



Comité consultatif public mixte (CCPM)

Comité Consultivo Público Conjunto (CCPC)

Joint Public Advisory Committee (JPAC)

**Public Consultation on the Draft JPAC Public Review
of Issues Concerning the Implementation and
Further Elaboration of Articles 14 and 15 of the
North American Agreement on Environmental Cooperation**

**Executive Summary of
Public Comments Received**

October 2000

**Public Consultation on the Draft JPAC Public Review of Issues Concerning the
Implementation and Further Elaboration of Articles 14 and 15 of the
North American Agreement on Environmental Cooperation**

Executive Summary Report of Comments Received

I. Introduction

The Joint Public Advisory Committee (JPAC) of the North American Commission for Environmental Cooperation (NACEC) was tasked to pursue these matters by CEC Council Resolution 00-09 adopted at the seventh Regular Session of the Council, held in Dallas, Texas, in June.

In the context, JPAC organized a public consultation on two subjects relating to NACEC's Citizen Submissions on Enforcement Matters mechanism. One subject for public comment is a proposed process for public review of issues concerning the implementation and further elaboration of Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC). The other involves a public review of the history of the submissions process with a view to identifying lessons learned.

This executive report summarizes the comments received from the public on the Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15. This document will be used as a background document for the plenary discussion on this subject during the JPAC regular session on 13–14 October 2000 in Washington, DC.

Please note that the public comments on the public history of submissions made under Articles 14 and 15 will be summarized through a separate document. The final JPAC report to Council on this specific issue should be available in fall 2001.

In the meantime, a second call for comments on the public history of submissions made under Articles 14 and 15 is scheduled for early 2001 and will be complemented by two public workshops. The first workshop on Submissions History—Lessons Learned is planned for 7 December 2000, in conjunction with JPAC's regular session of 7 and 8 December 2000 in Montreal, Quebec; the second workshop is planned in conjunction with the Council June 2001 session in Mexico. The comments provided to date by the public on this issue can be found on the NACEC web site at <<http://www.cec.org>> under the JPAC Section.

This Executive Summary and the public comments on the "Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15" can also be found on the NACEC web site at <<http://www.cec.org>> under the JPAC Section.

See Appendix A for the Council Resolution 00-09 and Appendix B for the "Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15."

II. Call for Comments

The Call for Comments on the “Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15” was released on 31 July 2000. The documents were sent to 5,800 persons from various sectors through the NACEC DataBank. These sectors include non-governmental organizations, government bodies, academic institutions, business and labor organizations, indigenous groups, media organizations, and individuals. The documents also were made available to the public through several environmental web sites, including CECNet, the Border Environmental Commission (BECC) site, Infoterra, the Environmental News Network, the Environmental Law Professors Site and others.

In addition, the JPAC Chair sent a letter to former and current submitters involved in Articles 14 and 15 encouraging them to provide comments, a letter to the 90 organizations that signed a letter sent the NACEC Council in May about the submissions process and a letter to the National Advisory Committees.

On the day the information was made publicly available, the NACEC web site registered 815 visitors. A public reminder was released on 15 September, which led to 915 persons consulting the CEC web site.

Following the reception of the comments, an acknowledgment of receipt on behalf of JPAC was sent to each organization.

See Appendix C for the Call for Comments on the “Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15,” released on 31 July 2000.

III. Public Comments

The majority of comments received dealt with the process by which JPAC receives and processes matters raised by the public.

There also were comments dealing with the proposed process for the public review of issues concerning the implementation and further elaboration of Articles 14 and 15 of the Agreement. The comments focused mainly on the transparency in how JPAC collects, defines and disseminates its information.

The public comments are summarized below:

A. General comments on the review process

Some commentators offered general acceptance of the proposed process for public review. The proposed modifications are “sensible,” “more than adequate,” and “appropriate and reasoned,” and they have “the potential to bring much needed transparency,” according to various respondents.

In addition, some commentators requested clarification on three themes with regard to the review process, as follows:

- a) Timeliness, in the sense of a need for established time frames for JPAC to carry out its functions;
- b) Relevance of issues, as regards the criteria JPAC uses to determine whether an issue is appropriate for JPAC consideration; and
- c) Public consultations, with respect to the form in which JPAC undertakes such matters (such as in workshops, local consultations in party countries, or otherwise).

In fact, various commentators made the general request that the public consultation be an “active” process, in which the JPAC takes a more active role in disseminating its information to the public, including information regarding its existence, functions and activities. One commentator perceived that the NACEC uses the Internet as its exclusive medium of dissemination, thus limiting the public availability of its resources, and that the present information is not very accessible to the general public due to its complex wording and layout.

B. Comments related to JPAC responsibilities

Some commentators sought additional information on how JPAC intends to address and group the issues raised. While some comments were concerned with what constitutes an “issue” for JPAC’s purposes, others recommended more efficient issue groupings.

Several comments dealt with the need to have a better understanding of how the JPAC determines whether an issue raised by the public is deemed relevant. Various commentators agreed that the lack of established criteria in such a definition may be used to limit public participation. These comments further called on JPAC to establish limits on the period for carrying out its actions, including acknowledging receipt of comments and sending matters to the Council. Many comments requested that written support be offered for determinations, regardless of the outcome.

C. Comments related to Council responsibilities

Some commentators expressed the expectation that the Council’s requirement to explain decisions will prevent a Party from weakening the process in response to unfavorable submissions, citing a flaw in the existing process that allows such a conflict of interest.

Other commentators referred to JPAC’s role vis-à-vis the Council. These topics included the requirement that issues must be raised by the Council in order to be heard by JPAC, the means through which such comments will be heard (workshops, consultations, etc.), and in general the need for clear criteria regarding the functions of JPAC and the Council in NACEC matters.

D. Comments on how JPAC receives and transmits issues

Comments dealing with how JPAC receives and transmits issues from the public were similar to those on JPAC responsibilities. Some were concerned with how issues were collected from the

public, such as which channels will be used to obtain public input and how these channels will be determined. Other commentators focused on the need to have set rules for determining what the Council receives from JPAC, such as whether JPAC will forward the full, original text of the public submission or a summary thereof.

One comment addressed the fact that JPAC is limited to reviewing Article 14 and 15 issues only on reference from the Council, and offered the recommendation that JPAC be empowered to act on its own initiative in this regard. Many comments called for an established, liberal framework for determining which issues are deemed relevant.

See Appendix D for the Sources of Public Comments and Appendix E for the Full Text of Public Comments.

Appendix A Council Resolution 00-09

Dallas, 13 June 2000

COUNCIL RESOLUTION 00-09

MATTERS RELATED TO ARTICLES 14 AND 15 OF THE AGREEMENT

THE COUNCIL:

RECOGNIZING that the strength of the Commission for Environmental Cooperation is premised on the ongoing and active involvement of the Council;

AFFIRMING the central role of the Joint Public Advisory Committee (JPAC) in providing the Council with advice on any matter within the scope of the *North American Agreement on Environmental Cooperation* (“NAAEC” or “Agreement”);

FURTHER AFFIRMING the importance of the unique role of the Secretariat regarding its responsibilities under Articles 14 and 15 of the NAAEC;

RECOGNIZING the need for transparency and public participation before decisions are made concerning implementation of the public submission process under Articles 14 and 15 of the NAAEC;

FURTHER RECOGNIZING that countries that are parties to international agreements are solely competent to interpret such instruments and that under Article 10(1) (d) of the NAAEC, the Council has the authority to address questions and differences that may arise between the Parties regarding the interpretation or application of the Agreement;

NOTING that, under Article 20(1) of the NAAEC, the Parties shall at all times endeavor to agree on the interpretation and application of the Agreement and shall make every attempt through cooperation and consultations to resolve any matter that might affect its operation;

AWARE that individual Parties have raised issues about the interpretation and application of Articles 14 and 15 under the NAAEC; and

REAFFIRMING that Articles 14 and 15 of the NAAEC provide the framework for the public submission process;

HEREBY RESOLVES that:

1. The Council may refer issues concerning the implementation and further elaboration of Articles 14 and 15 of the Agreement to JPAC so that it may conduct a public review with a view to providing advice to the Council as to how those issues might be addressed;

2. Any Party, the Secretariat, members of the public through JPAC or, JPAC itself, may also raise issues concerning the implementation and further elaboration of Articles 14 and 15 of the Agreement to the Council, who shall refer any such issues as it proposes to address to JPAC so that JPAC may conduct a public review with a view to provide advice to the Council as to how those issues might be addressed;
3. Any advice provided by JPAC shall be supported by reasoned argumentation;
4. The Parties, acting through the Council, shall consider JPAC's advice in making decisions concerning the issues in question relating to Articles 14 and 15 of the Agreement and shall make public its reasons for such decisions, bringing the process to conclusion;
5. (a) JPAC shall review the public history of submissions made under Articles 14 and 15 of the Agreement, including all actions taken to implement those articles, and shall provide a report identifying the lessons learned;

(b) To guide JPAC in the performance of such review, the Council shall provide JPAC with a referral memorandum or other information identifying issues raised by the Parties relating to specific submissions;
6. Pending any final decision by the Council, the Secretariat shall continue to process expeditiously any submissions on enforcement matters in accordance with the Agreement and existing Guidelines;
7. Any decision taken by the Council following advice received by JPAC shall be explained in writing by the Parties and such explanations shall be made public;
8. The Council shall review the operation of this resolution after two years.

APPROVED BY THE COUNCIL:

David Anderson
Government of Canada

Carol M. Browner
Government of the United States of America

Julia Carabias Lillo
Government of the United Mexican States

Appendix B Draft JPAC Public Review

Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15

Background

On 12 June 2000, the Council of the Commission for Environmental Cooperation (CEC) established a public review process for issues concerning the implementation and further elaboration of Articles 14 and 15 of the North American Agreement for Environmental Cooperation (NAAEC). Council Resolution 00-09 designates the Joint Public Advisory Committee (JPAC) as the entity that will conduct the public review and provide advice to Council on how the issues might be addressed. Following is a description of the public review process and a list of the steps JPAC will follow in undertaking a public review.

