



## **Workshop on the History of Citizen Submissions Pursuant to Articles 14 and 15 of the North American Agreement on Environmental Cooperation**

### **Summary**

#### **I. Introduction**

This document summarizes the discussions that took place at the *Workshop on the History of Citizen Submissions pursuant to Articles 14 and 15 of the North American Agreement on Environmental Cooperation* held 7 December 2000, in Montreal, Canada. This was the first planned workshop held for the purpose of producing the report on experiences with and practical applications of submissions made under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) further to Council Resolution 00-09 adopted in Dallas on 13 June 2000.

One of the primary objectives of this initiative is to gain a better understanding of the kinds of recommendations that the Joint Public Advisory Committee (JPAC) will be in a position to make about the mechanisms set out in NAAEC Articles 14 and 15, with the aid of persons and organizations who have employed these mechanisms. The purpose of this workshop was to thoroughly review and understand the lessons to be derived from these individual and collective experiences, and to work toward solutions that will enhance the transparency and effectiveness of the public participation mechanisms (see appendix A, Meeting Agenda).

The workshop gave participants from different backgrounds and holding differing views an opportunity to propose and discuss specific recommendations that will help to consolidate, expand and render more transparent the process arising from Articles 14 and 15 (see appendix B, List of Participants). The workshop is chaired by **Peter Berle**, a JPAC member.

Thus, the workshop offered an opportunity to present and consider a wide range of options, which will be analyzed in due course during the preparation of the report to Council. The first draft of this report will be available for public consultation prior to the second workshop<sup>1</sup> to be held on this topic in March 2001. This document summarizes the presentations, discussions and ideas of the participants. Since it was not designed to produce consensus, but rather to solicit a

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<sup>1</sup> During the JPAC Regular Session held on 8 December, it was further decided that a second workshop was not necessary, given the quality of input to date. It is planned, therefore, to release the final document during the June Council Session. . A draft report will be available for JPAC review at its regular session on 16 March 2001, and prepare for its public release.

range of viewpoints directly from the participants leading toward a set of recommendations, this summary is not intended as a record of any such consensus. It is a compilation of the options identified at the workshop, which are subject to the consideration of all interested persons and groups.

## II. Summary

The workshop Chair asked **Jacques Gérin**, former member of JPAC, to provide some opening observations. **Mr. Gérin** began by noting that today's workshop was bittersweet - that years later the Commission is still discussing this issue. He suggested, however, that this was to be expected: in designing the submission process, the authors were very progressive; as implementation proceeded, there was a reluctance to live up to the consequences of the process. That might be partly attributed to the fact that the institutions are new and innovative. He concluded by suggesting the only way out of this malaise was for Council to reaffirm with strength and conviction the *raison d'être* of the process which are public access and transparency. He urged the JPAC to advise Council accordingly.

**Janine Ferretti**, the Executive Director of the North American Commission for Environmental Cooperation (NACEC), in her opening remarks, emphasized the relevance of the mandate given to the JPAC. She considered the development of the history to be an important and promising step in the improvement of the citizen submission process under Articles 14 and 15. She stated that this mechanism, with all its strengths and weaknesses, represents significant progress towards the achievement of greater accountability on the part of the governments. She remarked that the process on which JPAC has embarked is important to an understanding of the lessons learned. It will serve to review the areas in need of clarification or refinement, and to assess the procedure set out in Articles 14 and 15. She concluded by reiterating her commitment to transparency, efficiency and accountability, the principles that will continue to guide the work of the Secretariat.

The Secretariat, represented by **Carla Sbert**, presented the status of submissions under Articles 14 and 15. At this point, there ensued a discussion about specific cases, where it was asserted by the Québec Environmental Law Center that Council had dismissed a case without presenting the considerations that guided its decision. Likewise, **Martha Kostuch** mentioned the lack of notice about the status of her submission. These concerns were duly noted, but it was agreed that this workshop was not the ideal forum in which to discuss procedural issues regarding specific cases. Thus, the ensuing discussion focused on the procedural and substantive issues relating to the process as a whole.

