



COMMISSION FOR ENVIRONMENTAL COOPERATION OF NORTH AMERICA

Joint Public Advisory Committee Session No. 01-03

**22–23 October 2001
Montreal, Quebec, Canada**

Summary Record

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America held a regular session on 22–23 October 2001 in Montreal, Quebec, Canada.

This Summary Record reports on each agenda item, records all decisions made by the Committee and identifies action items and responsibilities. (See Annex A for the agenda, Annex B for the list of participants, Annex C for Advice to Council 01–06 on Proposed Program Plan and Budget for 2002–2004, and Annex D for Advice to Council 01–07 on Citizen Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation.)

Previous summary records, advice from JPAC to Council and other JPAC-related documents may be obtained from the JPAC Liaison Officer's office or through CEC's web site at <<http://www.cec.org>>.

DISCLAIMER: Although this summary was prepared with care, readers should be advised that it has not been reviewed nor approved by the intervenors and therefore may not accurately reflect their statements.

Welcome and Overview by the Chair

The Chair welcomed everyone to Montreal, making particular mention of the students who were present. Each of the members introduced himself. The Chair welcomed the new Mexican member, Laura Silvan de Durazo, and noted the absence, with reasons, of Cam Avery, Ann Bourget and Raúl Tornel.

Approval of the Provisional Agenda

The agenda was approved without modification.

Report from the CEC Secretariat and Question Period

The CEC Executive Director provided an overview of activities undertaken by the Secretariat to implement initiatives from the 2001 June Council session. She explained that the new vision adopted by Council required a corresponding shift in focus by the Secretariat, while the existing work plan is to be completed. Meeting the challenge of North American economic integration, with the collaboration and cooperation this entails, calls for a new policy direction.

She went on to describe that energy, hazardous wastes and water are three of the key new issues that Council asked the Secretariat to address with corresponding emphasis on the production of high quality information, market approaches based on technology, and increased public participation.

A JPAC member reminded the Executive Director of JPAC Advice to Council 01–04 on Climate Change and asked how the Secretariat intended to pursue the issue of market mechanisms, in anticipation of measurable progress within the next year. He also asked how JPAC's letter to the Secretariat on the subject of Lake Chapala was being accommodated in the work program. The Executive Director replied that the intention is to pursue an activity on climate change in the areas of efficiency, renewable energy and carbon sequestration and develop options for Council to consider at its 2002 session. Regarding Lake Chapala, the intention is to fold this issue into a broader scoping exercise on water, as stated in her letter to the JPAC Chair dated 9 August 2001.

A JPAC member noted that quick action on climate change was required if there was to be an impact on North American policy.

Status Report on Issues Related to Articles 14 and 15 Submissions

The Legal Officer, Submissions on Enforcement Matters Unit, made a presentation on the status of each submission.

The JPAC Chair reminded the session that JPAC had expressed its disappointment and concern that Council had chosen not to take a vote on the pending submissions during the June Council session. This disappointment and concern was reiterated in a letter from the JPAC Chair to Council dated 27 September 2001, along with a request for follow-up on JPAC's lessons learned report. Having had no reply to that letter, she asked Canada's representative at the meeting to provide an update.

Canada's representative indicated that an earlier meeting of the Alternative Representatives had been cancelled due to the terrorist attacks on New York and Washington on 11 September. The meeting was now confirmed for 14–16 November in Montreal, and Canada would come prepared to vote on all pending submissions.

Several members of JPAC and the public expressed their continuing concern that the unacceptable delays were again undermining the submissions process and said JPAC should intervene and take a strong position.

Report from the National and Governmental Advisory Committee Representatives

The Chair then invited the National and Governmental Advisory Committees (NACs and GACs) representatives to make their presentations.

The representative of the Canadian NAC explained that much of their first meeting focused on familiarizing themselves with each other and their mandate. She explained that nine of the ten members were new. The second meeting focused on developing advice to the Canadian Governmental Committee on the Proposed Program Plan and Budget for 2002–2004. The advice was not yet ready at the time of this meeting. It will identify priorities, existing and emerging challenges and process issues, and focus on: market mechanisms, conservation and the restructuring of electricity markets; the involvement of governments in regulated investor disputes; water, air quality and climate change; and comparing law and policy within the three countries in relation to the industrialization of agriculture.

