

## **SUMMARY RECORD**

### **SESSION 99-09 OF ALTERNATE REPRESENTATIVES**

Held via conference call on 14 October 1999

The Council, represented by its Alternate Representatives, met via conference call on 14 October 1999. Mr. William Nitze (United States) chaired the meeting. Ms. Norine Smith and Mr. José Luis Samaniego represented Canada and Mexico respectively. Mr. Jonathan Plaut represented JPAC and Ms. Janine Ferretti, Executive Director, the Secretariat. Mr. Marc Paquin, Secretary to Council, acted as secretary of the session. Other officials of the Parties and the Secretariat also participated in the call.

#### **Item 1 Adoption of the agenda**

The Alternate Representatives revised and adopted the agenda for the session at the beginning of the session based on the provisional agenda. The agenda, as adopted, is attached as Annex A.

#### **Item 2 Adoption of summary records**

In accordance with Council Rules of Procedure (R.11), the Executive Director prepared the summary records of Alternate Representatives sessions and speakers have submitted corrections to the summary records of their remarks. The Alternate Representatives adopted the summary records of sessions 98-09, 99-01, 99-02, 99-03, 99-04, 99-05, 99-06 and 99-07.

The JPAC Chair reminded the Parties that he had sent a memo to the Alternate Representatives asking them to consider adding more information in the summary record of session 99-08 on the reasons why the Council decided to revise the Articles 14 and 15 Guidelines.

#### **Item 3 NAAEC Articles 14 and 15**

##### **Item 3.1 Friends of the OldMan River Submission**

The Alternate Representatives indicated that they expected to be in a position, by their November session, to decide whether or not to instruct the Secretariat to prepare a factual record pursuant to Article 15(2) in the matter of the submission filed by the Friends of the OldMan River (SEM 97-006). They requested that a draft Council resolution on this matter be prepared for discussion at their November meeting.

The Alternate Representatives also discussed timing issues associated with the development of new factual records, in light of ongoing discussions regarding policy questions related to the development of factual records.

**Item 3.2 Guidance on the development of factual records**

The Alternate Representatives agreed to review Canada's proposal entitled "A Policy for the CEC Secretariat with respect to the Preparation of Factual Record under Article 15 of the NAAEC" and to initiate discussions on the matter at their next session. They also recognized the importance of interim procedures so that the processes can continue while the issues related to the development of factual records are resolved.

In the event that interim procedures were to be developed, the Alternate Representatives discussed the need to notify the public, and to release these procedures for review and comments before they are finalized and adopted by the Council.

**Item 4 Council's responses to pending public inquiries**

The Alternate Representatives discussed the status of the Council's responses relating to the following inquiries received from the public. The Secretariat suggested that the Parties may wish to consider a policy for the development of Council's responses to public inquiries in order to ensure that they are responded to with celerity.

**Item 4.1 Centro Mexicano de Derecho Ambiental (CEMDA) re: Cozumel factual record**

The Alternate Representatives discussed the Council's response to CEMDA's letter and agreed that Mexico will take the lead in developing two draft letters, one for consideration by the Parties and another one addressed to the Submitter. The first letter will be from the Council, indicating that the last step in the Articles 14 and 15 process is the development of the final factual record, and also indicating that the Parties may cooperate, as provided by Article 10, on various environmental issues.

The second letter, addressed to CEMDA by Mexico, will underline the actions undertaken by the Government of Mexico further to the development of the factual record.

**Item 4.2 Alberta Wilderness et al, re: Articles 10(6)(a), 20(3), 21(1)(2) of NAAEC and compliance of Government of Alberta with Articles 3, 4, 20(3)**

The Alternate Representatives agreed to complete their review of the proposed response prepared by Canada and finalize the Council's response as soon as possible.

**Item 4.3 Sierra Club of Canada, Council of Canadians, and Greenpeace Canada re: NAFTA Chapter 11 and Suspension of S.D. Myers, Sun Belt Water Inc. and Pope & Talbot Inc.**

The Alternate Representatives agreed to review the responses already provided by Canada to Sierra Club of Canada et al., to determine whether or not a response from the Council is still warranted. The Secretariat indicated that the letter it received from the Sierra Club et al. was

addressed to the Council as a whole. The Secretariat will send again that letter to the Alternate Representatives for their consideration.

**Item 4.4 Sierra Club of Canada, Council of Canadians, Greenpeace Canada et al. re: Methanex Corp NAFTA Investor Dispute concerning California's notice to ban gasoline additive MTBE to Promote Clean Water**

The United States indicated that they expected to be in a position to share a draft response with the Parties by the time of the November session of the Alternate Representatives.

**Item 5 Discussion on 1999 projects**

The Alternate Representatives initiated discussions on the status of the Emerging Trends project and agreed to continue that discussion at their next session. In order to assist the Alternate Representatives in their next discussion on the matter, the United States requested that Canada and/or Mexico table a written proposal clearly defining how they view the project scope, goals, objectives, and specific steps for the implementation of the project.