**Gustavo Alanís** brought up the issue of delays in the processing of submissions by the Secretariat. He asked about the steps that the Secretariat is taking to expedite the process, since processing time varies excessively, from one month to two years. **Carla Sbert** commented on the factors that had stood in the way of prompter action. Until recently, she stated, there had been no specialized group working on Article 14 and 15 issues. Additionally, there were problems arising from differences in the interpretation of domestic law as well as the complexity of certain submissions. In addition, she mentioned the review of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on*

*Environmental Cooperation* (hereinafter referred to as the “Guidelines”) as having consumed a great deal of the work team’s time in terms of writing, negotiation and implementation.

**Michael Cloghesy**, former member of JPAC, commented that Articles 14 and 15 have become a means whereby citizens can contest a government’s decisions, whether good or bad, on a great variety of issues. This has generated a certain malaise on the part of the three governments, which has led to the politicization of the mechanism; thus the lack of transparency and clarity in the governments’ responses. **Mr. Cloghesy** sees no other option than a redrafting and clarification of Articles 14 and 15, failing which this instrument will remain frustrating for one and all.

On this point, **Peter Berle** identified the main themes that had been discussed by the participants to that point:

- Inadequate determination of time limits for action by Secretariat.
- Reasoning for Council resolutions not provided in text of resolution.
- General uncertainty about the inability to ascertain the status of a submission due to the 30-day waiting period established by the Guidelines.

**Cliff Wallis** emphasized that the problematic stage in the procedure is before Council, where decisions are made behind closed doors, usually by the Alternate Representatives. To resolve this difficulty, he suggested creating a body in which the Alternate Representatives (or the Ministers, if this is deemed appropriate) and JPAC would hear the arguments of both Submitter and Party; that is, submitters would be allowed to present their case and hear the Party’s arguments before Council makes a decision. In this regard, **Jon Plaut** referred to the decision, in drafting the wording of the Article 14 and 15 mechanism, not to establish a judicial procedure, so as to avoid a highly rigid, formalistic process. **Mr. Wallis** insisted that there is no transparency if the Alternate Representatives’ arguments are not made known to the submitter and submitter’s arguments are not disclosed to the other two countries. Maintaining the existing closed-door procedure would undermine the principle of transparency.

Later in the workshop, but on the same point, **Hervé Pageot** supported the idea that the Party and the submitter should meet in the event that Council does not decide to proceed with the development of a factual record. The idea is that the system should encourage consensus, not provoke confrontation. In this way, submitter could ascertain the reasons adduced by Council as well as the positions of the other Parties.

**Martha Kostuch** stated that citizens should be allowed to have input into matters of factual interpretation that arise but are not discussed in the submission itself. Regarding interpretation, submitters should have the opportunity to be heard: it is a question of natural justice. The Parties are members of Council, where they have the opportunity to present their positions on matters subject to interpretation, but submitters do not have this opportunity. Therefore, for matters of factual interpretation in a given case, whether it is before Secretariat or Council, the submitter’s participation should be allowed. Where a broader question arises on the interpretation and/or legal scope of the Guidelines, a broader process of citizen consultation on these matters should be initiated.

**Felipe Ayala** referred to Article 14.1 NAAEC, which establishes the criteria for determining whether the Secretariat may consider a submission filed with NACEC. There must be clarity as to the meaning of a failure of effective environmental law enforcement at the domestic level. To achieve this, Council must issue a resolution establishing the identity of the officially recognized domestic institutions and bodies, so as to establish clear limits on the actions of the institutions of three NAFTA member countries.

**Paul Kibel** commented that, in light of the experience derived from the *Cozumel* and *BC Hydro* cases, Section 12.1 of the Guidelines should be revised so that the Secretariat includes an independent evaluation of the relevant facts in the final version of its factual record. What with the significant experience developed by the Secretariat, it is unfortunate that it has no opportunity to comment on the merits of a case. If the revision of this section of the Guidelines proves to be insufficient, he suggested that JPAC recommend that NAAEC be amended to permit the Secretariat to play a more active and independent role in the consideration of the facts alleged in each submission. **Jon Plaut** asked **Mr. Kibel** if he did not consider that the Secretariat would be put in jeopardy by this proposal of independence, since the Secretariat is part of an organization that is controlled by Council. **Mr. Kibel** responded that the Secretariat would not be jeopardized, but rather that such a proposal is perfectly congruent with its objectives, and would in fact lend the Secretariat additional legitimacy.