The US NAC representative explained that they had prepared two letters of advice—one relating to Articles 14 and 15 and Article 10(6) of NAAEC, the other concerning the 2002–2004 Proposed Program Plan and Budget. The latter was not yet issued, so he concentrated on the former. He explained that during their 4–5 October meeting, the US NAC received a briefing from the EPA on the status of the pending Migratory Bird Treaty Act submission concerning the United States. He went on to explain why the US NAC had taken such a strong position against the US position and read aloud excerpts of their advice letter. He also said that the US NAC was troubled to learn that parties to the dispute were preparing draft resolutions for Council and asked JPAC to consider this matter.

The Chair of the US GAC presented an even stronger position than her US NAC colleague. She characterized the US position as fundamentally flawed because it undercuts the independence of the Secretariat by predetermining the scope of a factual record and by requiring that the Secretariat negotiate its work plan; and because it raises the bar for petitioners by requiring more information. She went on to explain that the US GAC considered that this position would modify the guidelines without going through the required process.

Regarding the Proposed Program Plan and Budget for 2002–2004, the Chair provided highlights from an advice letter that would be available soon: Concerning the Environment, Economy and Trade program, the US GAC endorses the move to merge NAFTA effects and emerging trends work and recommends that the CEC be more aggressive in pursuing progress at meetings of the NAAEC Article 10(6) working group. Concerning the Conservation of Biodiversity program, the US GAC sees advantages in merging marine mapping and marine protected areas work; broadening this work by including local populations in examining emerging marine issues; and integrating indigenous peoples and local and state governments in the North American Biodiversity Information Network. Finally, concerning the Pollutants and Health program, the US GAC is very enthusiastic about the Mexican government's desire to make the PRTR mandatory, with the CEC providing support to ensure that the data are comparable with the rest of North America, and with the public fully represented in all working groups, committees, etc.

Overview of the Proposed Program Plan and Budget for 2002–2004

The CEC Director of Programs provided an overview of the Proposed Program Plan and Budget for 2002–2004 prepared by the Secretariat. He noted that the CEC was unique among international organizations in providing opportunities for public input. He also made an important contextual comment—that when balancing the completion of the existing program with new initiatives, this was still a “zero sum game” requiring the careful management of human and financial resources. He said programs would carefully target capacity building to support specific objectives in the work plan. The same approach would be taken for public participation, targeting people familiar with the issue at hand to ensure practical and constructive contributions.

Plenary Discussion on the Proposed Program Plan and Budget for 2002–2004

The Chair reminded the meeting that JPAC Advice to Council 01-05 provided comments on the program outline. JPAC had since organized itself into “teams” targeting program areas to review the more detailed Proposed Program Plan and Budget. She went on to explain that the interaction during this would be used to assist JPAC in developing its Advice to Council.

Environment, Economy and Trade Program

She then invited the program manager of Environment, Economy and Trade to make a presentation, to be followed by a question and answer period.

A member of the public congratulated the Secretariat on its new strategic direction and on moving towards projects supporting new policy development. He informed JPAC and the meeting that the US NAC advice letter would focus primarily on Green Goods and Services. He also mentioned that he found it difficult to tease out the broader policy implications from the current document.

The CEC Director of Programs replied that the Secretariat was very much aware that the document was not “reader friendly” and did not make clear links between the projects and policy implications. He informed meeting participants that the Secretariat had taken the decision to prepare an outreach document to do just that.

A member of the public asked if the program is adequately considering demand management and its relation to renewable energy. The program manager replied that she agreed more work on the demand side was necessary—not to stimulate demand but to shift it in the direction of renewable energy sources, along with other measures.