To assist Council and JPAC in fulfilling their responsibilities, Council Resolution 00-09 also assigns JPAC the task of reviewing the public history of submissions made under Articles 14 and 15, including all actions taken to implement those articles, and compiling a report identifying lessons learned.

Public Review Process

See the attached diagram of the public review process.

JPAC Responsibilities

JPAC's responsibilities under Council Resolution 00-09 in respect to issues concerning the implementation and further elaboration of NAAEC Articles 14 and 15 are:

1. Receive issues raised by the public;
2. Transmit these issues to Council;
3. Transmit to Council issues raised by JPAC;
4. Conduct a public review of any issues the Council proposes to address and refers to JPAC; and
5. Provide advice, including reasoned argumentation, to Council as to how those issues might be addressed.

Council Responsibilities

Council's responsibilities under Resolution 00-09, in respect to issues concerning the implementation and further elaboration of NAAEC Articles 14 and 15, are:

1. Receive issues raised by any Party, the Secretariat and JPAC;
2. Receive issues from the public transmitted to Council by JPAC;
3. Refer any such issues it proposes to address to JPAC;

4. Consider JPAC's advice in making decisions relating to Articles 14 and 15 of the Agreement;
5. Explain in writing any decisions taken following advice received from JPAC and make those explanations public; and
6. In two years, review the operation of the Resolution (June 2002).

Steps in JPAC Review

In meeting its responsibilities under Council Resolution 00-09, JPAC will pursue a review process that is transparent, fair and expeditious. JPAC's responsibility is twofold:

1. It is responsible for receiving issues from the public and transmitting them to Council.
2. It is responsible for providing advice to Council on all issues referred to it by Council no matter what the source (Party, Secretariat, public or JPAC itself).

Specifically, JPAC offers the following plan for effecting its role under Council Resolution 00-09.

How JPAC receives and transmits issues from the public

1. Any member of the public wishing to raise an issue with the Council concerning the implementation and further elaboration of Articles 14 and 15 of the North American Agreement on Environmental Cooperation should provide a written statement of the issue to JPAC through the JPAC Liaison Officer at <mpepin@ccemtl.org>, by fax at (514) 350-4314, or by mail at the address listed below.

Any written statement provided by a member of the public to JPAC should describe the issue raised concerning the implementation and further elaboration of Articles 14 and 15. The written statement should not exceed three pages and may be submitted to the JPAC in any of three official languages of the CEC.

2. If JPAC determines that the written statement does not raise an issue relevant to the implementation and further elaboration of Articles 14 and 15, JPAC will forward the statement to Council accompanied by a written explanation of why it considers that the issue is not within the scope of Resolution 00-09. This written explanation will be sent through the JPAC Liaison Officer to the person or organization who raised the issue and also be posted on the CEC web site at <<http://www.cec.org>> within seven (7) working days.
3. When JPAC determines that an issue from a member of the public concerns the implementation and further elaboration of Articles 14 and 15, JPAC will have it transmitted, in writing, to Council for its consideration through the JPAC Liaison Officer. JPAC's determination will be sent through the JPAC Liaison Officer to the person or organization that raised the issue and will also be posted on the CEC web site within seven (7) working days.

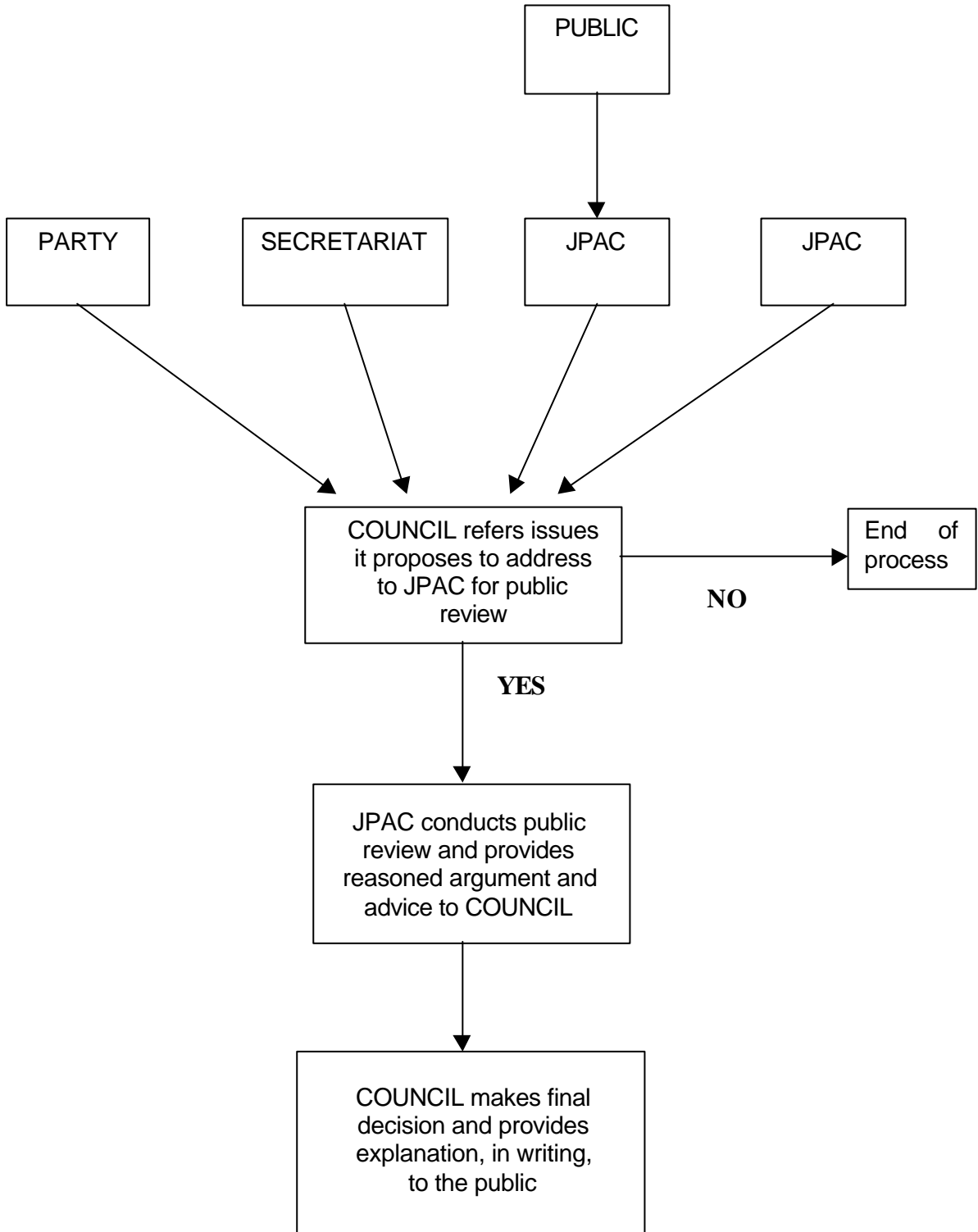
4. When JPAC receives Council's decision to address or not to address the issue raised by a member of the public, it will be sent in writing through the JPAC Liaison Officer to the person or organization who raised the issue and will be posted on the CEC web site within seven (7) working days.

How JPAC reviews issues referred to it by the Council

1. Upon receipt of an issue from Council, JPAC will hold a public review in such a form as it determines is necessary to give its advice to the Council. The format of the public review will be posted on the CEC web site.
2. Following its review, JPAC will provide written advice, including reasoned argumentation to the Council. This written advice will be sent through the JPAC Liaison Officer to the person or organization who raised the issue and will be posted on the CEC web site within seven (7) working days.

Implementation and Further Elaboration of Articles 14 & 15

Diagram of the Public Review Process



Appendix C Call for Comment

Immediate Publication

JPAC Calls for Public Comment on Issues Relating to CEC's Citizen Submissions Mechanism

Input Sought on Draft Public Review Process and Lessons Learned Regarding NAAEC Articles 14 and 15

Montreal, 31 July 2000—The Joint Public Advisory Committee (JPAC) of the North American Commission for Environmental Cooperation (CEC) is seeking public comment on two subjects relating to the NACEC's [Citizen Submissions on Enforcement Matters](#) mechanism. One subject for public comment is a proposed process for public review of issues concerning the implementation and further elaboration of Articles 14 and 15 of the [North American Agreement on Environmental Cooperation](#) (NAAEC). The other involves a public review of the history of the submission process with a view to identifying lessons learned.

JPAC was tasked to pursue these matters by CEC [Council Resolution 00-09](#), adopted at the seventh regular session of Council, held in Dallas, Texas, in June.

Under Article 14 of the NAAEC, the CEC may consider a submission from any person or nongovernmental organization asserting that a Party to NAAEC is failing to enforce its environmental law effectively. With Council approval, this can launch a process that leads to further investigation of the matter and the publication of findings in a factual record, as provided under NAAEC Article 15.

Comments on Process for Public Review of Issues

A document entitled "Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15" can be found in the NACEC web site at http://www.cec.org/who_we_are/jpac/index.cfm?varlan=english. It outlines the process and steps that JPAC proposes to follow in its review of issues referred to it by Council. JPAC seeks to ensure that the process be transparent, fair and expeditious, and invites public comment on the draft document to that end. JPAC members will finalize this document based on the public comments received during their regular session on 13–14 October, in Washington, DC. The public is invited to attend the regular session and exchange views with JPAC members on this draft document. The [agenda](#) of this JPAC regular session may be found on the CEC web site at <http://www.cec.org>.

Comments on Submissions History Leading to Lessons Learned

The public is also invited to provide comments on the Citizen Submissions process in general, as it has been implemented over its five-year history, or on the experience with any submission that has moved through the process. Through this call for comments, a second one planned for early in 2001, and two public workshops, JPAC will gather public input which it will analyze as it develops a report identifying lessons learned throughout the history of the submissions process.