**John Knox** asserted that nothing in the NAAEC's provisions stand in the way of the Secretariat requesting further information from a Party; hence, he does not see an obstacle to requesting further information from submitters as well, in order to clarify aspects and points under discussion. Likewise, he commented that in absolutely all cases, Council must provide the reasons why it adopts a resolution on whether or not to develop a factual record. He pointed out that this did not occur in the *Québec Hog Farm* case. Council simply denied the development of a factual record without further explanation, and such a decision runs counter to the entire conception of NACEC and NAAEC. He went on to address the matter of transparency, making specific reference to Section 10.2 of the Guidelines. He argued that the 30-day time limit for the Secretariat to make public its recommendation to Council on whether the submission warrants the development of a factual record, established by this section of the Guidelines, is nonsensical, impractical and does not stand up to serious analysis. The only purpose this provision can serve is as a "release valve" for public pressure until a decision can be made on the matter. Therefore, he recommended to JPAC that this section of the Guidelines be amended. Finally, he commented that the issue of whether the Secretariat may make recommendations is political, not legal, in nature. Since the contents of factual records are not defined in NAAEC, the absence of recommendations essentially represents an additional tacit agreement between the three countries.

**Martha Kostuch** strongly supported **John Knox's** position that the Secretariat's recommendation to Council for the development of a factual record be made public at the time it is issued, not after Council adopts a resolution.

**Mateo Castillo** referred to Article 14.1, which establishes the criteria for determining whether the Secretariat may consider a submission filed with NACEC. He suggested that a form be

developed to assist citizens in ensuring that their submissions contain the information necessary for them to merit the Secretariat's consideration.

**Daniel Basurto** argued that the entity analyzing the submission must have some discretionary power, although with legal limitations on that power, so as to provide certainty to the Parties and avoid an undue restriction of their rights. He stated that care should be taken with the possible abuse of this participatory instrument, since it is conceivable that relatively unserious or unprofessional submitters could make fraudulent use of Articles 14 and 15 to challenge a given action or activity, thereby vitiating the process.

In this regard, **Carla Sbert** stated that pursuant to the NAAEC, any person or organization without government ties and resident in North America may use the citizen submission process, and asserted that there has been no case in which a submitter under the NAAEC was unqualified or acted in bad faith. Submissions are dismissed if their content does not meet the requirements of the NAAEC.

**Regina Barba** pointed out that not all citizens have access to the citizen submission procedure, since the amended Guidelines now restrict access that was in fact granted by the NAAEC text. She asserted that the complexities of the process have caused many submissions to be rejected. It must be borne in mind that the objective of the mechanism is to achieve cooperation and compliance with North American environmental law.

**Erick Jansson** saw the necessity of maintaining a simple procedural scheme for Articles 14 and 15, such as the model applicable in the United States of America (USA) for citizen submissions under the *Administrative Procedure Act*. He felt that there is no reason whatsoever for the Secretariat not to request additional information from submitters; it is not necessary to hold a meeting, since the Internet or other information tools could be used. On the matter of transparency, he insisted that all arguments in support of a decision must be made public. The NAAEC procedure, like the aforementioned one applicable in the USA, must be conducted with greater openness. On this point, **Donna Tingley** stated that the governments have legitimate considerations in their responses to submissions, but these are unknown because the responses are not made public, and she therefore advocated in favor of strengthening the principle of transparency.

**Gustavo Alanís** took the floor to stress the importance of returning to the original intention of the Guidelines: that of guiding and facilitating public access. He stated that negotiations seeking to make the criteria for the Secretariat to consider submissions more restrictive, as well as to impose stricter requirements on submitters, should be set aside. He felt that it is indeed necessary to amend Articles 14 and 15 NAAEC, since the current wording keeps the procedure inequitable and relatively opaque. Although he acknowledged that it is only feasible to work on the Guidelines at this time, he stated that one should not lose sight of the need to amend the wording of the agreement itself in the future. **Mr. Alanís** asserted that submitters have no legal security as regards the time limits for the Secretariat to analyze whether a submission fulfils the requirements of Article 14.1, which are very basic and whose determination is relatively straightforward. Therefore, time limits should be imposed on the Secretariat in order to expedite the process. Regarding Article 14.2 NAAEC, he felt that it had been unduly restricted by Section

5.6 of the Guidelines, which imposes requirements (such as the issue of harm) that the agreement does not contemplate. The same is true for Section 7.4 of the Guidelines. That is, the Guidelines place impediments on the operation of the Agreement that were not originally intended, thus vitiating the Article 14–15 mechanism.