A JPAC member again raised the matter of Council’s clear direction that market mechanisms for conservation and greenhouse gas reductions be built into the program, cautioning that while the topic is sensitive, waiting until next June to determine next steps might be too long.

The CEC Director of Programs replied that the Secretariat was given a mandate to continue to explore these matters. It would be doing necessary preparatory work by convening top experts to develop options for Council to consider in June 2002, after which work would begin.

A member of the public enquired if tax incentives for developing markets were being explored. The program manager replied that the CEC's role is to provide information on what options are available, and certainly tax incentives are one.

A JPAC member noted there is a lot of work on the supply side being conducted by many organizations but he does not see comparable interest in making the demand side more price responsive. He recommended that the CEC not just prepare summaries and surveys, but move the issues forward.

Another JPAC member commented that energy production and energy trading are having a huge impact in the US/Mexico border region, citing that 98 percent of pollution on the border comes from energy production. The program should be looking explicitly at renewable energy.

Conservation of Biodiversity Program

The Chair then invited the head of the Conservation of Biodiversity program to make a presentation, to be followed by a question and answer period.

A JPAC member asked how the marine work would contribute to policy shifts in support designed to minimize and prevent threats to important ecosystems such as the Sea of Cortez. The program head replied that one of the main objectives of the North American Marine Protected Areas Network in the B2B priority region is to identify priority conservation areas, so that in the case they are not protected, recommendations can be issued as to the best ways to conserve their ecological value. Secondly, the project has a capacity building component, which currently is devoted to raising the level of knowledge and expertise of key stakeholders in the Peninsula de Baja California (judges, congressmen, lawyers, MPA managers, and NGO directors); this will help to build a core of informed people who understand the issue.

Another JPAC member asked why the invasive species work was shifted to the Law and Policy program and noted the new emphasis on policy and enforcement. The CEC Director of Programs replied that its placement in the Program Plan was not so important, as this is a “cross-cutting” topic where identification of compatible institutions and legal frameworks was the challenge.

The JPAC Chair noted the importance of developing a common understanding of the definition of invasive species before moving to policy work. The program head agreed, adding that one of this year's priorities is to develop a clearinghouse of information in Mexico compatible with those existing in Canada and the United States.

A member of the public commended the CEC for its work on marine protected areas as an excellent example of the benefits of synergy and alliances. He offered that a similar initiative was now required for terrestrial protected areas and described a project he is involved in—Benefits Beyond Borders: the State of North American Protected Areas—and suggested this as an opportunity for a new partnership (WCPA and CEC) to jointly develop a report on the state of protected areas in North America.

A JPAC member asked if the previous work of this program on the Bight of the Californias and the Gulf of Maine had resulted in lessons learned that could be applied to other areas. The program head replied that indeed lessons learned had been shared with groups in other regions, for instance the CEC/Pronatura/Texas Center for Policy Studies Workshop on the Gulf of Mexico, and had even been used to support Central America countries in developing a Regional Action Plan.

Pollutants and Health Program

The Chair then invited the program manager of the Pollutants and Health program to make a presentation, to be followed by a question and answer period.

The JPAC Chair asked how the public could be involved in the Children’s Health work beyond participation in the Expert Advisory Board. The program manager replied that she would encourage JPAC involvement in public review of the work, to strengthen linkages beyond the Advisory Group.

A member of the public drew attention to the relationship between increased trade and increasing air pollution associated with transportation and asked if the program will look at the development of transportation infrastructure as it relates to air quality.

The CEC Director of Programs replied that after the air quality meeting in Winnipeg earlier this year, it was not clear what the CEC role could be in this important issue. During the June Council session, it was decided to focus on the relationship between transportation (diesel) and children’s health, particularly with respect to respiratory illness. A pilot project at selected border crossings will attempt to draw on data to link emissions to respiratory illness.

A JPAC member added that, as in the case of leaded gas some years ago, establishing a link between diesel fuel emissions and illness would help convince legislators to take action.

Another JPAC member noted that this program (and the program plan as a whole) needs to more clearly articulate goals and rationales and link these to activities—that the activity is not a goal in itself.

