



April 30, 2002

Mr. Jonathan Plaut
Chair, Joint Public Advisory Committee
North American Commission for Environmental Cooperation
393, St-Jacques West, Suite 200
Montreal, Quebec
Canada H2Y 1N9

SUBJECT: Call for Comments on the Work Plan Issue Related to the Implementation and Further Elaboration of Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC)

Dear Mr. Plaut:

Thank you for the opportunity to submit comments regarding the recent imposition by the Council to the Commission for Environmental Cooperation (CEC) of new requirements directing the CEC Secretariat to submit a work plan to the Parties prior to the preparation by the CEC of a factual record initiated under the auspices of NAAEC's Article 14 and 15 citizen submissions process.

At the outset, we must express our ongoing concern and disappointment regarding Council's recent overall approach to the Article 14 and 15 citizen submissions process. We believe that the NAAEC citizen submissions process was the result of a balanced initial negotiation among the Parties.

Regrettably, recent actions by Council could result in limits on the scope and timeliness of factual records, and a further erosion of the independence of the CEC Secretariat. Our concern is heightened by the history and experience regarding Council's actions in relation to the Article 14-15 process, including Council's Article 14-15 Guideline revision process and Council's recent instructions to the Secretariat to prepare limited factual records regarding *specific* cases raised in submissions (as opposed to the preparation of factual records regarding allegations in each of the submissions of *widespread* failures to effectively enforce environmental laws). This history raises the concern that the current work plan requirement may be misused for further delay and the creation of unwarranted obstacles to fact finding under the Article 14-15 process.¹

¹ On November 16, 2001, the Council instructed the Secretariat to develop factual records for five citizen petitions submitted to the CEC under Article 14 of NAAEC. The Council resolved in each of the five resolutions:

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We are concerned that the cumulative effect of Council's recent approach may produce long-term damage to the Article 14 and 15 citizen submission process and have ramifications for the successful integration of trade and environment policies throughout the hemisphere in the near future.

At a time when the NAAEC Parties are seeking support for trade expansion globally and throughout the hemisphere via important initiatives such as the Free Trade Area of the Americas (FTAA), undercutting the modest sustainability efforts undertaken in the NAFTA environmental side agreement would signal movement in the wrong direction. We are concerned that excessive limitations on the development of a factual record in the Council's work plan requirement will erode public confidence in the NAFTA parties' commitment to ensuring trade liberalization is accompanied by environmental safeguards.

Thank you again for the opportunity to present these views and we look forward to working with you to preserve the integrity of this vital public participation and environmental cooperation mechanism.

Sincerely,

/s/ Jake Caldwell

Jake Caldwell
Globalization and the
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JC/jc

TO DIRECT the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and to provide the Parties with the opportunity to comment on that plan...
Council Resolution 01-08 (SEM-97-006), Council Resolution 01-09 (SEM-98-006), Council Resolution 01-10 (SEM-99-002), Council Resolution 01-11 (SEM-99-004), and Council Resolution 01-12 (SEM-98-004).