Finally, at a question from **Serena Wilson, Mr. Alanís** agreed that the Guidelines do have merit; they are of great assistance, especially to persons and organizations who are not experts in environmental law or do not have specialized legal council. The language of the Guidelines should be kept simple; they should not impose additional requirements on the Secretariat and submitters, nor introduce issues not contemplated in NAAEC Articles 14 and 15.

**Regina Barba** proposed that Council develop a glossary defining each of the relevant concepts. Such a glossary would make for homogeneous interpretation and facilitate understanding among the Parties, the Secretariat, JPAC and submitters.

**Héctor Sepúlveda** gave a presentation on the status of citizen submissions in Mexico, concluding with a set of recommendations:

- Domestic remedies must be pursued before a submission is filed with NACEC.
- Submitter should have to demonstrate its moral and economic solvency.
- Submissions should be backed by a technical expert.
- Industry-confidential information should be protected.
- There should be a possibility of holding other groups (industry or NGOs) responsible for failures to enforce the law.
- Time limits should be shortened.
- The factual record should contain recommendations.

**Anne Perrault** focused her comments on the Guidelines, affirming that although they have been very useful, all of the changes discussed ultimately depend on the political will to strike a balance between national interest and public access to information. The Article 14–15 process should not be conceived of as a kind of litigation, but rather an opportunity to find out what is happening with regard to the North American environment, and to expand cooperation. In this regard, she supported the idea that before a decision is made in a given case, the Parties and the submitter should meet in a non-confrontational setting to explore possible solutions. She considered it important for the Secretariat to play a greater role in the analysis of issues and in finding cooperative solutions that address the Parties' needs and the submitter's demands. Finally, she reflected on the lack of clarity in the NAAEC text and the Guidelines as to the criteria used by the Secretariat in determining whether a submission merits consideration, and she emphasized the delays in this process.

**Adam Greene** raised three points to be considered in the revision of the Article 14–15 procedure: transparency, justice and due process. It must be kept in mind that the objective of NAAEC and this mechanism is the effective enforcement of environmental law. He felt that the process is in fact working, although there is room for some improvements, such as those mentioned by the workshop participants. Thus he recommended that all changes to the Guidelines take as their aim the continuous improvement of environmental law enforcement, and

that no amendments be made without careful consideration of consequences that might prove counterproductive in the future. In addition, he urged those present not to call for reforms that would lead to a reopening of the NAAEC negotiations, and that all amendments be restricted to the Guidelines.

**Don Houston** commented that the issues at stake with the citizen participation mechanism go beyond the bounds of Articles 14 and 15: they relate to the very legitimacy and efficacy of NACEC. As mentioned by others at the workshop, the principles of transparency, effectiveness, efficacy, equity and accountability should be reinforced. But in addition to the technical and procedural aspects of the mechanism, the discussion should also extend to the political level. It should critically examine the real probability that NACEC will be able to carry out its mission with the support of the citizens and the commitment of the governments.

**Gustavo Alanís** remarked on the lack of precision in NAAEC Article 14(3), which refers to the Party's response to the Secretariat. The uncertainty relates to the failure to specify whether the time limit refers to working days or calendar days. No consequence is prescribed for a Party's failing to respond within the 30-day period, nor is there any clarification of the "exceptional circumstances" which the Party may invoke in order to extend the response period to 60 days. He considers it indispensable to clarify this concept so as to avoid undue discretionality and prolongation of the process, as well as to determine what should happen when a Party does not respond within the time limit. Lastly, at a question from **Stephen Kass**, he agreed with the litispence exception set out in Article 14(3)(a), since a case should not be heard by two tribunals at the same time.