Another JPAC member brought up the issue of water as a transport mechanism for pollution, noting that water is known to be one of the most important pathways for toxicity and endocrine disruptors. She encouraged the SMOC group to introduce this aspect into its work. She also supported the comment by the previous speaker, saying that for a distantly removed person, the program plan is not clear—it needs summaries of priorities and goals, then a rationale for why each specific project was designed.

The CEC Director of Programs agreed entirely with these latter comments, reiterating that this was exactly why the Secretariat was working on an outreach document. Regarding water, the CEC has a positive history with San Pedro and the Silva reservoir. These activities are very resource intensive. After much discussion at the Secretariat on how to build Council’s priorities into the work plan, it was decided to focus on gathering information and proposing options.

A member of the public suggested that JPAC itself develop a vision for the CEC, pulling together key issues and identifying those that are doable. He expressed disappointment at the trade corridors work, noting the severe problems at border crossings. He recommended that the Program re-think its approach to this work.

Another member of the public expressed support for the program, noting particularly the SMOC and air quality work. He volunteered that the International Joint Commission (IJC) has worked a lot on the issue of children's health through its Health Professionals Task Force. The program manager noted that the CEC is currently in dialogue with the IJC Task Force on areas of potential collaboration, e.g., indicators of children's environmental health. He further expressed optimism that the automobile industry's move to compatible fuel standards is a step in the right direction.

Law and Policy Program

The Chair then invited the CEC Director of Programs to make a presentation on the Law and Policy program, to be followed by a question and answer period.

The Director explained that he was the one making the presentation as the program head, Darlene Pearson, was leaving the Secretariat. He also expressed support for the recommendation that JPAC be involved in developing a vision for the CEC.

A JPAC member expressed his concern that public participation in this program was limited to government officials and civil servants. He thought it particularly important that NGOs and local representatives be involved early on in these projects so that training and education would not have to be repeated when governments change. He went on to note that it would not be possible to conduct a study on comparable standards for hazardous waste disposal because in Mexico there is no supporting infrastructure.

The Director explained that the nature of the enforcement program activities does not always allow for public participation. The program's focus is on cooperative activities among enforcement agencies and on joint-capacity building for enforcement officers dealing with transboundary issues. He agreed with the need to make further efforts to involve the public in enforcement and commented that at present the governments are working to attend to this issue. One example is NAWEG's main activity for 2001, a conference specifically focusing on public participation in wildlife enforcement. Also, projects such as the ODS (ozone-depleting substances) and NAWEG (Wildlife Enforcement Group) training have involved pertinent sectors of the public. Regarding the concern about training officials who might be replaced when their country's government changes, he observed that in many cases the persons benefiting from the training are field officers whose tenure is not necessarily affected by changes in administration. He also agreed that the lack of hazardous waste disposal infrastructure in Mexico was a problem. However, as a first stage, this problem will be addressed from the legal/enforcement perspective through the standards initiative. Discussions with government representatives resulted in a recommendation to focus this report on pretreatment and disposal standards.

A member of the public suggested work on comparing agricultural standards with European countries that have much more experience in this area.

A JPAC member suggested that enforcement tends not to lend itself to public involvement—it is something governments undertake on their own. However, there is certainly a benefit to involving the public in the discussions about enforcement.

Specific Obligations under the Agreement

The Chair then invited the CEC Director of Programs to make a presentation, to be followed by a question and answer period.

A JPAC member reiterated the need for public involvement in Article (10)6 discussions.

Another JPAC member suggested using “mini” Article 13 reports for smaller issues, such as Lake Chapala, which JPAC still considers urgent. This technique would provide an alternative to folding the smaller issue into the larger water scoping exercise.

Another JPAC member underscored the need to keep up momentum on the Lake Chapala issue. He expressed support for the “mini” Article 13 approach. He reminded the meeting of the consistent message from the public at the Council meeting. Regarding transboundary environmental impact assessment (TEIA), he noted the lack of any progress and suggested it be sent back to the parties. If it is revived, the parties can then inform the CEC how it could contribute.

