

## **SESSION 04-05 OF ALTERNATE REPRESENTATIVES**

### **SUMMARY RECORD**

The Commission for Environmental Cooperation (CEC) Council, represented by its Alternate Representatives, met in Montreal, Canada on 19-20 August 2004. Ms. Norine Smith (Canada) chaired the meeting. Ms. José Manuel Bulás and Mr. Jerry Clifford represented Mexico and the United States, respectively. Ms. Donna Tingley, JPAC Chair, represented the Joint Public Advisory Committee (JPAC) and Mr. William Kennedy, CEC Executive Director, represented the Secretariat. Ms. Julie-Anne Bellefleur, Council Secretary, acted as secretary for the session. Other officials of the Parties and the Secretariat were also in attendance (Annex A).

#### **Introductions and review of agenda and objectives**

The Canadian representative, as Chair and facilitator for the meeting, shared her views and expectations for the meeting consisting of articulating the overall goals, objectives and priority elements for the development of the CEC's work program over the next five years, building on the Akumal meeting and Puebla declaration as a point of departure.

The Alternate Representatives took the opportunity to thank their Trade colleagues for joining them in the development of the Strategic Plan for Trade and Environment. They also welcomed John Kirton and Ian Crain who were invited to the meeting for their expertise on the topics of information for decision-making and capacity building.

#### **Report by the Executive Director**

Noting that his next quarterly report would be issued in time for October meeting of Alternate Representatives, the Executive Director offered a few observations on the development of the CEC's strategic plans. Recalling that the Puebla Declaration and the TRAC report emphasize the need to focus the CEC's work, he pointed out that, as some of the CEC's current and past projects are linked with the new priorities, the Parties are not starting totally afresh in defining possible programming elements. He also reaffirmed that the Secretariat was looking forward to receiving the Parties' guidance in the development of the work program. Finally, he suggested that the Alternate Representatives keep in mind the need to start considering potential announceables for the 2005 Council Session at one of their next meeting.

#### **Report by the JPAC Chair**

Reflecting on the JPAC's joint meeting with Council in June 2004 in Puebla, the JPAC Chair noted that while the dialogue was at times straightforward it provided an opportunity for an open communication, which in her view is an important step towards improving relationships. Reporting on recent JPAC activities, she mentioned that JPAC Advice 04-02 on Future Directions for the NAAEC had been forwarded to Council and indicated that JPAC's Advice on

the Council's review of the Operation of Council Resolution 00-09 would be issued shortly. She also indicated that JPAC had recently come to agreement on the terms of reference and the selection of a consultant to draft an analysis relating to the topic of the "*inherent conflict of interest built into the NAAEC*". In closing, she indicated that an Advice on the involvement of indigenous peoples in the activities of the CEC was also forthcoming.

She also provided an update on JPAC's process for providing input in the development of the CEC's strategic plans. Noting that the JPAC Regular Session scheduled for 27 and 29 October in Montreal will focus partly on the CEC's strategic and operational plans, she underscored the need to share relevant material with the public at least two weeks in advance of that meeting. The Alternate Representatives agreed to consider, at their September meeting, what type of documents or presentations could be shared with the public.

### **Presentation and discussion of the guidance provided by the Council**

The Alternate Representatives reviewed the key elements of the CEC's vision based on the Puebla Declaration.

### **Discussion of the attributes of a successful CEC Work Program**

The Alternate Representatives confirmed their concurrence with the CEC's mission statement as follows: "*The CEC facilitates cooperation and public participation to foster conservation, protection and enhancement of the North American environment for the benefit of present and future generations, in the context of increasing economic, trade and social links among Canada, Mexico and the United States*".

Using the Puebla Declaration as a starting point, they exchanged views on possible dimensions and attributes of CEC programming relating to the three priorities identified in the Puebla Declaration.

### **"Trade and Environment" priority theme and meeting of Article 10(6) Environment and Trade Officials**

Following a presentation by John Kirton, the Parties exchanged views on potential elements for the establishment of goals and objectives of a Trade and Environment Strategic Plan. They also shared their views about possible criteria to help establish priorities and guide the eventual selection of specific activities.