**John Knox** stated that in the future, the Secretariat will require greater resources to deal with cases arising under Articles 14 and 15, due basically to three factors: 1) the number of submissions is likely to increase, since submitters have greater experience in producing submissions that fulfil the criteria of Articles 14(1) and 14(2); 2) likewise, the number of factual records to be prepared will increase, implying a need to work on two or more files at the same time, which has not occurred so far; 3) the publication of factual records will render the mechanism even more attractive for submitters, since they will receive a great deal of attention and publicity for their activities.

Continuing with his remarks, **Knox** drew JPAC's attention to the need to follow up on factual records, and not conclude the process once they are published. For such follow-up, he felt that there were two possible stances: first, that of ongoing confrontation, as provided in the dispute resolution chapter of NAAEC, which it would be unwise to adopt for the Article 14–15 mechanism; second, and more recommendable, the building of options based on frameworks of cooperation, as NACEC has done with the Article 13 mechanism; that is, suitable follow-up could arise from the linkage of factual records with NACEC's cooperation programs. An additional advantage of this latter option is that it does not require an amendment to the Agreement.

At a question from **Steve Owens**, **Mr. Knox** stated that, even though NAAEC does not explicitly prohibit factual records from containing conclusions or recommendations, this is a point that JPAC should not support, since the Parties are convinced that the purpose of factual records is

not to reach conclusions of law. Perhaps it would be possible to envisage factual records containing conclusions of fact, without making determinations about legal compliance or the absence thereof. He felt that this battle is not worth fighting, since the Parties will most certainly put up a resistance. He insisted on the relevance of follow-up, since cases are currently abandoned by NACEC once the factual record is published.

**Randy Christensen** pointed to a lack of commitment on the part of the Parties to comply with NAAEC Article 21 regarding the provision of information requested by the Secretariat, which negatively impacts on the promptitude and efficacy of the citizen submission mechanism. JPAC should inform Council of the importance of fulfillment of the Agreement in good faith. He then addressed the issue of confidentiality, requesting that the Parties' options for adducing this exception as a reason for withholding information from the Secretariat be restricted. NAAEC Articles 39 and 42 specifically set out the exceptions that the Parties may invoke as a justification for withholding requested information, and any confidentiality argument that does not have its basis in these provisions should be disallowed.

**Martha Kostuch** made reference to the Referral Memorandum given to JPAC by the Alternate Representatives as a guide to the development of the report on the history of Articles 14 and 15. The issues it addresses are very limited and do not coincide with the concerns expressed during this workshop. Therefore, JPAC should go beyond the narrow bounds of the Referral Memorandum. In addition, she put forth the following recommendations:

- That Council reaffirm its commitment to the Article 14–15 mechanism.
- That Council decide on the independence of the Secretariat where the citizen submission process is concerned.
- That the factual records contain conclusions, including conclusions of law, as well as recommendations.
- Submissions must be allowed in the case of general failures to enforce the environmental law.
- The Parties, the Secretariat and Council must abide by clear time limits for fulfillment of their obligations within the process.
- In the event that NAAEC negotiations are reopened, sanctions should be included in Articles 14 and 15.
- The work of the Alternate Representatives should be characterized by transparency and accountability.
- The goal of the process is compliance; it is not to embarrass the governments. Therefore, viable options for solving the problems should be sought.

**Paul Kibel** supported the position of **John Knox** on the inclusion of conclusions and recommendations in factual records. Issuing a recommendation for this to occur would elicit strong political resistance from the Parties. Nevertheless, he felt that JPAC's position should not be to make recommendations satisfactory to Council, but rather to express ideas that strengthen and benefit the Article 14–15 process. Council's failure to welcome such ideas, for reasons of a political nature, should not inhibit JPAC from presenting them. JPAC must preserve its independence.



**Gustavo Alanís** commented on the government of Mexico's new stance on public participation, JPAC and Articles 14 and 15. This new commitment must be seized as an opportunity to urge the US and Canadian governments to strengthen public participation and the mechanisms guaranteeing it. Regarding Article 15, he made a series of specific remarks:

- Article 15(2) establishes that the Parties shall vote on the development of a factual record, even though they are the respondents in the corresponding proceeding. This places the governments in a conflict-of-interest situation.
- Article 15(5) provides that the Parties may comment on the accuracy of the draft factual record. However, the submitters are never permitted a similar opportunity. This makes the process inequitable.
- Articles 15(2) and 15(3) do not set a time limit for the Secretariat to conclude its investigation and produce the factual record. This leads to major delays in the process, and it would be appropriate to set a time limit for this investigation.
- Article 15(7) makes for a lack of transparency in that it allows Council to decide whether or not to make public the factual record developed by the Secretariat.
- The absence of conclusions and recommendations is a significant weakness. There should be a follow-up mechanism to the factual record so that it is reflected in reality.
- Articles 15(1) and 15(2) do not prescribe a time limit in which the Council must vote on the Secretariat's recommendation to develop a factual record. A time limit must be set so that Council makes a decision expeditiously.
- Article 15(7) does not provide a mechanism to enable submitters to object to a decision to keep a factual record confidential. This is a denial of the principles of transparency, justice and equity.
- The same is true for Article 14(3); if the Secretariat decides not to produce the factual record, the submitter has no way to appeal this determination.

**Jon Plaut** commented that in addition to procedural issues, the development of an environmental conscience in North America should be an important barometer of the effectiveness of the Article 14–15 mechanism. Likewise, **Randy Christensen** emphasized the importance of taking advantage of the transfer of political power in Mexico and the United States to promote mechanisms of citizen participation.

**Leonor Alvarado** mentioned the importance of JPAC's opening up avenues of cooperation between environmental groups and government officials. The terms of the dialogue must be changed so that civic groups can see their role as that of strengthening the effectiveness of environmental law and enhancing compliance, rather than seeking confrontation.

**Cliff Wallis** felt that NACEC and the citizen submission mechanisms are an element of the democratic process but not a substitute for it. Various groups are indeed seeking to embarrass the governments for their default on international commitments, since this is one approach to achieving the central objective, that of effective environmental law enforcement. He supported the idea of striving for solutions through cooperative approaches so as to provide follow-up to the factual records.

**Serena Wilson** cautioned that amendments to the guidelines that include the imposition of time limits on the Council decisions may prove impossible for Council to meet, and time limits on the Secretariat could result in a factual record that is not thoroughly researched. She also pointed out that if the Secretariat were to include in factual records any conclusions of law or recommendations on further action by the party subject to the factual record, it would magnify tensions between the Secretariat and Council that could be harmful to the process. She recommended that JPAC, pursuant to NAAEC Articles 16 and as the public arm of the NACEC, provide those conclusions of law and recommendations after a factual record is published. In addition, she acknowledged that the reports prepared pursuant to Article 13 of the NAAEC have had a link with the Article 14 process and queried whether this link should be further explored.

**Jon Plaut** insisted on the need for the process to give rise to cooperative programs or measures and not sanctions. **John Wirth** stressed the effectiveness of the Article 13 model, wherein NACEC has acted as a neutral intermediary to facilitate the adoption of cooperative solutions. **Peter Berle** supported the idea of adopting the Article 13 process as a model for follow-up to factual records, given the success obtained in the *Silva Reservoir* case. In this regard, **Gustavo Alanís** commented that the Article 13 mechanism is more user-friendly than the citizen submission mechanism and has demonstrated its effectiveness. Thus, he did not consider it suitable to link the two mechanisms, but preferred that they remain independent.

**Ernesto Enkerlin** supported the idea of time limits and deadlines being established for processing of citizen submissions so as to expedite the mechanism.

**Mateo Castillo** defined the factual record as the objective evidence of the failure to enforce the environmental law. Thus, he argued that it should give rise to a plan of action containing preventive and corrective programs. If it has no impact on reality, the efficacy of the mechanism would be jeopardized.

Finally, **Alejandro López** made four specific comments:

- Articles 14 and 15 evidence the right of all citizens to apply to NACEC to achieve the effective enforcement of environmental law.
- It is necessary to go beyond the Guidelines so as to resolve the contradictions, lacunae, discretionality and ambiguity they contain, and for that purpose a regulation to Articles 14 and 15 should be adopted.
- The possibility should be envisaged of creating an international environmental tribunal for North America.
- The factual record demonstrates a situation of non-compliance and even if it does not have binding legal effects, it provides support for the taking of other legal initiatives at the local level.

### III. Next Steps

**Martha Kostuch** stated that the next step in the process of review of the lessons learned from the application of Articles 14 and 15 should be to produce a preliminary report for public consideration, with an opportunity for citizens to comment on it.