The CEC Director of Programs replied that the issue of TEIA would likely re-emerge when locating new energy infrastructure.

North American Fund for Environmental Cooperation (NAFEC)

The Chair then invited the NAFEC coordinator to make a presentation, to be followed by a question and answer period.

A JPAC member, responding to the coordinator’s point that the next call for proposals could focus on the energy area, asked if this has been confirmed and noted that other areas such as water and forestry have strong public support. The Director of Programs replied no, that this was just an idea.

A JPAC member agreed that NAFEC is still a very important part of the CEC even if the funds are limited, noting the many examples where NAFEC-funded projects have enriched the work plan and influenced the program plan as a whole.

A member of the public congratulated the NAFEC coordinator for maintaining conservative administrative costs, noting his experience with how difficult this can be.

Another member of the public described how NAFEC had provided funds for the first meeting of his organization, which has since flourished. He offered to work with the CEC to help attract additional funding for NAFEC.

A JPAC member strongly supported the utility of the fund and agreed that providing a focus for the annual call for proposals was a good idea, given the limited funds available. She would like a further discussion on the topic for next year, suggesting that rather than energy, other cross-cutting issues may be more useful. She asked if and how recipients (usually community level) evaluate their experience and is this information shared?

The NAFEC coordinator replied yes and that one of the important outcomes of NAFEC was the NAFEC database of expertise and experiences on which the CEC and others draw to connect directly with communities.

Presentation of the CEC Web Site

The publications manager presented the recent improvements made to the CEC web site. The Chair thanked him for his presentation and congratulated the Communication team for the impressive improvements made since the implementation of this public outreach mechanism.

Discussion on Advice to Council on the Proposed Program Plan and Budget for 2002–2004

Each of the JPAC teams reported comments on the Proposed Program Plan and Budget which formed the basis for the development of Advice to Council 01-06 (see Annex C).

Action: Council, Secretariat

Discussion on the Draft Terms of Reference related to the JPAC Mandate on Access to Environmental Information in North America

After a lengthy discussion wherein all JPAC members expressed their views, it was decided that JPAC could not accept this new mandate. While JPAC is very interested in this topic, the scope of the mandate is too large for it to handle. As mentioned in the Council Communiqué, JPAC could participate in but not lead this effort. It was further recommended that the Secretariat is better suited to take up this work. It was agreed that the Chair would inform Council of this decision at the 14–16 November meeting of the Alternate Representatives.

Action: JPAC Chair, Council

Approval of JPAC Program for 2002

It was agreed, now that JPAC would no longer be taking on the mandate on access to environmental information in North America, to make the appropriate changes to the 21–22 March 2002 meeting and also as a consequence to revert to the 2001 budget level of C\$370,000.

It was also agreed that during its next regular session on 30 November, JPAC will discuss how the JPAC round tables and the public Council Session to be held in June 2002 in Ottawa might be improved. A call for public participation on this issue will be released. It was also agreed that a task force be established. Members are Gustavo Alanís-Ortega, Jon Plaut and Liette Vasseur.

The JPAC program for 2002 was then approved with these changes.

Action: JPAC

Articles 14 and 15

As a result of new information provided to JPAC concerning the Migratory Bird Submission (SEM-99-002) by the US NAC, US GAC and the public, and after a thorough discussion, JPAC developed and approved Advice to Council 01-07 (see Annex D).

Action: Council

It was also agreed that the Chair reply to the 17 October 2001 letter from the Center for International Environmental Law attaching Advice to Council 01-07 and deferring any decision to refer these issues to Council as per Council Resolution 00-09 pending Council's response to Advice 01-07.

Action: JPAC Chair

A JPAC member reviewed the draft Internal Process for the JPAC Public Review. It was approved without modification.

Action: JPAC

Concerning the matter of discussion on the issue of informing Council prior to a vote, the JPAC member who raised the question agreed that the issue has been appropriately dealt with.

