

SESSION 03-02 OF ALTERNATE REPRESENTATIVES

SUMMARY RECORD

The Commission for Environmental Cooperation (CEC) Council, represented by its Alternate Representatives, met via conference call on 22 April 2003. Mr. Jerry Clifford (United States) chaired the meeting. Ms. Norine Smith and Ms. Olga Ojeda represented Canada and Mexico respectively. Mr. Gustavo Alanís-Ortega represented the Joint Public Advisory Committee (JPAC) and Mr. Victor Shantora, CEC Acting 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.

Item 1 Adoption of the agenda

The Alternate Representatives adopted the agenda based on the provisional agenda, with the exclusion that item 4 (adoption of Summary Record), which was deferred to their next session (Annex A).

Item 2 Report by the Acting Executive Director

The Acting Executive Director indicated that he had recently met with U.S. government officials for a briefing session on issues related to the Sound Management of Chemicals (SMOC) and offered to repeat the exercise with Canadian and Mexican officials, if deemed useful. He also informed the Parties of an upcoming meeting with the “Friday Group” to be held on May 1, in Ottawa. Finally, he reported on the recent release of the 2000 Taking Stock report and underlined the broad media coverage generated by the release of this report.

Item 4 Report by the JPAC Chair

The JPAC Chair indicated that, in response to the Alternate Representatives’ request during their joint meeting with JPAC on 27 March in Mexico City, JPAC would soon be submitting recommendations for specific agenda items at the June 2003 Council Session, including suggestions for the proposed Environment and Trade Ministerial meeting.

He also informed the Alternate Representatives of JPAC’s intention to organize a workshop on Emerging Air Quality Issues in North America, in parallel to the Council Session, on the following three areas: (i) comparative study of air management systems across North America; (ii) comparability of North American environmental standards for power plants; and (iii) identification of issues related to how emissions trading systems might evolve in North America. He indicated that representatives of the North American Air Working Group would be invited to present a progress report at the workshop and to share information as to how they plan to involve the public in their activities.

Acknowledging the importance of air quality issues as a priority for North America, the Alternate Representatives welcomed JPAC's initiative.

The Acting Executive Director offered the Secretariat's assistance, as may be deemed appropriate, in order to facilitate the establishment by the Parties of the North American Air Working Group. He informed the Alternate Representatives that information relating to the scheduling of a conference call of the Working Group was forthcoming.

Item 5 Submissions on Enforcement Matters under Articles 14 and 15

Item 5.1 Submission SEM-99-002: Migratory Birds

Pursuant to NAAEC Article 15(7), the Alternate Representatives voted unanimously in favor of making public the final factual record for Submission SEM-99-002 (Migratory Birds), as per Council Resolution 03-03 (Annex B).

Item 5.2 Submission SEM-00-006: Tarahumara

A point which was the subject of much discussion involved the difference of views regarding language in the draft Council Resolution on Submission SEM-00-006 (Tarahumara) related to the manner in which the original submission was processed by the Secretariat. The Parties noted that the Secretariat modified the submission contrary to the NAAEC and the Guidelines for Submission on Enforcement Matters under Articles 14 and 15 of the NAAEC. The Acting Executive Director noted the Secretariat's disagreement and concern with this statement and its expression in the draft resolution. He suggested including the Secretariat's views in the summary record and moving forward in accordance with Council's direction.

On this same subject, the JPAC Chair evoked the difficulty for him to comment on the specific language of the resolution since he had not been provided with a copy, but he concurred with an earlier comment made by the Canadian representative who questioned the value added by including such a statement. The Secretariat noted that its capacity to comment on the draft resolution had also been limited by the fact that it had not been provided with a copy of the draft under discussion.

Following the exchange of views, the Alternate Representatives adopted Council Resolution 03-04 instructing the Secretariat to prepare a factual record (Annex C).

Item 5.2 Submission SEM-02-001: Ontario Logging

Following an exchange of views on the draft resolution for Submission SEM-02-001 (Ontario Logging), the Alternate Representatives agreed that the submission did not contain the sufficient information required to proceed with the development of a factual record at this time. Through the adoption of Council Resolution 03-05 (Annex D), the Council unanimously decided to defer consideration of the Secretariat's notification of 12 November 2002, pending submission by the

submitters of the requisite sufficient information in support of the allegations set forth in the submission.

The JPAC Chair courteously noted that in accordance with Article 14:1(c), the determination as to whether the submission provides sufficient information was incumbent upon the Secretariat.

Item 6 Other Issues

No other issues were discussed.