**Peter Berle** stated that JPAC's consultants will develop a draft report that attempts to reconcile the various points of view expressed in the workshop, establish priorities and formulate preliminary recommendations. **Stephen Kass** stated that this draft will be available for public commentary in March. In light of the comments made, it will be revised and a new version will be published in advance of the JPAC session to be held in June 2001. As a result, it should be possible for the final report to be submitted to Council in the fall of next year.

**Gustavo Alanís** requested that society as a whole be openly invited to participate in the preparation of the report and that it not be limited to the participants in this workshop.

**Regina Barba** proposed that in addition to the work of NACEC and JPAC, civil society groups be allowed to produce their own evaluations of the effects of the citizen participation mechanisms, and suggested that the *Centro Mexicano de Derecho Ambiental* publish an evaluation of the *Cozumel* case, five years after it was made public.

#### IV. Preliminary Conclusions

**Wilehaldo Cruz**, a JPAC consultant, synthesized the various ideas and proposals made in the workshop as follows:

1. There was a basic consensus on certain aspects, although some risks may be associated with them, and all of this must be duly weighed.  
The points of consensus are:
  - (a) Openness: The public participation procedures must be made more accessible and open; obstacles should be removed, and the aspect simplicity, or lack of legal formalism, should be maintained.
  - (b) Transparency: This principle should characterize all stages of the process so as to rule out unjustified discretionality, ambiguity and secrecy. The main concern appears to center around decision making by Council and the Alternate Representatives. On this matter, the role and participation of JPAC should be strengthened.
  - (c) Time limits: Time limits should be imposed on the process, primarily regarding the work of the Secretariat and Council.
  - (d) Strengthening of resources: The resources available for work relating to NAAEC Articles 14 and 15 should be augmented in anticipation of an increased workload, and this work should be made more efficient and expeditious.
2. Another topic arising is that of *follow-up*, although there is no agreement as to what body should be responsible for it (Council, Secretariat, JPAC). Neither is the follow-up mechanism specified, since it was proposed that it be tied to the Article 13 mechanism or NACEC's cooperation programs.
3. The suitability of including conclusions and recommendations in the factual record was discussed. Various positions on this matter were heard: some said they should not be

included, others felt they should be limited to matters of fact, while still others argued that they should include matters of law as well.

4. It was pointed out that the Article 14–15 procedure is not an isolated mechanism, but that it fits within the broader framework of consensus building and enhanced cooperation, which are fundamental tasks of NACEC.



*Comité consultatif public mixte (CCPM)*

*Comité Consultivo Público Conjunto (CCPC)*

*Joint Public Advisory Committee (JPAC)*

**Workshop on the Public History of Submissions under  
Articles 14 and 15 of the North American Agreement on Environmental Cooperation**

**Thursday, 7 December 2000**

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**Provisional Agenda**

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|---------------|--|
| 9:00 – 9:15   | Welcoming remarks by JPAC Chair and Workshop Chair   |
| 9:15 – 9:30   | Introduction by JPAC Working Group   |
| 9:30 – 9:45   | NACEC Secretariat statements by the Executive Director   |
| 9:45 – 10:15  | Plenary discussions with the participants<br>a) Purpose of Articles 14 and 15<br>b) Status of submissions under Articles 14 and 15           |
| 10:15 – 10:30 | Break  |
| 10:30 – 12:30 | c) Issues raised by the public on Lessons Learned related to Articles 14 and 15<br>and the referral memorandum from the CEC Council          |
| 12:30 – 13:30 | Lunch  |
| 13:30 – 15:30 | c) Issues raised by the public on Lessons Learned related to Articles 14 and 15<br>and the referral memorandum from the CEC Council (cont'd) |
| 15:30 – 16:30 | d) Next steps<br>Further opportunities for public input including the draft report on the<br>Public History of Submissions                   |
| 16:30 – 16:55 | Initial feedback from the JPAC Working Group   |
| 16:55 – 17:00 | Concluding remarks by Workshop Chair   |
| 17:00 – 18:00 | Reception  |



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North American Agreement on Environmental Cooperation**

**7 December 2000**

Delta Hotel  
777 University  
Montréal, Québec

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