Public Workshops on Submissions History—Lessons Learned

A first public workshop on Submissions History—Lessons Learned will take place on 7 December 2000 in conjunction with JPAC's Regular Session of 7–8 December 2000, in Montreal, Quebec. Financial assistance will be provided for the participation in this workshop of five individuals from each country representing various groups and interests. These participants will be selected by a JPAC working group in October from among those who have contributed comments during this first call for public comments. Participants selected will be so advised by the end of October.

A second public workshop on Submissions History—Lessons Learned is planned in conjunction with the Council session in June 2001 in Mexico.

Deadline for Comments

Please assure that your comments on the draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15 and the Submissions History—Lessons Learned are submitted **by 22 September 2000**. Please include your name, firm or organization, address, telephone and fax numbers as well as e-mail address. Comments may be sent to Manon Pepin, JPAC Liaison Officer, by e-mail at <mpepin@cemtl.org>, or by fax or mail to either Montreal or Mexico City at the addresses below:

Joint Public Advisory Committee Commission for Environmental Cooperation 393 St. Jacques West Suite 200 Montreal, Quebec H2Y 1N9 Fax: (514) 350-4314	Comité Consultivo Público Conjunto Comisión para la Cooperación Ambiental Progreso No. 3 Viveros de Coyoacán México, D.F. 04110 Fax: (525) 659-5023
---	--

The CEC was established by Canada, Mexico and the United States to build cooperation among the North American Free Trade Agreement (NAFTA) partners in implementing the NAAEC, the environmental side accord to NAFTA. The CEC addresses environmental issues of continental concern, with particular attention to the environmental challenges and opportunities presented by continent-wide free trade.

The Council, the CEC's governing body, is composed of the federal environment ministers (or the equivalent) of the three countries, and meets once a year. Attending the seventh session of Council were Canadian Environment Minister David Anderson, Mexican Secretary for the Environment, Natural Resources and Fisheries Julia Carabias Lillo, and US Environmental Protection Agency Administrator Carol M. Browner.

JPAC is a 15-member, independent, volunteer body that provides advice and public input to Council on any matter within the scope of NAAEC.

For more information or to obtain other documents related to JPAC, please consult CEC's web site at <<http://www.cec.org>>, or to ask for printed copies, contact Jocelyne Morin at the CEC Secretariat: e-mail: <jmorin@cemtl.org>, fax: (514) 350-4314 or telephone: (514) 350-4366.

Appendix D Sources of Public Comments

The following table summarizes the sources of public comments received, through 22 September 2000 (the deadline for submissions). The full text of the comments is available in Appendix B.

	Nongovernmental Organizations	Government Bodies	Business Organizations	Total
Canada	3	1	2	6
Mexico	2			2
United States	2	1	1	4
Total	7	2	3	12

Appendix E Full Text of Public Comments

The full text of public comments received on the proposed review process for issues concerning the implementation and further elaboration of Articles 14 and 15 of the North American Agreement for Environmental Cooperation is transcribed below.

The original language in which the comment was submitted, and any other pertinent observations, is noted at the top of each document.

To facilitate the reading, the table below lists the public comments:

Doc. No.	Organization	Represented by	Starting on page
(1)	Alberta Wilderness Association	Cliff Wallis	14
(2)	Canadian Council for International Business	Tinda Sebe and Scott Campbell	15
(3)	Center for International Environmental Law	Anne Perrault and Steve Porter	16
(4)	Centro Mexicano de Derecho Ambiental	Gustavo Alanis-Ortega and Ana Karina González	18
(5)	Friends of the Oldman River	Martha Kotsuch	20
(6)	National Advisory Committee (Canada)	William J. Andrews	25
(7)	National Wildlife Federation	Douglas Jake Caldwell and Andrea Abel	30
(8)	Sierra Legal Defence Fund	Randy L. Christensen	33
(9)	Terfa Inc.	Wilson Eedy	37
(10)	Texas Natural Resource Conservation Commission	Stephen M. Niemeyer Acosta	38
(11)	United States Council for International Business	Adam B. Greene	39
(12)	Environmental Health Coalition	Cesar Luna	42



Alberta Wilderness Association

"Defending wild Alberta through awareness and action"

September 22, 2000

Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques West, Suite 200
Montreal, Quebec H27 1N2
Sent to: Manon Pepin: mpepin@ccent1.org

RE: Draft JPAC Public Review of Articles 14 and 15

Dear Members of JPAC:

Here are the Alberta Wilderness Association's thoughts on Article 14/15 Submissions:

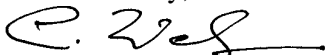
- A. **There must be accountability.** To this end, factual records must be made public and should clearly state conclusions and recommendations. All secretariat recommendations regarding the preparation of the factual record should also be made public as soon as the recommendation is made. There must be specific timelines that guarantee a response to submission within a reasonable time period.
- B. **There must be timeliness.** We do not feel there is any need for a 30-day waiting period for notification to submitters and the public after the CEC Secretariat's recommendation on preparing the record has been provided to Council. There must be specific timelines that guarantee a response to submission within a reasonable time period.
- C. **Specific and Chronic Lack of Enforcement.** There must be avenues for ENGOs and the public to make submissions on specific failures to enforce as well as chronic/general failures to enforce. In fact, the latter probably deserve the most serious attention and scrutiny.

We are opposed to the idea that only Article 14 & 15 issues referred to JPAC by Council can be reviewed by JPAC.

In summary, we feel that Article 14 and 15 submissions can be powerful tools to achieve better enforcement of environmental laws. For ENGOs and the public, this is one of the most important components of the North American Agreement on Environmental Cooperation. It must not continue to be used by Council in a way that undermines public process and effective environmental law enforcement.

Thank you for listening to our concerns.

Yours sincerely,



Cliff Wallis
President

deercroft@home.com



Canadian Council for
International Business
Conseil canadien pour le
Commerce international

September 22, 2000

Issues Concerning the Implementation and Further Elaboration of Articles 14 & 15
The CEC Citizen Submissions Process

The following constitute comments on the JPAC Public Review of issues regarding the implementation and further elaboration of Articles 14 and 15 of the NAEEC from the Canadian Chamber of Commerce and the Canadian Council for International Business.

Guidelines for Citizen Submissions to the CEC

Guidelines put in place to review citizen submissions made to the CEC have to be fair and balanced for all parties. Furthermore, it is expected the CEC will review citizen submissions in a credible and transparent manner, based on sound scientific evidence, and with due regard for the three elements of sustainable development, i.e. social, environmental and economic considerations. Confidence in the review process, in the CEC and in the ability of the three NAFTA governments to objectively review and respond to submissions, are of prime importance for fostering support and acceptance of this mechanism.

The Implementation and Further Elaboration of Articles 14 and 15

We consider that Articles 14 and 15 of the NAEEC are acceptable in their current form and allow for sufficient input from the public on North American environmental issues. At the same time, in order for these articles to work as effectively as possible, the NAFTA governments must be clear about how they will respond to legitimate claims and concerns. If the JPAC is to play a greater role in this process, it will be important for this body to remain balanced and credible, including having appropriate representation from business.

The function of the CEC citizen submissions process is to “promote the effective enforcement of environmental law” in the three NAFTA countries. At the same time, it is not the CEC’s role to set policies or mandate environmental practices – this is the proper domain of the NAFTA governments. In carrying out its responsibilities, the CEC must remain mindful of the sustainable development policies of the respective governments and not exceed their bounds. The Canadian government, for example, has clearly stated that: “We must ensure that trade policies support sustainable development and do not restrict legitimate actions to protect the environment and, at the same time, make certain that environmental policies do not unnecessarily limit economic opportunities” (DFAIT Trade and Environment Discussion Paper, May 1999). The citizen submissions process, and indeed any CEC initiative undertaken to advance the objectives of the NAEEC, must respect government policies that have been forged around consensus and established domestic law-making practices.

The CCIB and the Canadian Chamber remain ready to assist the CEC and the Canadian government in ensuring effective and balanced processes that will benefit Canada and the environment.

Contact Information

Tinda Sebe (CCIB) – tsebe@ccib.org, 613-238-4000

Scott Campbell (Canadian Chamber of Commerce) – scampbell@chamber.ca, 416-868-6415

Center for International Environmental Law

September 22, 2000

Manon Pepin
JPAC Liaison Officer

Re: Comments on Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15

Thank you for the opportunity to comment on the JPAC process for reviewing issues related to the implementation and elaboration of Articles 14 and 15. We believe the new process for public review of issues has the potential to bring much needed transparency to the citizen submissions mechanism. Additionally, we believe JPAC, as an independent entity that has demonstrated significant leadership in providing advice to the Council, is well-suited to the task of facilitating the review. However, the extent to which the new process increases the fairness and smooth functioning of the citizen submissions mechanism will depend largely on how the Council responds to JPAC advice.

We offer the following general observations and questions about the process:

- It is unclear if JPAC intends to address each issue separately or group the issues chronologically or by subject matter. We suggest JPAC attempt to group the issues, if possible, to ensure an efficient process.
- Clearly, JPAC will need financial and staff resources to implement this process. It appears that for every issue raised by the public, JPAC might have up to four tasks: (1) review for relevancy; (2) draft a written explanation; (3) provide advice to Council; and (4) hold a public review. We encourage the Council to evaluate the workplan to determine where resources might be available. We suggest the Council begin with an evaluation of existing programs that have exceeded their original life expectancy.
- We are most hopeful that the requirement imposed on Council to explain its decisions will reduce the ability of a Party to weaken the process in response to submissions against it. We believe this conflict of interest created by Party actions has been a serious structural flaw in the existing process.

How JPAC receives and transmits issues from the public:

- We suggest JPAC identify the criteria it will use to determine whether an issue raised by a member of the public is relevant to the implementation and further elaboration of Articles 14 and 15. These criteria should be defined liberally to maximize the opportunity for public input; and, in cases of uncertainty, an issue raised by the public should be presumed to be relevant.
- We suggest JPAC identify the time frame within which it must make this determination of relevancy and the time frame within which the Council must decide to address or not address the relevant issue.