JPAC Working Groups

It was agreed that a new working group be established on electricity restructuring. Members are Daniel Basurto, Peter Berle and Merrell-Ann Phare.

Future JPAC Meetings

One JPAC member from each country, Steve Owens, Merrell Ann Phare and Laura Silvan de Durazo, will attend the re-scheduled SMOC working group meeting in Tucson, Arizona, on 2 November 2001.

The next, and final, regular session for 2001 will be held on 30 November in San Diego, California, in conjunction with the CEC Symposium on "Environmental Challenges and Opportunities of the North American Electricity Market."

The JPAC Chair announced that the vote for the 2002 JPAC Chair (from among the US members) would commence on 1 November and the official announcement will be made during the 30 November JPAC regular session.

Observers' Comments

A member of the public noted a typographical error on page 106 of the English version of the Proposed Program Plan and Budget—"expected" and not "excepted." He thanked JPAC for its continuing work.

Another member of the public noted her interest in the discussions on communications and ways to attain a wider audience. She suggested too much emphasis was placed on access to the CEC web site, given that not everyone has access. Other techniques must be developed. She also offers to be a volunteer when JPAC organizes meetings.

The JPAC Chair drew her attention to *Trio* and to information bulletins regularly sent to the over 3,000 individuals in the CEC database.

A member of the public thanked JPAC for a very interesting meeting and for making personal time available with her students. She will provide JPAC with their research reports. She also thanked JPAC for its strong stand on Articles 14 and 15.

Adjournment

The Chair thanked the members, the participants, the interpreters and the JPAC staff and adjourned the session.

Prepared by Lorraine Brooke

APPROVED BY JPAC MEMBERS ON 12 NOVEMBER 2001



Commission for Environmental Cooperation of North America

Joint Public Advisory Committee Regular Session 01-03 22–23 October 2001

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Provisional Agenda

Chair: Liette Vasseur

Monday, 22 October 2001

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|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9:00 – 9:10 | Welcome and overview by the JPAC chair
a) Approval of the provisional agenda |
| 9:10 – 10:00 | Report from the CEC Secretariat and question period
a) Activities report by the CEC Executive Director
b) Status report on issues related to Article 14 and 15 Submissions |
| 10:00 – 10:15 | Report from the National and Governmental Advisory Committee representatives |
| 10:15 – 10:30 | Break |
| 10:30 – 10:45 | Overview of the proposed Program Plan for 2002–2004 |
| 10:45 – 12:15 | Plenary discussion on the proposed Program Plan for 2002–2004
<i>(5-minute presentation by the CEC staff followed by 40 minutes for questions and answers)</i> |
| 10:45 – 11:30 | Environment, Trade and Economy Program Area |
| 11:30 – 12:15 | Conservation of Biodiversity Program Area |
| 12:15 – 13:30 | Lunch (not provided) |
| 13:30 – 15:00 | Plenary Discussion on the proposed CEC Program Plan and Budget for 2002–2004 (cont'd)
<i>(5-minute presentation by the CEC staff followed by 40 minutes for questions and answers)</i> |
| 13:30 – 14:15 | Pollutants and Health Program Area |
| 14:15 – 15:05 | Law and Policy Program Area |
| 15:00 – 15:30 | Break |
| 15:30 – 16:30 | Plenary Discussion on the proposed CEC Program Plan and Budget for 2002–2004 (cont'd)
<i>(5-minute presentation by the CEC staff followed by 25 minutes for questions and answers)</i> |
| 15:30 – 16:00 | Others Initiatives including Specific Obligation under the Agreement |
| 16:00 – 16:30 | The North American Fund for Environmental Cooperation |
| 16:30 – 17:00 | Presentation of the CEC Web site and other various issues |
| 17:00 – 18:00 | Cocktail (La Cave Room) |