Item 7 Next session of Alternate Representatives

The Alternate Representatives confirmed their availability for their next session to be held via conference call on 15 May 2003 (1:00—4:00 PM, Eastern time). It was noted that this would be the last planning session prior to the June 2003 Council Session.

Item 8 Closure of the session

In closing, the Chair thanked the staff of all three countries for their excellent work, on behalf of the Alternate Representatives.

**SESSION 03-02 OF ALTERNATE REPRESENTATIVES
AGENDA**

Held via conference call on Tuesday, 22 April 2003
2:00 PM to 4:00 PM, Eastern time (1:00 to 3:00 PM, Mexico time)

Chair: United States

- Item 1 Adoption of the agenda
- Item 2 Report by the Executive Director
- Item 3 Report by the Chair of JPAC
- Item 4 Adoption of summary record
- Item 5 Submissions on Enforcement Matters under Articles 14 and 15
- Item 6 Other issues
- Item 7 Next session of Alternate Representatives
- Item 8 Closure of the session

**SESSION 03-02 OF ALTERNATE REPRESENTATIVES
ANNOTATIONS TO THE AGENDA**

Item 1 Adoption of the agenda

The Council shall adopt the agenda.

DOCUMENTS:

- a) Draft annotated agenda (distributed 15-04-2003) C/C.01/03-02/AGEN/01

Item 2 Report of the Acting Executive Director

The Acting Executive Director will briefly address the Council on Secretariat activities and matters requiring their attention.

DOCUMENTS: No document

Item 3 Report by the Chair of JPAC

Under this item the JPAC Chair will provide an update to the Alternate Representatives on JPAC Activities.

DOCUMENTS:

- a) JPAC Advice 03-01: Seeking Balance between the Interests of the Public and Investors in the Application of Chapter 11 of the NAFTA (distributed 8-04-2003)
b) JPAC Advice 03-02: Second North American Symposium on Assessing the Environmental Effects of Trade (distributed 8-04-2003)

Item 4 Adoption of Summary Record

In accordance with Council Rules of Procedure (R.11), the Executive Director prepared the summary record of Session 03-01 of Alternate Representatives. The Alternate Representatives are expected to approve the summary record.

DOCUMENTS:

- a) Draft summary record of Session 03-01 of Alt. Reps held on 27–28 March 2003, including Canadian comments (distributed 9-04-2003)

Item 5 Submissions on Enforcement Matters under Articles 14 and 15

Item 5.1 Submission SEM-00-006: Tarahumara

Pursuant to Guideline 10(2), the Secretariat informed the Council on 29 August 2002 that it considers that submission 00-006 warrants developing a factual record. As provided by Article 15(2) of the NAAEC, Council may, by a two-thirds vote, instruct the Secretariat to prepare a factual record on the matter.

DOCUMENTS:

- a) Secretariat's Article 15(1) notification dated 26 August 2002
- b) Draft Council Resolution (distributed by MX 10-04-2003)

Item 5.2 Submission SEM-02-001: Ontario Logging

Pursuant to Guideline 10(2), the Secretariat informed the Council on 12 November 2002 that it considers that submission 02-001 warrants developing a factual record. As provided by Article 15(2) of the NAAEC, Council may, by a two-thirds vote, instruct the Secretariat to prepare a factual record on the matter.

DOCUMENTS:

- a) Secretariat's Article 15(1) notification dated 12 November 2002
- b) Draft Council Resolution (distributed by CA)

Item 5.3 Submission SEM-99-002: Migratory Birds

Pursuant to Article 15(5) of the NAAEC, the Secretariat submitted to the Council on 28 November 2002 the draft factual record pertaining to Submission no. 99-002: Migratory Birds. In accordance with the same Article, following a 45-day review period, the United States provided on 13 January 2002 comments on the accuracy of the draft factual record. Pursuant to Article 15(6), the Secretariat incorporated, as appropriate, any such comments in the final factual record and submitted it to the Council on 21 February 2003.

In accordance with Article 15(7), the Council may decide, by a two-thirds vote, to make the final factual record publicly available, normally within 60 days following its submission by the Secretariat.

DOCUMENTS:

- a) Final factual record (distributed 21-02-2003)
- b) Draft Council Resolution (to be distributed by US)

Item 6 Other Issues**Item 7 Next sessions of Alternate Representatives**

The Alternate Representatives are expected to confirm the date of their next session tentatively scheduled for 15 May 2003, via conference call.

DOCUMENTS:

- a) Schedule of sessions of Alternate Representatives for 2003, as of 11 April 2003 (distributed 15-4-2003)

C/C.01/02-06/PLAN/01/Rev.2

Item 8 Closure of the session

The Chairperson is expected to close the session.