- JPAC proposes to draft a written explanation of why it considers an issue is not within the scope of Resolution 00-09. Will it provide a written explanation when it believes an issue is relevant? This might provide the Council with additional guidance on its decision to address or not address the issue.

How JPAC reviews issues referred to it by the Council:

- JPAC proposes to "hold a public review in such a form as it determines is necessary". We suggest JPAC describe the possible "forms" for public review and identify the criteria it will use to choose the form of review.
- Again, we suggest JPAC identify time frames within which JPAC and Council tasks must occur.

Again, thank you for the opportunity to comment on the Public Review of Issues process. We look forward to working with JPAC and the Council to improve the citizen submission process.

Sincerely,

Anne Perrault, Steve Porter
Attorneys
Center for International Environmental Law
1367 Connecticut Avenue, Suite 300
Washington, DC 20036 USA
(202) 785-8700
aperrault@ciel.org, sporter@ciel.org

[Document No. (4). Source Language: Spanish]

**COMENTARIOS DEL CENTRO MEXICANO DE DERECHO AMBIENTAL, A.C.
(CEMDA)**

M.C. Gustavo Alanis-Ortega

M.C. Ana Karina González

Atlixco 138, Colonia Condesa, México, D.F., 06140

Tel: (525) 286-3323, 211-2457

Fax: (525) 211-2593

Correo electrónico: general@cemda.org.mx

JPAC Responsibilities - Comments

With regard to JPAC responsibilities, we consider that, in order to be able to receive the issues submitted by the public, there must be clear rules determining the form in which these issues submitted by the public are to be received. In addition, it will be necessary to specify what is understood by the word “issues.” With respect to forwarding these issues to the Council, it will be important to specify how (the manner in which) such issues will be forwarded to the Council. That is, whether they will go to the Council as they were presented, whether a summary of them will be made. As regards the public review, it must be specified what a “public review” is. That is, will there be a forum, workshop, seminar, consultation and what will be the criteria for the undertaking thereof. Further, the period for the consultation should be determined.

With respect to the Council advisement by the JPAC, will there be a period for that? How much time does the Council have to cover the issues? Lastly, who will cover the issues? The Council, the JPAC, or a technical group? Also, the Secretariat is not assigned a role at any time. Will the Secretariat play any role?

Council Responsibilities - Comments

With regard to Council responsibilities, we consider that it must be specified which issues are referred to that the Council will handle, since at time reference is made to “application and further elaboration” and at other times reference is made to “implementation or further elaboration of Articles 14 and 15.” Furthermore, it is provided that the Council shall receive issues that the public submits via the JPAC, giving rise to the question of what will happen to issues reaching the Council directly without going through the JPAC? Also there should be the necessary, clear and transparent criteria to be followed so that the Council refers to the JPAC any issue it intends to cover

With respect to point 4 of the Council responsibilities, it is important to know if this is based on the cases already presented under Articles 14 and 15, or in relation to any future modifications proposed for Articles 14 and 15. Regarding point 5, it is important to establish the time that the Council has to explain any decision in writing and to make it public. Lastly, we believe that the two-year period for reviewing the functionality of the Resolution is a very short time, given its implications for the process stipulated in Articles 14 and 15, for which reason we suggest that the period be of at least 4 years.

Steps in JPAC Review - Comments

It needs to be clearly stipulated the manner in which the comments will be received (forums, consultations, workshops, electronically) and the period that the public will have to get them to the JPAC. Also, as has already been commented above, the public should know what the Council will receive: the issue as it was presented, or a summary thereof. With respect to point 2, we believe it is necessary to establish the criteria to be followed to make recommendations to the Council, and the times for making them.

How JPAC Receives and Transmits Issues - Comments

Point 1: Is this “consultation” ongoing? Or will it last for a determined period?

Point 2: The criteria, guidelines or policies allowing the JPAC to determine whether a written statement does or does not relate to a relevant matter will have to be established. As there are no such criteria, discretionality may arise. This comment also applies to point 3.

Point 3: The time that JPAC has to forward a statement to the Council has to be established, as do the criteria for determining whether a statement is relevant, as mentioned above. Forwarding a written statement to the Council does not specify whether it will be presented as submitted to JPAC or whether it will be a summary thereof.

How JPAC Reviews Issues Referred To It by the Council - Comments

Point 1: In how much time will the public review process be undertaken? Once more, what is meant by Public Review (forums, workshops, seminars, e-mail)? Further, we find the provisions that the public review will conform to what JPAC deems necessary to be highly discretionary, for which reason there should be greater care taken with the language to avoid situations like this. Also, we believe that the form for public review should be made known from the start, and not use only the CEC web site for publication because very few people will have knowledge thereof due to lack of electronic accessibility.

Point 2: We consider that a determined time has to be established for JPAC to forward to the Council a recommendation in writing, as well as a time period for the person who submitted the issue to be notified, and for the publication thereof on the CEC web site. Lastly, we propose to add a point 3, specifying what the Council will do with such a recommendation.

[Document No. (5). Source Language: English]

**Martha Kostuch, Vice-President
The Friends of the Oldman River
Box 1288
Rocky Mountain House
Alberta T0M 1T0
Phone: 403-845-4667
Fax: 403-845-5377
e-mail: Martha@rttinc.com**

August 27, 2000

Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques West, Suite 200
Montreal, Quebec H27 1N2
mpepin@ccemtl.org

**RE: Comments on the Draft JPAC Public Review of Issues Concerning the
Implementation and Further Elaboration of Articles 14 and 15 and the Submissions
History – Lessons Learned**

Dear JPAC:

With the copy of this submission that I am sending by regular mail, I am enclosing a copy of the presentation that I made to the CEC Council on 12 June 2000. I believe some important lessons can be learned from how our submission has been and is being dealt with. It is interesting that I still have had no response from the CEC Council to the presentation I made to them in June.

In early July, I made a submission to JPAC outlining the Article 14 and 15 issues that I would like them consider reviewing. Since I have not yet received acknowledgement of receipt of that submission, I will repeat the list of issues again here:

- Factual records should include conclusions.
- Factual records should include recommendations.
- There should be a requirement to make factual records public.
- The 30 day waiting period for the public (and especially submitters) to be notified after the Secretariat's recommendation regarding the preparation of a factual record has been provided to Council should be eliminated.
- The substance of the Secretariat's recommendation regarding the preparation of a factual record should not be kept secret until the Council makes its decision on whether a factual record should be prepared.

- If there are interpretive matters related to a specific submission, the submitter should have an opportunity to comment on the interpretive matters.
- Submissions should be allowed on a general failure to enforce the law.
- The Secretariat and the Council should have timelines for them to carry out their duties.

Specifically regarding the Draft JPAC Public Review Proposal, JPAC should commit to respond to the public who make submissions, raise issues, etc. within a reasonable period of time.

The draft proposal implies that JPAC can only review Article 14 & 15 issues referred to it by the Council. I do not agree. JPAC should be able to review Article 14 & 15 issues on its own initiative. JPAC should also be able to review issues brought to JPAC by the public if they feel a review is warranted.

The draft proposal indicates that JPAC can hold a public review in the form it determines necessary. What are the formats for public review that will be considered? I think the options for public review should be included in the document.

I would appreciate an acknowledgement of receipt of this submission. Please keep me on the distribution list for this important topic. I am interested in participating in future consultations regarding Articles 14 & 15.

Sincerely,

Martha Kostuch

Presentation to the NACEC Council
June 12, 2000
by Martha Kostuch, Vice-President, The Friends of the Oldman River

Brief history of FOR's submission

First submission was made in October 1996. After referring that submission to the party for a response, the CEC Secretariat rejected that submission because the same matter was before the Courts. The Secretariat made it clear that it was their interpretation that only if the Party had the matter before the Courts was there an automatic rejection of a submission. Never-the-less, in our specific case, they felt that the matter before the Court and FOR's submission were so similar that they recommended that a factual record not be prepared while the matter was still before the courts.

In October 1997, after the case dealing with the same matter had been withdrawn from the courts, FOR made another submission. There were considerable delays in dealing with FOR's second submission.

The first reason the Secretariat gave for the delays was a lack of manpower and resources.

The next reason the Secretariat gave for the delay was questions of interpretation. The Secretariat hired outside legal council to give them legal opinions on the interpretation question. We were never informed what the interpretation issues were nor were we provided any opportunity to provide any input or give our opinion on the interpretation issues.

Finally, on July 19, 1999, the Secretariat recommended to Council that a factual record be prepared. Unfortunately, the Council at their annual meeting in Banff in June 1999 revised the rules and required the Secretariat to keep the fact that they had made their recommendation to Council a secret for 30 days. I guessed when the Secretariat made their recommendation because the Secretariat stopped talking to me.

Even in August when the Secretariat finally made the fact that they had sent their recommendation to Council, the substance of the recommendation itself was still kept secret except for the fact that they recommended that a factual record be prepared.

On May 16, 2000, the Alternates (I think they should be called ghosts) made a decision and after over two and a half years since FOR's 2nd submission was made, the decision to defer making a decision was that finally the full text of the Secretariat recommendation was released.

Key Elements of FOR's Submission

FOR's submission alleges that there is a general failure by the Government of Canada to apply with and enforce the *Fisheries Act* and the *Canadian Environmental Assessment Act* or CEAA.

FOR provided evidence of the general failure of the Government of Canada to enforce these Acts.

In 1990-1001, over 12,000 Fisheries Act Section 35(2) authorizations were issued. In 1995, in a clear attempt to avoid triggering CEAA which came into effect in January 1995, the Department of Fisheries and Oceans released a Directive allowing letters of Advice to be issued. In 1995-96, less than 350 Fisheries authorizations were issued.

In May 1997, in the Sunpine case which was later withdrawn from Court, the Honourable Justice Muldoon stated in reference to the use of Letters of Advice.

“This is a transparent bureaucratic attempt at sheer evasion of binding statutory imperatives. It is neither cute nor smart and this court is not duped by it.”

