

March 6, 2002

Jon Plaut
JPAC Chair for 2002
c/o CEC Secretariat
393, rue St-Jacques ouest, bureau 200
Montreal, Quebec H2Y 1N9

Dear Mr. Plaut,

During the June 2001 Council Session in Guadalajara, the Parties addressed many of the recommendations in the Joint Public Advisory Committee's report on "Lessons Learned" regarding the Articles 14 and 15 process (see Council Resolution 01-06). At that time, the Council also agreed to "consider expeditiously where it deems appropriate other matters addressed in the JPAC report on lessons learned." The purpose of this letter is to follow-up on the Council's commitment to provide a response to the four outstanding recommendations in the report (the four recommendations are attached for your reference).

Regarding the first two recommendations identified in the attachment hereto, the Parties fully appreciate the objective of ensuring a process that is open and transparent. Both of these recommendations, however, involve trade-offs between an efficient and timely process and the desire for transparency. Recognizing that the issue of balance is a critical one, we do not believe that implementing these recommendations will result in the appropriate balance, particularly with respect to the length of time it takes to complete the process. In addition to considerations of balance, we are concerned that implementing these recommendations will lead to exchanges among the submitters, the Secretariat and the named Party in the submission that will result in a more adversarial public submissions process which we do not believe would benefit the process.

With respect to JPAC's third recommendation as listed in the attachment, although the Parties agree that accountability is a critical issue, we note that pursuant to the North American Agreement on Environmental Cooperation, the Articles 14 and 15 process terminates with the development and potential release of the final factual record. Additionally, because various mechanisms exist in each of the three countries to ensure that commitments are respected, (e.g, administrative remedies, civil remedies, political pressure), we believe that any follow-up which a Party may choose to undertake in response to the development of a factual record is a domestic policy matter.

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Finally, when your fourth recommendation was discussed at the Alternate Representatives meeting last November, both the JPAC Chair and the Secretariat agreed that this was no longer an issue.

We appreciate JPAC's efforts on the Lessons Learned report and look forward to future cooperative efforts between the Council and JPAC to address issues related to the continued evolution of the public submissions process.

Sincerely,

[original signed by Diane Carroll on March 6, for]

Norine Smith
Alternate Representative for Canada
Assistant Deputy Minister,
Policy and Communications

c.c. Olga Ojeda
Judith Ayres
Janine Ferretti

attach.

**Other matters in the JPAC report on lessons learned which Council agreed
“to consider expeditiously where it deems appropriate”**

1. "...[W]here a Party's response includes new information not referred to in the original Submission, the submitter should be provided with that information and a brief opportunity to respond. A time period of up to 30 days should be given to the submitter for this purpose."
2. "...[I]f a Party chooses to submit additional information directly to the Council in response to (...) a recommendation [for a factual record] from the Secretariat, the submitters should be so advised and, if they request, permitted to make a brief written reply to such information so that the Council can make a more fully informed decision on the Secretariat's recommendation."
3. " To respond to the concern regarding monitoring, one option would be for the Party involved to report to the CEC within a reasonable period of time (for example, not exceeding 12 months) after the release of a factual record pursuant to Council authorization on the actions, if any, that it has taken to address the matters set forth in that factual record. Such a report should be made public in the next CEC annual report, after an opportunity for JPAC members to review and provide comments, through the draft CEC annual report in accordance with the Article 16(6) of the NAAEC."
4. "With respect to (...) [confidential information], we believe that a Party's right to invoke that defense against disclosure should be narrowly construed and should be limited to those circumstances in which it is expressly authorized by Art. 39 of the NAAEC"