Tuesday, 23 October 2001

- 9:00 – 10:30 Discussion on a potential advice to Council on the proposed Program Plan for 2002–2004*
- 10:30 – 11:00 Discussion on a potential advice to Council on the North American Fund for Environmental Cooperation*
- 11:00 – 11:15 Break
- 11:15 – 12:30 JPAC Program*
- a) Discussion on the draft terms of reference related to the JPAC mandate on access to environmental information in North America
 - b) Approve the Program for 2002
- 12:30 – 13:30 Lunch (not provided)
- 13:30 – 14:30 Articles 14 and 15*
- a) Approve the internal process for the JPAC public review of issues concerning the implementation and further elaboration of Articles 14 and 15
 - b) Discussion on the issue of informing Council prior to a vote
 - c) Others issues
- 14:30 – 14:45 Administrative matters*
- a) JPAC working groups: member appointments and rotation
 - b) Future JPAC meetings
- 14:45 – 15:00 Observers' comments
- 15:00 End of the session

* Session open to the public as observers.



**Commission de coopération environnementale de l'Amérique du Nord
Commission for Environmental Cooperation of North America
Comisión para la Cooperación Ambiental de América del Norte**

22–23 octobre 2001 / 22–23 october 2001 / 22–23 de octubre de 2001

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**Liste des participants / List of Participants / Lista de participantes
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ADVICE TO COUNCIL: NO. 01-06

Re: 2002–2004 Proposed Program Plan and Budget of the North American Commission for Environmental Cooperation

The Joint Public Advisory Committee (JPAC) of the North American Commission for Environmental Cooperation (CEC);

IN ACCORDANCE with its mandate to provide advice to Council under Article 16(4) of the North American Agreement on Environmental Cooperation (NAAEC);

HAVING provided a prior Advice to Council 01-05 on the 2002–2004 Work Program Outline of the CEC;

ACKNOWLEDGING that some of the matters raised in this Advice were included in the 2002-2004 Proposed Program Plan and Budget;

REITERATING that JPAC continues to place a high priority of the matters raised in Advice to Council 01-05;

UNDERSTANDING that the CEC is now pursuing the new direction established by Council at their June 2001 Session while efficiently completing the existing work plan;

OFFERS the following comments and recommendations on the 2002–2004 Proposed Program Plan and Budget of the CEC:

General Comments

- The matters raised in Advice to Council 01-05 were generated from substantive public discussions during the 2001 Council Session. Those not already incorporated into the Proposed Program Plan and Budget remain priorities for inclusion;
- At its June 2001 Session, Council identified several priorities for future work. All of these should be fully incorporated into the Proposed Program Plan and Budget;
- In support of the new direction established by Council, further work is required to clearly articulate how each program area is designed to contribute to or influence policy development and further, how each project assists in achieving that goal;
- A rationale should be provided for how each project and topics for study within projects were selected in relation to the stated goals and objectives of the program area;

- Each project should clearly describe how public participation will be achieved. In addition, ways and means for improving access to information should be built into each project, understanding that this is two-way process – from government to public and from the public to government;
- Efforts should be made to provide greater opportunities for the public to participate in the working groups and meetings of the CEC, for example the Sound Management of Chemicals Working Group;
- The matter of water raises a complex array of issues, some of which are identified as Council priorities. While JPAC sees value in the Secretariat's proposal to conduct a scoping exercise, this should not replace the urgent need for action in targeted areas of study and cooperation; and
- JPAC notes its support for the Secretariat's initiative to develop outreach materials to better inform the public and other interested groups about the work of the CEC.

Environment, Economy and Trade Program

- JPAC remains concerned that there is no opportunity for public comment on the options for consideration by Council in Project 1.2.1 (Action 2: Activity 3) and Project 1.2.2 (Action 1: Activity 2). The resources assigned to these activities (C\$200,000 in total) should be reallocated in such a way that the public participates in the development and review of these options before a final Council decision; and
- JPAC Advice to Council 01-05 called for a Secretariat initiative to facilitate the development of market mechanisms to reduce greenhouse gas emissions. Although JPAC believes a shorter-term project is needed to stimulate policies for greenhouse gas reductions, it supports the project described in the Proposed Program Plan and Budget.