The judge went to indicate that DFO was circumventing the environmental laws which they decline to obey.

Review of the Secretariat’s Recommendation Report

The Secretariat understood that the Sunpine case that is still before the Courts is dealing with different legal issues than the Sunpine case which was used as an example in FOR’s submission.

The Secretariat also understood that FOR’s submission dealt with the general failure of the Government of Canada to enforce the *Fisheries Act* and CEAA and not a specific case.

In its recommendation report, the Secretariat states, “In the Secretariat’s view the submission raises matters whose further study would advance the goals of the NAAEC, notably the effectiveness of a Party’s various enforcement practices under one of the most important environmental laws of that Party.”

The Alternates Decision

The Alternates were wrong to make a decision to defer making a decision on the need to prepare a factual record.

In the Resolution passed by the Alternates on May 16, 2000, the Alternates use the excuse that the Sunpine case is still before the Courts.

FOR’s submission alleges a general failure to enforce the *Fisheries Act* and CEAA, not a failure in relation to any specific case. Secondly, the Sunpine case currently before the Courts deals with different legal issues than FOR’s submission. After a lengthy review, the Secretariat understood these two points. Unfortunately, the Alternates did not.

Either that or the Alternates are saying that citizens can not make submissions alleging a general failure of a Party to enforce their laws. If so, I believe that is contrary to the purpose of NAAEC.

Request of Council

I ask the Council to immediately refer FOR's submission to the Secretariat for the preparation of a factual record.

Comments on Council's Review/Interpretation of the Submission Process

The Governments have a conflict of interest. The Governments should separate their responsibilities as members of the CEC Council from their interests as Parties subject to review. The Council should go out of its way to be seen as not interfering or tampering with the submission process.

The Council is undermining the integrity of the public submission process.

The Council is tying the hands of the Secretariat and limiting the Secretariat's ability to carry out its responsibilities under Articles 14 and 15.

NAC
CCN

Canada - National Advisory Committee

Comité consultatif national - Canada

North American Agreement on Environmental Cooperation ~ Accord nord-américain de coopération dans le domaine de
l'environnement

www.naaec.gc.ca/english/nac/ www.naaec.gc.ca/french/ccn/

September 15, 2000

Mr. William Andrews
Chairperson

Barrister & Solicitor
1958 Parkside Lane
North Vancouver, BC
V7G 1X5
Phone: (604) 924-0921
Fax: (604) 924-0918
E-Mail: wjandrews@home.com

Mr. Stewart A.G Elgie

Sierra Legal Defence Fund
106 Front Street, Suite 300
Toronto, ON
M5A 1E1
Phone: (416) 368-7533
Fax: (416) 363-2746
E-Mail: selgie@sierralegal.org

Ms. Anne Mitchell

Canadian Institute for Environmental
Law and Policy
517 College Street, Suite 400
Toronto, ON
M6G 4A2
Phone: (416) 923-3529
Fax: (416) 923-3949
E-Mail: cielap@web.net

M. Christian Van Houtte

Association de l'industrie de l'aluminium
1010 rue Sherbrooke ouest, suite 1600
Montreal, QC
H3A 2R7
Phone: (514) 288-4842
Fax: (514) 288-0944
E-Mail: associa@login.net

Secretariat:

Jean-François Dionne

Environnement Canada
Environnement Canada
Americas Branch
Direction des Amériques
25^e floor / étage Les Terrasses de la Chaudière,
10 rue Wellington Street
Hull, QC
K1A 0H3
Tel: (819) 994-6051
Fax: (819) 997-0199
E-mail: JeanFrancois.dionne@ec.gc.ca

Hon. David Anderson
Minister of the Environment
Terrasses de la Chaudière
10 Wellington Street
Hull, QC
K1A 0H3

M. Paul Bégin
Ministre de l'Environnement
Gouvernement du Québec
Edifice Marie-Guyart
675, boul. René Lévesque E
Québec, QC
G1R 5V7

Hon. Halvar Jonson
Minister of Environment
Government of Alberta
Legislature Building
Edmonton, AB
T5K 2B6

Hon. Oscar Lathlin
Minister of Conservation
Government of Manitoba
Room 344, Legislative
Building
450 Broadway Avenue
Winnipeg, MB
R3C 0V8

Dear Ministers:

Re: Proposed CEC Program Plan, JPAC Draft Article 14-15 Process, and NAC Appointments

On behalf of the Canada National Advisory Committee (Canada NAC), I am pleased to provide the following advice based on the conference call meetings of the Canada NAC on March 16, 26 April, 18 May, and 24 May 2000, an in-person meeting in Toronto on 9 May 2000, a in-person meeting in Dallas, Texas, on 11–13 June, in conjunction with the CEC Regular Session, and a conference call on 11 September 2000. NAC members also participated as observers in the March 23-24 meeting of the Joint Public Advisory Committee in Guadalajara, Mexico, the Symposium on Children's Health and the Environment sponsored by the Commission for Environmental Cooperation on 10 May 2000, in Toronto, and, as mentioned above, the CEC annual meeting in Dallas in June.

This letter of advice focuses on three topics:

2. The 2001–2003 Proposed Program Plan and Budget for the North American Commission for Environmental Cooperation, August 2000;
3. The Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15;
4. The process for appointments to the Canada NAC.

2001-2003 Proposed Program Plan

Background. The Canada NAC has received the August 2000 draft of the proposed 2001–2003 Program Plan and Budget, however not all the members of NAC have yet had an opportunity to review it thoroughly. We understand that Canada is currently developing its initial response to the proposed 2001–2003 Program Plan and Budget, so we will make the following comments based on our initial review. Later, the NAC may be in a position to provide additional comments.

Recommendation. The Canada NAC recommends that Canada incorporate the following comments in its response to the August 2000 Proposed Program and Budget for the CEC:

1. The Proposed Program and Budget is well written and clearly laid out. One particular strength is the attention given to the linkages between the various CEC programs and projects.
2. The CEC should be congratulated for presenting a high caliber work plan. The plan includes a balanced combination of established programs producing significant results, new projects that show great promise, and almost-completed projects that are being phased out.
3. The CEC Symposium on the environmental effects of NAFTA, scheduled for October 2000 in Washington, D.C., is a major achievement, culminating almost five years of intensive effort. We are pleased to see that the CEC is proposing a follow-up symposium in 2002. Evaluating the environmental effects of NAFTA is an ongoing assignment, one that is central to the North American Agreement for Environmental Cooperation.
4. The proposed project "Comparative Report on Environmental Standards," within the Law and Policy program area, is a welcome addition. As you know, in the past few years the Canada National Advisory Committee has recommended that Canada support such a project. One of the most common fears about NAFTA is that it will lead to a competitive lowering of environmental standards (the 'race to the bottom'). The NAAEC clearly mandates the CEC (and the Parties) to identify environmental standards in the three countries with a view toward upward harmonization and improvement of standards.

5. The Emerging Environmental Trends in North America project deserves particular support. To paraphrase the project Rationale (p.8), it is better to 'anticipate and prevent' than to 'react and cure.' The work done to date provides a strong basis for practical outcomes from this project.
6. The proposed Mapping Marine and Estuarine Ecosystems of North America project is an important extension of the excellent work already done by the CEC on terrestrial mapping in North America. By focussing on compatibility and coordination of existing and developing ecosystem classification systems and mapping, the CEC is maximizing its 'value added' contribution to the achievement of a truly North American perspective on the North American environment.
7. The Sound Management of Chemicals remains the CEC's 'flagship' program area. The successful implementation of the North American Regional Action Plan (NARAP) on DDT (acknowledging that the job is not finished) is a significant achievement. Implementation of the NARAP on mercury is now a high-profile challenge. Notably, success with the mercury NARAP will require substantial action within Canada and the United States, in contrast with the DDT NARAP, where most of the difficult improvements occurred within Mexico. With three new NARAPs proposed for development in 2001 (lindane; dioxins, furans and hexachlorobenzene; and environmental monitoring and assessment), committed participation from the three Parties and the relevant private sectors will be essential.

JPAC Article 14-15 Public Review Process

At the annual meeting in Dallas in June 2000, the Council decided to develop a process for reviewing possible changes to the Article 14-15 public submission process (Council Resolution 00-09), with JPAC providing the vehicle for public input. As you know, the NAC members present at the Dallas meeting strongly commended this approach. In furtherance of this decision, JPAC has recently released a proposal titled "Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15." Again, not all the members of the Canada NAC have had the opportunity to review this proposal in detail. As a general comment, however, it appears that the draft is consistent with the intention of Council Resolution 00-09.

In addition to the proposed public review process, we understand that a report on the history of the application of Articles 14 and 15 is being prepared (as required by Council Resolution 00-09). The content of this report will in many ways set the stage for the ensuing discussion of Article 14-15 issues. Our comment is that it is important that this report include a fair and accurate description of the perspectives of the organizations that have made Article 14 submissions, as well as the perspectives of the three Parties.

NAC Appointments

Background. The official terms of the current members of the Canada NAC expired in August 1999. Since that time we have been serving on a *pro tem* basis. In the letter of advice from the NAC on 7 October 1999, we encouraged the Governmental Committee to make appointments to the NAC as soon as possible in order to maintain its momentum and to provide direction for the future. In that letter, the NAC also proposed the following qualifications that we believe are important to maintaining a strong Canada NAC:

1. that the individual contributes to balance on the NAC in terms of geography, gender, social background, and sector;

2. that the individual has experience and interest in public policy matters going beyond the concerns of his or her own sector;
3. that the individual be willing and able to participate constructively regarding matters of trade and the environment; and
4. that the individual be in a position to devote consistent personal time and attention toward participating in the NAC.

In the letter of advice from the NAC on 26 January 2000, we noted that appointments had not yet been made and again we encouraged the Governmental Committee to act as soon as possible. At that time we understood that the federal ministers' office was reviewing possible appointments to the Canada NAC and to other CEC-related positions (e.g., Canadian appointments to JPAC and to the Selection Committee for the North American Fund for Environmental Cooperation). In the spring of 2000, the NAC urged the federal government to make the appointments in time for the new committee members to attend the June annual meeting. At the June 2000 meeting in Dallas, members of the Canada NAC met with the federal minister and reiterated the importance of these appointments. It is now more than one year since the appointments of the NAC members officially expired and the new appointments have not been made.