The Parties agreed that meetings of the 10(6) group should take place on the margins of each of the upcoming sessions of Alternate Representatives. They tasked their staff with developing a concrete proposal on potential goals and objectives, and refining the list of potential activities, for consideration at their next meeting to be held on 23-24 September 2004 in Washington, D.C. This will be accomplished through conference calls of the 10(6) working level group, who may also meet prior to the Alternate Representatives' meeting in Washington, should this be deemed useful. Canada agreed to take the lead in preparing potential goals and objectives for the CEC's Strategic Plan on Trade and Environment as well as criteria that will help establish priorities and

guide the eventual selection of specific activities. The United States agreed to take the lead in fleshing out the details on five of the six (6) priority areas listed in the Puebla Declaration. The Secretariat was asked to complement the information on any relevant area that may not have been covered (i.e.; invasive species) in the information note it provided back in April 2004 relating to CEC's work on trade and environment and the history of the 10(6) group.

### **“Information for Decision-Making” priority theme**

As a starting point to their discussion, the Alternate Representatives exchanged views on key gaps and needs within North America in the area of information and potential niches for CEC activities in this area based on ideas and options outlined in the presentations from Ian Crain and William Sonntag of USEPA.

In preparation for their next session in Washington, the Alternate Representatives asked their officials to develop the next stage of discussion on the dimensions and attributes of CEC programming in support of the information for decision making (ifDM) priority theme and to seek the views of the Global Earth Observation System of Systems (GEOSS) so as to get a North American perspective. To this end the Parties' lead contacts on information agreed to meet in Mexico City together with knowledgeable experts from each country regarding their GEOSS planning and expectations. Mexico will ensure appropriate representation of their experts in this area. The US indicated the possibility of bringing a contractor to speak to the information technology systems issues and to provide advice. The Alternate Representatives suggested that it would be useful to invite GEOSS representatives for a briefing and demonstration of their system at their Washington meeting so as to inform their discussion.

### **“Capacity Building” priority theme**

Following a presentation by the Mexican representative on considerations and items of interest to Mexico in the field of capacity building, the Alternate Representatives exchanged views on the development of a broad base strategy for this priority. Recognizing that further analysis and discussion is required before the Parties can define the goals and objectives for this strategy, the Alternate Representatives agreed that it would be useful to convene a meeting or conference call of experts prior to their next meeting in order to generate ideas for synthesis at the GSC level. The Secretariat offered to draft an agenda and to provide a list of capacity building experts, for the Parties' consideration. The Canadian and United States representatives undertook to formalize their partnership with their respective international development agencies (USAID and CIDA) between now and the September meeting. For its part, Mexico offered to share information on capacity building initiatives in Mexico that the Parties may wish to share with their respective agencies in advance of the next meeting of Alternate Representatives.

### **Other regular business**

#### **Item 1 Article 13 Report on the Effects of Transgenic Maize in Mexico**

The Executive Director provided an update on the status of the Article 13 report on Maize and Biodiversity. He indicated that comments to the draft report submitted by the Parties in late July

2004 were under review by the Secretariat and the Expert Advisory Group. The Secretariat will carefully review the report in consideration of all comments received and to ensure that it is consistent in three languages, before forwarding the final report to Council.

**Item 2 Submissions on Enforcement Matters under Articles 14 and 15 (SEM -03-005 (Montreal Technoparc))**

Pursuant to Article 15(2) of the NAAEC, the Council instructed the Secretariat to prepare a factual record on the matter of submission 03-005 (Montreal Technoparc) as per Council Resolution 04-05 (Annex B). The Canadian representative indicated that Council had reviewed at length the Secretariat's recommendation. Noting that Council considers the submission to be a good one, she shared the Council's concerns with some of the specific items listed on page 17 of the recommendation—especially after having reviewed the body of text that elaborates on these specific items—and asked that these be reflected in the summary record as follows:

“Council is cognizant of the attention being paid to the "scoping" issue, and has attempted to address these concerns by either removing the inappropriate item or by "recrafting" to a minimum the language used by the CEC Secretariat in its recommendation. Items e) g) f) and k) were not included in the Council Resolution, for the following reasons:

e) a factual record is meant to look at what occurred with respect to a Party's enforcement, not what "could have" or "should have" occurred;

g) given the nature of solicitor-client privilege, the CEC Secretariat should not ask to receive this type of information;

f) the CEC Secretariat should not use the factual record process to develop legal opinions. However, Council did consider the information on the division of ownership to be relevant and captured that under bullet 6 (information on the division of ownership of the Montreal Technoparc site and its relevance to enforcement efforts)

k) a factual record is meant to look at events that occurred in the past—not the present or future. If a Party, when providing comments on the draft factual record, wishes to inform the CEC Secretariat of recent developments, it is the Party's choice. This should not be part of a factual record.