Conservation of Biodiversity Program

- The North American Biodiversity Information Network (NABIN) has been a very successful activity for the CEC. Considering its maturity, along with its accumulating costs, JPAC considers this an opportune time pass to it on to another group to maintain and manage and recommends that the Secretariat explore this possibility; and
- Funds freed up by this move could be used to develop and finance projects engaging local peoples in biodiversity conservation, possibly through the North American Fund for Environmental Cooperation (NAFEC).

Law and Policy Program

- The program should explicitly state as one of its goals, the continuous improvement of enforcement and compliance of the environmental laws of the three countries;
- Project 4.2.3 – Enforcement Compliance Reporting lacks any information on Actions for the years 2003 and 2004. Details should be provided before considering approval of Actions for 2002;
- There should be clearly defined opportunities for public involvement in the projects on regional enforcement, compliance and capacity building, particularly involvement in the development of priorities and enforcement and compliance promotion topics;

- The lack of hazardous waste disposal infrastructure in Mexico has to be taken into account in the Comparative Report on Environmental Standards; and
- Clarification is required on the term "Policy" in the title of this program and the policy objectives of the Proposed Program Plan and Budget as a whole.

Specific Obligations under the Agreement

- Related to NAAEC Article 10(6), JPAC reiterates its request for trade and environment officials to meet in a public forum;
- The specific actions of the Article 10(6) Working Group should be, in the name of transparency, explicit in the Program Plan and Budget; and
- NAFEC should be continued, even with its diminished funding for all the reasons JPAC has articulated in the past. In order to maximize its effectiveness, it should continue to focus on a limited number of subjects, tied to the Program Plan and Budget.

APPROVED ON 23 OCTOBER 2001



ADVICE TO COUNCIL: NO. 01-07

Re: Citizen Submissions on Enforcement Matters under Articles 14 & 15 of NAAEC

The Joint Public Advisory Committee (JPAC) of the North American Commission for Environmental Cooperation (CEC);

IN ACCORDANCE with its mandate to provide advice to Council under Article 16(4) of the North American Agreement on Environmental Cooperation (NAAEC);

MINDFUL of the bold step made by Council at its June 2000 Council Session toward resolving controversies that have plagued the CEC in previous years by adopting Council Resolution 00-09 – Matters Related to Articles 14 and 15 of the Agreement;

FURTHER encouraged by the positive response at the June 2001 Council Sessions to its Lessons Learned report on Citizen Submissions under Articles 14 and 15 and the JPAC Process for Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15;

REGRETTING, however, having to later register its disappointment, by way of a letter to Council dated 27 September 2001, about continuing delays in voting on the five pending submissions;

NOW HAVING BEEN APPRISED that Council will be asked to consider:

- a limit on the Secretariat's discretion to determine the scope of a pending submission as a condition for a vote to proceed with the development of the factual record; and
- that the Secretariat submit a work plan to Council prior to undertaking the development of this factual record.

IS COMPELLED to express its frustration at being forced once again to advise on issues related to Articles 14 and 15, because past agreed-upon procedures are being ignored or circumvented.

REGISTERS its strong and considered objection to such a proposal on the basis that this would:

- violate Council's reaffirmation in Council Resolution 00-09 of the its commitment to improve transparency;

- circumvent the process established in Council Resolution 00-09 concerning the implementation and elaboration of the Articles 14 and 15 of the NAAEC;
- constitute a constructive amendment to the guidelines and, therefore, should first be submitted to JPAC and public review;
- constitute a flagrant disregard for one of the recommendations of JPAC's Lessons Learned Report with respect to supporting the independence of the Secretariat in the Articles 14 and 15 process;
- increase the workload of the Secretariat and the burden on the submitters to produce more detailed documentation; and
- undermine the credibility of the process by involving an interested Party in the development of the Secretariat's work plan.

REQUESTS that Council demonstrate good faith and vote on the pending submissions in the spirit of the renewed commitment to the Articles 14 and 15 process expressed in the 2000 Council session and guided by the lessons learned articulated in JPAC's report to Council in 2001.

APPROVED ON 23 OCTOBER 2001