The NAC is concerned that the failure of the Governmental Committee to appoint new members to the Canada NAC (and to the other CEC committees) reflects badly on Canada's commitment to the CEC. The lack of a properly appointed Canada National Advisory Committee at the annual meeting in Dallas was widely known among the participants from all three countries. In our view, this was a source of significant embarrassment to Canada and undermines the credibility of Canada's positions and proposals regarding the CEC.

At the meeting of NAC members with the federal minister in Dallas, the minister acknowledged the importance of the NAC appointments. We are aware that some progress was made toward making the appointments over the following months. However, almost three months later no appointments have been made. In our respectful opinion, it has to be concluded that the Governmental Committee's process for making committee appointments is dysfunctional. There appears to be a lack of sufficient political will and administrative efficiency.

In its most recent conference call meeting, the NAC discussed options that might improve the appointments process. One possibility that warrants consideration is for the NAC or the Governmental Committee to invite the public to make nominations for the committee positions. The final decision would be made by the Governmental Committee, of course. This system would promote public interest in the NAC and the other CEC committees. It would also provide a public accountability function in that the schedule for nominations and appointments would be well known to those interested in the CEC. In addition, a nomination process would ensure that the individuals being considered for appointment have committed that they are willing to devote the necessary time and attention to the committee obligations. I should repeat that this is merely a suggestion for consideration. The NAC is convinced, however, that something must be done to establish a functional process for making appointments to the NAC and the other CEC committees.

Conclusion

On behalf of the Canada NAC I would like to thank you for your attention to the above comments. The Canada NAC looks forward to your response to this letter of advice in due course.

Speaking for myself, I would like to take this opportunity to inform you that I intend to resign from the Canada NAC when this letter of advice is completed. I have enjoyed my years on the Canada NAC very much, and I thank you for providing me with that opportunity. At this point, however, I am finding it impossible to carry out my role as Chair of the NAC in planning upcoming NAC activities in the absence of certainty as to when the new members of the NAC will be appointed. When the incoming NAC is appointed, I would be happy to provide it with whatever assistance I can, in order to facilitate a smooth transition.

Best wishes to you in your ongoing efforts to protect the environment.

Yours truly,
William J. Andrews

Chair, Canada National Advisory Committee
Cc. distribution list attached

Distribution list

Cc. **Environment Ministers for the Provinces of Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Saskatchewan, British Columbia, Yukon, Northwest Territories, and Nunavut**

Hon. Oliver Langton
Hon. Kevin MacAdam
Hon. Michael Baker
Hon. Kim Jardine
Hon. Dan Newman
Hon. Buckley Bélanger
Hon. Joanne Sawicki
Hon. Dale Eftoda
Hon. Joseph Handley
Hon. Peter Kilabuk

Members of the Senior Officials' Committee

Gilbert Charland
Norine Smith
Dick Stephens
Annette Trimbee

Chairs of the US NAC/GAC and Mexican NAC/GAC

Mateo Castillo
John Knox
Robert Varney

Members of the Joint Public Advisory Committee

Care of Manon Pepin

Secretaría de Medio Ambiente (Semarnap)

Israel Núñez Birrueta

US Environmental Protection Agency

Mark Joyce

[Document No. (7). Source Language: English]

NATIONAL WILDLIFE FEDERATION

September 22, 2000

The Hon. Sra. Regina Barba, Chair
c/o Manon Pepin, Liaison Officer
Joint Public Advisory Committee
Commission for Environmental
Cooperation
393 St. Jacques West
Suite 200
Montreal, Quebec H2Y 1N9
Fax: (514) 350-4314

By Fax, Electronic Mail, and First Class Mail

RE: Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Article 14 and 15 (J/DISC/Rev.4)

Dear Ambassador Barba:

The National Wildlife Federation (NWF) is pleased to provide the following comments in response to the Joint Public Advisory Committee's (JPAC) request for comments on the *Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Article 14 and 15 (J/DISC/Rev.4)* (hereinafter *Draft JPAC Public Review*). We appreciate this important opportunity to present our views on the implementation of the Commission for Environmental Cooperation (CEC) Council's commitment to enhance public review of the citizen submission process.

The National Wildlife Federation is the United States' largest not-for-profit conservation education and advocacy organization with over four million members and supporters. We welcome CEC Council Resolution 00-09 "Matters Related to Articles 14 and 15 of the Agreement (June 13, 2000) and we look forward to the immediate implementation of Resolution 00-09. As part of our commitment to constructive participation in this important initiative, the National Wildlife Federation offers the following comments on the major steps of the process as presented in the current *Draft JPAC Public Review*:

I. How JPAC Receives and Transmits Issues from the Public

- The *Draft JPAC Public Review* assign's JPAC the responsibility to determine whether an issue raised by a member of the public is relevant to the implementation and further elaboration of Articles 14 and 15. JPAC should elaborate in greater detail and through a process allowing for public input, the broad manner and approach, including the

establishment of appropriate timelines for action, it will employ to guide JPAC in these important determinations.

- JPAC should clarify whether it will provide a written explanation to Council when it determines that a written public submission does not raise an issue relevant to the implementation and further elaboration of Articles 14 and 15 *and* when JPAC determines that a written public submission *does* raise an issue relevant to the implementation and further elaboration of Articles 14 and 15. The current Draft JPAC Public Review is unclear as to whether a relevant public concern will be sent forward to Council as written, or accompanied by JPAC advice;
- JPAC should clarify when it receives Council's decision to address or not to address the issue raised by the member of the public, the *Council's written decision* (and not simply JPAC's version of the decision) will be transmitted through the JPAC Liaison Officer. The Council must explain in writing any decisions taken following advice received from JPAC and make those explanations public. Council Resolution 00-09, para. 7, appears to support the public dissemination of a Council's written decision as it states: "Any decision taken by the Council following advice received by the JPAC shall be explained in writing by the Parties and such explanations shall be made public.";

II. How JPAC Reviews Issues Referred to it by the Council

- in order to succeed and earn the confidence of all stakeholders, the process established by Council Resolution 00-09 must move forward with a presumption in favor of the Council referring most, if not all, issues concerning the implementation and further elaboration of Articles 14 and 15 to the JPAC. A presumption in favor of referring all issues addressing Articles 14 and 15 to the JPAC is consistent with the recognition in Council Resolution 00-09 of "the need for transparency and public participation before decisions are made concerning implementation of the public submission process under Articles 14 and 15 of the NAAEC " and it is consistent with the articulation of the Council's responsibilities in the current *Draft JPAC Public Review*;
- JPAC should clarify and elaborate in greater detail and through a process allowing for public input, the broad manner and approach, including the establishment of appropriate timelines for action, it will employ to "hold a public review in such a form as it determines is necessary". Further elaboration of JPAC's options for "form" of public review is necessary and issues for consideration include: opportunities for the public to provide oral and written comments; JPAC holding a public discussion of each issue, and; the possibility of drawing on experts or consultants or even government representatives to offer different perspectives and analysis of an issue;

III. Other Issues

Timelines:

The *Draft JPAC Public Review* document does not designate specific timelines in which action must be taken. While we recognize the difficulties inherent in assigning specific time-sensitive deadlines for completing various portions of the process without the benefit of knowing the issues that will be raised, we believe that a better attempt at establishing timelines to ensure responsiveness and improved accountability is needed.

Resources:

Adequate and sufficient funding for the JPAC to carry out the public review process must be provided to ensure a transparent process with wide participation from civil society. The CEC's Proposed Program Plan and Budget should provide for other funds to be made available to the JPAC if issues arise requiring additional resources such as legal advisors, consultants, or extended public meetings.

* * *

Thank you for the opportunity to submit these comments and we look forward to working with you as the implementation of Council Resolution 00-09 progresses in a timely and effective manner.

Respectfully submitted by,

Douglas Jake Caldwell
Program Coordinator
Trade and the Environment

Andrea Abel
Program Associate
Trade and the Environment

SIERRA LEGAL DEFENCE FUND

September 22, 2000

Via Facsimile (514) 350-4314

Manon Pepin
JPAC Liaison Officer
Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques West
Suite 200
Montreal, Quebec H2Y 1N9

RE: “Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15

On behalf of Sierra Legal Defence Fund, I am pleased to present the following comments, which concern the draft public review procedure developed by the JPAC. SLDF is also providing comments, in a separate document, regarding “lessons learned” from previous citizen submissions. A document describing SLDF and a description of its previous involvement in CEC activities is attached to these comments.

SLDF would like to thank the JPAC for its work in the development of Resolution 00-09 and its work thus far in developing the public review process. The JPAC has always been a strong advocate for a public voice in the citizen submission process.

The JPAC has done a commendable job of creating a transparent mechanism for addressing issues arising under Articles 14 and 15 which fully employs the mandate granted to the JPAC under Resolution 00-09. The public review process, as described in the draft document, is a significant step forward in resolving the issues that arise concerning the citizen submission process. SLDF is particularly pleased to see that the public review process makes specific, detailed provision for members of the public to raise issues with the JPAC.

Regarding the draft review process, SLDF has some limited suggestions regarding issues where clarification or further guidance through guidelines would be beneficial. SLDF has further comments regarding the ability of Resolution 00-09, and the process it mandates, to fully address the public concern that led to its development. SLDF provides these comments to the JPAC in its role as the CEC’s public representative, with the hope that the JPAC will communicate these issues to the Council for consideration prior to the finalization of the public review process.

A. THE DRAFT PUBLIC REVIEW PROCESS

The draft public review process developed by the JPAC is a significant step forward. SLDF only comments relate to clarification of some aspects of the public review process would be beneficial, including:

- Further elaboration of how the JPAC will determine the form and content of any public review when the Council has referred issues to the JPAC.