With respect to items d) i) and j) Council redrafted to a minimum the language used by the CEC Secretariat in order to eliminate any ambiguous language, in light of the body of the text, that would suggest that the CEC Secretariat would prepare a factual record that would attempt to assess the effectiveness or the effects of Environment Canada's enforcement efforts at the Montreal Technoparc site.

Council is of the view that a factual record should not attempt to assess, pass judgment or draw any conclusions on the enforcement efforts undertaken by a Party—it should simply set out all the facts relevant to the issue raised in the submission. Council is of the view that resolution 04-05 captures and remains true to the CEC Secretariat's recommendation. The resolution allows

the CEC Secretariat to develop a good factual record that will set out the facts surrounding Environment Canada's enforcement efforts at the Montreal Technoparc site in an objective and factual manner."

### **Item 3 Travel Policy for Government Officials**

Under this item the Secretariat asked the Parties to clarify whether the travel policy adopted at Session 03-06 of Alternate Representatives should apply to provincial/state representatives, in addition to federal representatives. The Alternate Representatives exchanged views on the implications of the rule which states that "*CEC funds should not be used to cover travel expenses of Canadian and United States government representatives and that a reasonable amount should be accessible to facilitate the participation of Mexican government representatives*". They agreed that until notified otherwise, this rule should apply to both federal and province/state representatives, with the exception of government representatives that are invited to meetings in their capacity of experts. They further agreed to reassess the implications of this new rule should it affect the appropriate representation in CEC activities at the state/provincial level.

### **Item 4 Mexico's National Implementation Plan for POPs under the Stockholm Convention**

The Executive Director provided background information relating to the CEC's potential role as Executing Agency for the implementation of Mexico's National Implementation Plan for POPs under the Stockholm Convention. He indicated that pursuant to section 5.6 of the CEC's financial rule, the Acting Executive Director notified Council on 3 March 2003 of its intent to pursue GEF funds and to act as Executing Agency for Mexico. As none of the Parties expressed any objection, two relevant agreements have since then been drafted: i) a grant agreement between the World Bank, CEC and Semarnat and ii) a Cooperation Agreement between the CEC and Semarnat. Most recently, Mexico presented for the Parties' consideration a draft Council Resolution authorizing the Secretariat to sign the funding and cooperation agreements. The United States and Canada asked that they be provided with a copy of the relevant documents for their review and undertook to get back to Mexico and the Secretariat promptly in order to move forward with this initiative.

### **Item 5 CEC workshop on Building the Renewable Energy Market in North America**

The Secretariat provided an update on the organization of the CEC workshop on Building the Renewable Energy Market in North America to be held in Montreal on 28-29 October 2004. The Alternate Representatives thanked the Secretariat for the update, but expressed the need to consult with their respective agencies and departments in order to ensure that the appropriate government representatives attend the workshop. They undertook to review the preliminary agenda and list of invitees and to get back to the Secretariat with their comments at the next GSC conference call. They also noted that, in the future, the Secretariat should consult with them—through the GSC—before extending invitations to high level government representatives on behalf of the CEC, so as to ensure that their respective government relations protocol is followed.

**Item 6 International Courses**

The Mexican representative provided information on a series of training sessions on international negotiation skills to be held under the auspices of Harvard University. He extended an invitation to his Canadian and United States counterparts to attend the upcoming session to be held from 30 August to 1 September. The Canadian and United States representatives thanked Mexico for the invitation and indicated that they would see if they could send a representative despite the short notice. The Chair suggested that the international negotiations handbook developed by the International Institute for Sustainable Development (IISD) may be a useful source of information for Mexico's efforts in this area.