22 April 2003

COUNCIL RESOLUTION 03-03

Instruction to the Secretariat of the Commission for Environmental Cooperation to make public the Factual Record for Submission SEM-99-002 (Migratory Birds)

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;

HAVING RECEIVED the final factual record for Submission SEM-99-002;

NOTING that pursuant to Article 15(7) of the NAAEC, the Council is called upon to decide whether to make the factual record publicly available; and

AFFIRMING its commitment to a timely and transparent process;

HEREBY DECIDES:

TO MAKE PUBLIC and post on the registry the final factual record for Submission SEM-99-002; and

TO ATTACH to the final factual record comments provided by the Parties to the Secretariat on the draft factual record.

APPROVED BY THE COUNCIL:

Judith E. Ayres
Government of the United States of America

Olga Ojeda Cardenas
Government of the United Mexican States

Norine Smith
Government of Canada

22 April 2003

COUNCIL RESOLUTION: 03-04

Instruction to the Secretariat of the Commission for Environmental Cooperation Regarding the assertion that Mexico is failing to effectively enforce its environmental law in the Sierra Tarahumara in the State of Chihuahua (SEM-00-006).

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 submission filed on 9 June 2000, by *Comisión de Solidaridad y Defensa de los Derechos Humanos A.C.*, representing various Indigenous communities in the Sierra Tarahumara in this submission process;

NOTING that the Secretariat modified the submission contrary to the NAAEC and the *Guidelines for Submission on Enforcement Matters under Articles 14 and 15 of the NAAEC* (Guidelines) and that it determined on 6 November 2001 that the submission warranted a response from the Party;

FURTHER NOTING that the government of Mexico, on 15 February 2002, submitted its response to the Secretariat in accordance with Article 14(3) of the NAAEC;

HAVING BEEN INFORMED by Mexico that the administrative proceedings related to the citizen complaints referenced under headings H and M of the submission are no longer pending; and

HAVING REVIEWED the notification by the Secretariat of 29 August 2002, indicating that the development of a factual record is warranted;

HEREBY UNANIMOUSLY DECIDES TO:

INSTRUCT the Secretariat to prepare a factual record with respect to the submission;

REMIND the Secretariat that any assistance it provides to submitters must be in accordance with the NAAEC and the Guidelines;

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

DIRECT the Secretariat to inform the Submitter of this resolution.

APPROVED BY THE COUNCIL:

Judith E. Ayres
Government of the United States of America

Olga Ojeda Cárdenas
Government of the United Mexican States

Norine Smith
Government of Canada

22 April 2003

COUNCIL RESOLUTION: 03-05

Instruction to the Secretariat of the Commission for Environmental Cooperation Regarding the Assertion that Canada is failing to effectively enforce section 6(a) of the *Migratory Bird Regulations* (MBR) adopted under the *Migratory Birds Convention Act, 1994* (MBCA) (SEM 02-001).

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 submission filed on 4 February 2002 relating to the above-mentioned matter by Canadian Nature Federation, Canadian Parks and Wilderness Society, Earthroots, Federation of Ontario Naturalists, Great Lakes United, Sierra Club (United States), Sierra Club of Canada, Wildlands League, all represented by the Sierra Legal Defense Fund, and the response provided by the Government of Canada, dated 11 April 2002;

HAVING REVIEWED the notification to Council by the Secretariat on 12 November 2002 indicating that the development of a factual record is warranted in relation to the submission (SEM-02-001); and

NOTING that the submission, as it is based in large part on an estimation derived from the application of a descriptive model, and does not provide facts related to cases of asserted failures to enforce environmental law, does not contain the sufficient information required to proceed with the development of a factual record at this time;

HEREBY UNANIMOUSLY DECIDES:

TO DEFER consideration of the Secretariat's notification of 12 November 2002, pending the following:

- a) the submitters being provided a period of 120 calendar days from the date of this resolution to submit the requisite sufficient information in support of the allegations set forth in SEM-02-001;
- b) the termination of the submission process for SEM-02-001 if the submitters elect not to provide further information within the 120 calendar day time frame;
- c) in the event such further information is provided, the Secretariat determining whether that information warrants a response from Canada or whether the submission process should be terminated;
- d) in the event such a response is requested and provided by Canada, the Secretariat, after considering both the new information provided by the submitters and the response of Canada to that information, notifying Council whether it recommends the preparation of a factual record.

TO INSTRUCT the Secretariat to forthwith notify the submitters of this resolution.

APPROVED BY THE COUNCIL:

Judith E. Ayres
Government of the United States of America

Olga Ojeda Cárdenas
Government of the United Mexican States

Norine Smith
Government of Canada