- Development of criteria to guide the JPAC’s consideration of whether issues referred by the public concern the implementation and further elaboration of Articles 14 and 15. Specifically, it would be beneficial for the JPAC to communicate its understanding of phrase “implementation and further elaboration” to the public. And,
- The JPAC should develop a time frame for making its determination whether an issue referred by the public concerns the implementation and further elaboration of Articles 14 and 15.

B. COMMENTS REGARDING RESOLUTION 00-09

Resolution 00-09, and the public review process it establishes, were created to address public concerns that the Parties to the NAAEC were working clandestinely to weaken Articles 14 and 15 and attempting to influence the Secretariat’s handling of particular citizen submissions. Given the purpose and intent of the NAAEC and, in particular, the citizen submission mechanism, it is essential that the citizens of Canada, Mexico and the United States have confidence in the operation of Articles 14 and 15.

The management of the citizen submission process by the parties has importance beyond the context of the NAAEC. The citizen submission process is unique in the realm of international trade agreements as it provides the only mechanism allowing citizens to address the environmental effects of trade. As the Parties are well aware, public concern about the effects of free trade is high. A failure to defend the integrity and transparency of the citizen submission mechanism will simply strengthen anti-trade arguments.

It is everyone’s interest that the Parties ensure that the citizen submission process is accessible, credible and vibrant. Two aspects of Resolution 00-09 raise particular concern. First, the Council has provided little indication of how the decision to refer issues to Council will be made. Second, the wording of Resolution 00-09 makes unclear the scope of the issues that may be dealt with in the public review process.

In Resolution 00-09 states that “Council may refer issues concerning the implementation and further elaboration of Articles 14 and 15 of the Agreement to the JPAC...” No further guidance or indication is given regarding how the Council will exercise its discretion to refer issues to the JPAC. It appears that implementation and application of Articles 14 and 15 could be significantly altered without any public input so long as the Parties (or at least two Parties) agree to the alteration. This, understandably, may undercut public confidence in the citizen submission process. SLDF makes the following recommendations regarding Council referral:

- That guidelines be developed to direct when Council will refer issues to JPAC, which should include, at a minimum, the following protections:
 - that any new interpretation, policy or proposed agreement between the Parties which would change or alter previously established practices in the citizen submission process be referred to the JPAC; and

- that any proposed directions from Council to the Secretariat regarding the Secretariat's preparation of a factual record, other than initial instruction to prepare a factual record (set out in Article 15(2)), be referred to the JPAC.

The wording of Resolution 00-09 also raises uncertainty regarding the potential scope of issues that may be addressed under the JPAC's public review process. Article 20 of the NAAEC and the Preamble of Resolution 00-09 refer to "co-operation and consultations" regarding the "interpretation and application" of the NAAEC. However, section 1 of the resolution and the JPAC's draft public review process refer to the "implementation and further elaboration of Articles 14 and 15". The wording "implementation and further elaboration" is clearly broad enough to encompass any potential issues concerning Articles 14 and 15 that might arise. However, if the use of the words "implementation and further elaboration" was intended in anyway to limit the scope of issues potentially referred to the JPAC by the Council or the public, that position should be made clear.

While it is legally correct to state that the Parties, as sovereign entities who are party to an international agreement, can interpret and amend the NAAEC as they see fit, this approach is inconsistent with the history, spirit and intent of the NAAEC. The most successful citizen submission will, at most, result in information being presented to the public. Under the NAAEC, no other consequences flow from the citizen submission process. This stands in stark comparison to Chapter 11 of the NAFTA, which has awarded "investors" millions of dollars in compensation due to the effects of environmental laws and results in the effective striking down of those laws.

The citizen submission process is only effective to the extent that its is a strong process, independent of the Council. The life that the Council gives to the citizen submission process will be a clear indication of the Parties willingness to address the issues of trade and the environment.

Respectfully submitted,

Randy L. Christensen

THE SIERRA LEGAL DEFENCE FUND AND ITS INVOLVEMENT WITH THE CEC

The Sierra Legal Defence Fund (SLDF), founded in 1990, is a non-profit environmental law organization that provides free legal services to the environmental community in Canada. SLDF has three primary goals:

- 1) To 'level the playing field' for environmental groups that simply cannot afford to go to court against large institutions when important wilderness values are at stake;
- 2) To bring carefully selected cases with the ultimate goal of establishing an aggregate of strong legal precedents that recognize the vital importance of environmental values;
- 3) To provide professional advice on the development of environmental legislation.

SLDF is funded by public donations and foundations grants. We currently have over 17,000 individual supporters across Canada.

SLDF has provided support and assistance to several organization and individuals interested in filing citizen submissions with the Commission for Environmental Cooperation (CEC). Randy Christensen, the Sierra Legal Defence Fund's representative to the June 2000 Council session, is counsel of record for three Citizen Submissions:

1. Submission 97-001, filed on behalf of the BC Aboriginal Fisheries Commission, the British Columbia Wildlife Federation, the Trail Wildlife Association, the Steelhead Society of British Columbia, Trout Unlimited (Spokane Falls section), Sierra Club (US), the Pacific Coast Federation of Fishermen's Association, and the Institute for Fisheries Resources. Submission 97-001 is the first submission from Canada or the United States to proceed to the Factual Record development stage. The Factual Record for BC Hydro was released in June, 2000.
2. Submission 98-004, filed on behalf of the Sierra Club of British Columbia, the Environmental Mining Council of British Columbia and the Taku Wilderness Association.
3. Submission 00-004, filed on behalf of the David Suzuki Foundation, Greenpeace Canada, the Sierra Club of British Columbia, the Northwest Ecosystem Alliance and the National Resources Defence Council.

Mr. Christensen has also attended previous CEC functions, including the January 1999 JPAC meetings regarding proposed changes to the Guidelines for Citizen Submissions, the June 1999 Council session in Banff, Alberta, where Mr. Christensen gave a short presentation to Council members, and the June 2000 Council meeting in Dallas.

In general I think public consultation needs to be an active process, not a passive one (which yours is). These need has been understood through some 20 years or more of my experience in many countries, using the CECInfo access to the UN Infoterra got the information to me. Your proposed process does not include such wide means of distribution or access. Also the approach to consultations seems to be rather formal and might even appear to need a lawyer involved. This should not be.

I commented on the final item of the last text page of you draft. My comment was that it is necessary to have an "active" or even "proactive" information program to be effective public consultation. A very good handbook on community consultation is available from the EUROPEAN FOUNDATION for the Improvement of Living and Working Conditions as a free Adobe acrobat document. If you are interested I will send it. I know that Environment Canada has published a number of guidelines in public involvement which should be available, and I have also published a paper on this many years ago. A group of your status should refer to these. All emphasize the need to bring the public into the process, not just put information on your web site and hope people find it. There are millions of web sites out there now. When was the last time you checked my site at www.geoniger.com. I do not expect you to have heard of this. The only way that I heard of your web site was that someone posted it to the United Nations Infoterra newsnet site which I monitor. Are the public who do not have internet of any value to you? How many of the Mexican public are on the net? You need to develop some more proactive means of getting the issues you want commented on out to the public.

My other annotation that I sent related to page two of your document "How JPAC receives and transmits issues from the public. First, as discussed above, this assumes that the public know who CEC and JPAC are, know of the issues, and know the mechanisms to send comments. As a long-term environmentalist who is involved in such things globally, including having written some of the environmental processes for Canada and Mexico under the agreement, I am surprised how little I know of what you are up to. If this was a public consultation program I was conducting under CEAA, it would not be accepted. But then, my major concern under this item is the very formal and almost legalistic manner in which it is laid out. I may be wrong, but I get the impression that I would need to conduct a scientific research program, hire a lawyer and prepare a thesis before I submit my formally written comments. Or else they will be discarded as unimportant or invalid. Again, how many of the public does this rule out or scare off.

I hope that this provides a more formal version of my reply. It was a lot more work than just attaching the annotations to your acrobat file and returning them.

Thank you for reading my ramblings and I do hope they are constructive.

Yours truly,

Wilson Eedy, Ph.D.
Environmental Manager, Terfa Inc.
Operations Director, Geomatics Nigeria Limited
Editorial Board, The Canadian Field-Naturalist
Advisory Board, African Journal of Environmental Assessment and Management
Past Conservation Authority Director and Chairman Environmental Advisor
Committee, Halton Region
Environmental and Public Consultation Consultant for 27 years

Terfa Inc
RR# 1, Moffat, Ontario
Canada L0P 1J0
Phone: (519) 824-0759
Fax: (519) 824-9170
e-mail: edith@attcanada.ca

[Document No. (10). Source Language: English]

Texas Natural Resource Conservation Commission
Protecting Texas by Reducing and Preventing Pollution

Robert J. Huston, *Chairman*
R.B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Jeffrey A. Saitas, *Executive Director*

September 22, 2000

Ms. Regina Barba, Chair
Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques Ouest
Suite 200
Montréal, Québec H2Y 1N9

Dear Ms. Barba:

Thank you for inviting me to submit comments on the mechanism for citizen submissions on enforcement matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation. Let me first say that the draft procedure for public review on input re Art. 14 & 15 seems sensible, more than adequate, and appears to be a workable process that will lead to unanimous adoption of the final recommendations forwarded by the Joint Public Advisory Committee to the Commission for Environmental Cooperation.

In regards to comments relating to the citizens submissions process, I want to emphasize complication of the process. Under the original Articles 14 and 15 guidelines there were 11 steps. Last year the guidelines were revised and additional actions added to the process, making it more cumbersome. If a goal of the process is to make it easy for submissions to be considered by the Council, then no more changes to the current process are warranted. However, if the desire is for people to produce fewer submissions, then a lengthier, more complicated process will only serve to reduce the effectiveness of this tool for the residents of North America.

Thank you very much for your consideration. If there should be any further need to communicate with me, I can be reached at 512-239-3600 or by e-mail at sniemeye@tnrcc.state.tx.us.