**SESSION 04-05 OF ALTERNATE REPRESENTATIVES**

**Montreal, Canada, 19—20 August 2004**

**Delegations List**

(as of 19/08/2004)

**CANADA**

**Alternate Representative**

Norine Smith, Environment Canada  
Jenna MacKay-Alie, Environment Canada  
Julie Pelletier, Environment Canada  
Leonardo Iannone, Environment Canada  
Bill Jarvis, Environment Canada  
Joanna Talafre, Environment Canada  
Nancy Harris, Environment Canada  
Tim Gallagher, Environment Canada  
Dick Ballhorn, Foreign Affairs  
Martin Roy, Foreign Affairs  
Julie Crowley Foreign Affairs  
Louise Lapierre, Province of Quebec  
Kim Lakeman, Province of Alberta  
Daryl Hanak, Province of Alberta

**MEXICO**

**Alternate Representative**

José Manuel Bulás, UCAI, Semarnat  
José Manuel Medina Aguilar, UCAI, Semarnat  
Elleli Huerta, Subsecretaría de Fomento y Normatividad Ambiental,  
Semarnat

**UNITED STATES**

**Alternate Representative**

Jerry Clifford, USEPA  
Mark Linscott, USTR  
Paul Cough, USEPA  
William Sonntag, USEPA  
Sylvia Correa, USEPA  
Jan Gilbreath, USEPA  
Darci Vetter, USTR  
Heidi Bell, USEPA  
Ken Labbe, USEPA  
Curt Stone, Environment, Science, Technology and Health Counselor,  
US Embassy, Ottawa

**JPAC**

**JPAC Chair**

Donna Tingley  
Manon Pepin, JPAC Liaison Officer

**SECRETARIAT**  
**Executive Director**

William Kennedy  
Doug Wright, Director of Programs  
Julie-Anne Bellefleur, Council Secretary  
Hernando Guerrero, Director of Mexico Liaison Office  
Geoffrey Garver, Director, Submissions on Enforcement Matters Unit  
Evan Lloyd, Director of Communications  
Eduardo Delgadillo, Director of Administration  
Chantal Line Carpentier, Head, Environment, Economy and Trade  
Mihaela Vulpescu, Program Assistant

**EXPERTS**

Prof. John J. Kirton, Associate Professor, Department of Political  
Science, University of Toronto  
Dr. Ian K. Crain, Principal, The Orbis Institute



Montreal, 20 August 2004

COUNCIL RESOLUTION 04-05

**Instruction to the Secretariat of the Commission for Environmental Cooperation  
Regarding the Assertion that Canada is failing to effectively enforce sections  
36(3) of the federal *Fisheries Act* (SEM-03-005).**

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

CONSIDERING the above noted submission, filed on 14 August 2003 by Waterkeeper Alliance, Lake Ontario Waterkeeper, Société pour Vaincre la Pollution, Environmental Bureau of investigation and the Upper St. Lawrence Riverkeeper/Save the River!, and the 14 November 2003 response provided by the Government of Canada;

HAVING REVIEWED the 19 April 2004 notification to Council by the Secretariat recommending the development of a factual record with respect to the submission;

HEREBY UNANIMOUSLY DECIDES TO:

INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters* under Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* in respect of the following items arising in the context of Submission SEM-03-005 with regard to alleged failure to effectively enforce section 36(3) of the *Fisheries Act*:

- facts surrounding Environment Canada’s inspections, before and after, the issuance of a warning in 1998;
- facts surrounding Environment Canada’s 2002-2003 investigation, in response to a request from members of the public;
- characteristics and fate of the contamination of the Montreal Technoparc sector;
- results of the oil containment and pumping system(s) at the Montreal Technoparc sector;
- the ecotoxicological study carried out in 2002;
- information on the division of ownership of the Montreal Technoparc sector and its relevance to enforcement efforts;
- information on Environment Canada’s technical actions and advice and its relevance to enforcement efforts at the Montreal Technoparc sector; and
- compliance promotion efforts following the decision by Environment Canada not to seek charges.

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; and

TO DIRECT the Secretariat to consider, in developing the factual record, whether the Party concerned “is failing to effectively enforce its environmental law” since the entry into force of the NAAEC on 1 January 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to 1 January 1994, may be included in the factual record.

APPROVED BY THE COUNCIL:

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José Manuel Bulás  
Government of the United Mexican States

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Judith E. Ayres  
Government of the United States of America

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Norine Smith  
Government of Canada