Sincerely,

Stephen M. Niemeyer Acosta
Policy Analyst, Division of Border Affairs

cc: Diana Borja, Director, Division of Border Affairs
Dan Eden, Executive Assistant to Commissioner Marquez

P.O. Box 13087 · Austin, Texas 78711-3087 · 512-239-1000 · Internet address: www.tnrcc.state.tx.us



**United States Council
for
International Business**

1212 Avenue of the Americas, New York, NY 10036-1689
tel: 212-354-4480 ~ fax: 212-575-0327
e-mail: info@uscib.org ~ Internet: www.uscib.org

Serving American Business as U.S. Affiliate of:

International Chamber of Commerce (ICC)
International Organisation of Employers (IOE)
Business and Industry Advisory Committee (BIAC) to the
OECD
ATA Carnet System

September 22, 2000

Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques West
Suite 200
Montreal, Quebec H2Y 1N9

The United States Council for International Business (USCIB) welcomes the opportunity to comment on the *Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15*.

First, the USCIB considers Council Resolution 00-09 on Matters Related to Articles 15 and 15 of the Agreement an appropriate and reasoned response to the needs to the Parties to address outstanding issues regarding the management of the citizen submission process. As stated in our earlier comments on this subject, the USCIB supports the expanded role of the JPAC in the submission process while maintaining the Council's decision-making authority.

Second, the USCIB believes that the *Draft JPAC Public Review* document accurately reflects the scope and objectives set forth in the Council Resolution 00-09, and supports the JPAC in moving ahead with its review along the lines suggested in the document.

Last, concerning lessons learned from the history of the submissions process, as the USCIB has not been directly involved in any submissions to the CEC under Articles 14 and 15, we offer no specific comments on the process. However, a copy of our earlier comments regarding the submission process is attached for your reference.

Feel free to contact me with any questions or comments that you may have.

Yours sincerely,

Adam B. Greene
Director of Environmental Affairs



United States Council for International Business

1212 Avenue of the Americas, New York, NY 10036-1689
tel: 212-354-4480 ~ fax: 212-575-0327
e-mail: info@uscib.org ~ Internet: www.uscib.org

Serving American Business as U.S. Affiliate of:

International Chamber of Commerce (ICC)
International Organisation of Employers (IOE)
Business and Industry Advisory Committee (BIAC) to the
OECD
ATA Carnet System

December 8, 1998

Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques West
Suite 200
Montreal, Quebec H2Y 1N9

The United States Council for International Business (USCIB) is pleased to submit the following comments on the September 4, 1998 revision of the *Guidelines for Submissions on Enforcement Matters under Article 14 and 15 of the North American Agreement on Environmental Cooperation* (NAAEC), which have been disseminated by the Joint Public Advisory Committee (JPAC) for public comment.

Maintain Objective Process for Submissions on Enforcement Matters:

On balance, the USCIB believes that the process for submissions on enforcement matters developed by the CEC Secretariat in 1995 has worked effectively, and that it has adhered to the scope and intent of Articles 14 and 15 of the NAAEC. Indeed, the existing Guidelines have fostered an objective, transparent, and timely assessment of the submissions received by the Secretariat, effectively managing a broad range of issues across three federal jurisdictions. Thus, the USCIB recommends that any revisions of the Guidelines do not alter its existing framework of being a "fair, impartial, and transparent" process.

General Comments:

In its August 3, 1995 comments on the CEC *Draft Procedures for Submissions on Enforcement Matters* (attached), the USCIB made four general comments that remain applicable to the Guidelines and the current revision:

- **Objectives of Article 14 and 15:** The primary objectives of these articles is to bring out the facts of a relevant issue and contribute to its resolution through cooperative dialogue, thereby assisting the regulatory agency in improving its effectiveness. To date, the submission process has conformed with this objective.

- **Transparency:** The entire process should remain as transparent as possible without breaching confidentiality requirements.
- **Due Process:** The process should remain one based on the concept of due process, as well as support and uphold due process in the Parties' three national jurisdictions. Commendably, the Secretariat has, through the existing Guidelines, remained focused on the primacy of national laws under the NAAEC.
- **Role of the JPAC:** While the JPAC's role in the review and revision of the Guidelines is essential, the Committee should also be used as a source of expertise and judgment on the factual issues of the submissions, as it is distinct from the Parties, the Secretariat, and the submitters.

Specific Comments:

Insofar as the revised Guidelines for public comment appear to maintain the objective, transparent, and timely procedures of the existing Guidelines, the USCIB would again recommend that as little as possible be modified, focusing on procedural issues that warrant improvement. However, a number of issues may be usefully raised in this review of the Guidelines. The numbering below follows the Revised Text:

- **Section 4.5:** The Guidelines should also allow for notification of any third parties referenced in the submission.
- **Section 7.2:** The Guidelines should directly reference Article 45.1 of the NAAEC regarding the definition of "effectively enforce its environmental law".

Conclusions:

As stated above, the goals of the submission process are to effectively and efficiently resolve disputes between a private group and an environmental regulatory agency, to increase cooperation among the Parties to the Agreement on such issues, and to ultimately improve the effectiveness of environmental protection. The existing Guidelines and the submission process has served those objectives well to date, and the revision process should in no way alter its general framework.

The USCIB would welcome the opportunity to continue to participate in the Guidelines revision process, particularly at the JPAC roundtable on the Guidelines to be held next January in Montreal.

Sincerely,

Adam B. Greene
Director of Environmental Affairs

October 6, 2000

Joint Public Advisory Committee
Commission for Environmental Cooperation
393 St. Jacques West, Suite 200
Montreal, Quebec H2Y 1N9

Re: Comments on Issues Relating to CEC's Citizen Submissions Mechanism

Dear Members:

Environmental Health Coalition (EHC) is thankful for the opportunity to comment on the *Draft Document of the Process for Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15* of the NAAEC as well as on *Submissions History Leading to Lessons Learned*. As petitioners of a pending submission under these articles we have gained first-hand experience of this process which in turn can serve to examine the effectiveness and efficiency of Articles 14 and 15 submission process.

The following comments relate only to the *Draft Document of the Process for Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15*. EHC will reserve its comments on the specific issues related to our pending submission as it has moved through the process for future comment sessions next year.

General Comments on the Draft Document

- **The Review Process Must Ensure Equal Access.** Under the proposed process, the public, including petitioners in a submission, must first address a particular issue of concern to the JPAC which will in turn carefully review it and analyze it prior to any decision to present it before the Council. A Party however, can go directly to the Council on any issue of concern without JPAC's initial review and analysis. **Under this format, the public, primarily a petitioner bringing an issue for review concerning its submission, will be placed in an unfair disadvantage. The Petitioner(s) will be subject to a first layer of review process compared to a Party which can go directly to the Council despite the fact that it may also part of the same submission.** In essence, such a process poses an undue burden on the public whenever there is a dispute as to the interpretation or implementation of Articles 14 and 15 because it is the only sector of stakeholders who must go through the JPAC prior to the Council for review. In order to ensure a more equitable process, a Party must bring any issue of concern to the JPAC if that Party is part of a submission and the issue relates that submission. The JPAC must in turn apply the same procedures to determine whether the issue of concern merits further review by the Council.
- **The Process Must Ensure Transparency and Fairness to All Involved.** Related to the first comment, the review process must strive to achieve utmost transparency. If a member of the public or a petitioner to a submission brings an issue to the JPAC for review related to a particular submission, the parties involved in the specific submission must be informed and be given an opportunity to comment or respond to the issue being placed for review. Similarly, **if a Party to a submission raises an issue for review related to the submission, the JPAC must notify the petitioners, must send a copy of the statement by the Party to petitioners and must give them an opportunity to respond to the statement prior to any decision by the JPAC or Council.** Because it is expected that the majority of issues raised for review will be concerning the treatment of pending submissions, it is imperative that all the parties involved be given an opportunity to participate in the review process.

- **The JPAC Must Conduct Public Review Before It Makes Its Recommendation to the Commission.** The public should be given the opportunity to present before the JPAC its position as to why should the Council review and resolve the issue being presented. The JPAC will only benefit from such public discussion in order to make a more intelligent and objective recommendation to the Council.
- **The Review Process Must Occur Within a Timely Manner and Must Not Cause Undue Delays in the Overall Article 14/15 Submission Process.** It is imperative that the review process for issues concerning the implementation of Articles 14 and 15 do not serve to further delay the overall submission process. **To safeguard such potential delays, the review of issues should have specific time limitations for review and analysis.** As discussed below in the Specific Comments section, it is unclear from the draft as to the amount of time allowable for review and response of issues presented to the JPAC and Council for review.

Specific Comments on the Draft Document

- **Raising an Issue with the Council.** The draft document provides that a member wishing to raise an issue must do so in writing not exceeding 3 pages. EHC believes this is an acceptable initial step in identifying and addressing the issue of concern. However, the JPAC must take a flexible approach to allow the submitter to further elaborate and articulate with specificity the nature of the concern at issue when it is of such a complex nature that it may not be able to be fully presented within the 3 page requirement. Additionally, the submitter must be given a priority when
- **Time the JPAC Has to Review and Respond to Inquiry.** It is unclear from the draft document the amount of time the JPAC will have to review an issue brought by the public. The review process must have strict time lines in order to assure effectiveness and efficiency. Although the draft specifies the time it shall take to publish a particular decision, it does not provide the time the JPAC may take in reviewing a particular issue. **It is of outmost importance to maintain a process with strict mechanisms that will ensure prompt response and transparency. Absent those mechanisms, this review process will prove ineffective, and instead will be disruptive to the overall submission process.** Generally, 30 to 45 calendar days should be considered to be reasonable time to review and respond to an issue presented by the public.

Respectfully submitted,

Cesar Luna, Esq.
 Environmental Health Coalition
 Border Environmental Justice Campaign
 1717 Kettener Bld. Suite 100
 San Diego, CA 92101
 Phone: (619) 235-0281
 Fax: (619) 232-3670
cesarl@environmentalhealth.org
www.environmentalhealth.org