**Item 6 2000 Regular Session of the Council**

The United States indicated they have initiated the search for an appropriate venue for the 2000 regular session of the Council and hope to be in a position to confirm the venue before the end of 1999.

Mexico noted the importance of that session as the first of the 21<sup>st</sup> century, and likely the last one for the last one for the current Mexican and US members of the Council, and the need to convey clearly the future direction of the CEC, suggesting that the Secretariat should prepare information on the CEC's accomplishments over the past 5 years.

**Item 7 Other issues**

**Item 7.1 Status of NAAEC Article 28 Model Rules for dispute resolution**

The Alternate Representatives confirmed that the next Model Rules negotiating session will take place during the week of 6 December 1999 in Mexico City.

**Item 8 Next sessions of Alternate Representatives**

The Alternate Representatives confirmed that their next session scheduled 21-22 October 1999 will focus on the review of the proposed 2000-2002 Program Plan and approval of the 2000 Program and Budget contained therein.

**Item 9 Closure of the session**

The Chair closed the session.

**AGENDA**  
**SESSION 99-09 OF ALTERNATE REPRESENTATIVES**

Held via conference call on 14 October 1999  
From 2:00 to 5:00 PM, Eastern Time (1:00 to 4:00 PM, Mexico time)

- Item 1 Adoption of the Agenda
- Item 2 Adoption of summary records
- Item 3 NAAEC Articles 14 and 15
- Item 4 Council's response to pending public inquiries
- Item 5 Discussion on 1999 projects
- Item 6 2000 Regular Session of the Council
- Item 7 Other issues
- Item 8 Next session of Alternate Representatives
- Item 9 Closure of the session

**SESSION 99-09 OF ALTERNATE REPRESENTATIVES  
ANNOTATIONS TO THE AGENDA**

**Item 1 Adoption of the agenda**

In accordance with Council Rules of Procedure (R. 9.6), the Council shall adopt the agenda for the session at the beginning of the session based on the provisional agenda. The Alternate Representatives are expected to adopt the agenda for the session.

DOCUMENTS:

- a) Provisional annotated agenda C/C.01/99-09/AGEN/01/Rev.4

**Item 2 Adoption of summary records**

In accordance with Council Rules of Procedure (R.11), the Executive Director prepared the summary records of Alternate Representatives sessions. Speakers may submit corrections to the summary records of their remarks before they are finally approved by the Council (R.11). The Alternate Representatives are expected to review and approve summary records of sessions 98-09, 99-01, 99-02, 99-03, 99-04, 99-05, 99-06, 99-07, 99-08 and 99-00.

DOCUMENTS:

- |  |                          |
|--|--------------------------|
| a) Session 98-09 Summary Record (distributed 8-07-99)  | C/C.01/98-09/SR/01/Rev.4 |
| b) Session 99-01 Summary Record (distributed 8-07-99)  | C/C.01/99-01/SR/01/Rev.5 |
| c) Session 99-02 Summary Record (distributed 21-07-99)   | C/C.01/99-02/SR/01/Rev.5 |
| d) Session 99-03 Summary Record (distributed 21-07-99)   | C/C.01/99-03/SR/01/Rev.1 |
| e) Session 99-04 Summary Record (distributed 23-09-99)   | C/C.01/99-04/SR/01/Rev.4 |
| f) Session 99-05 Summary Record (distributed 23-09-99)   | C/C.01/99-05/SR/01/Rev.3 |
| g) Session 99-06 Summary Record (distributed 23-09-99)   | C/C.01/99-06/SR/01/Rev.2 |
| h) Session 99-07 Summary Record (distributed 23-09-99)   | C/C.01/99-07/SR/01/Rev.3 |
| i) Session 99-08 Summary Record (distributed 24-08-99)   | C/C.01/99-08/SR/01/Rev.6 |
| j) Session 99-00 Summary Record (distributed 7-10-99)  | C/C.01/99-00/SR/01/Rev.4 |
| k) Memo from JPAC Chair dated 14 July 1999 re: Amendments to Guidelines on Article 14 and 15 of NAAEC (distributed 15-07-99) |                          |

**Item 3 NAAEC Articles 14 and 15**

**Item 3.1 Friends of the Old Man River Submission**

On 19 July 1999, the Secretariat informed the Council that it considers that the submission filed by the Friends of the Old Man River (SEM 97-006) relating to Canada's enforcement practices warrants the development of a factual record. Pursuant to Article 15(2), the Council is expected to decide, by a two-thirds vote, whether or not to instruct the Secretariat to prepare a factual record on the matter.

DOCUMENTS:

- a) Notification from the Secretariat dated 19 July 1999 informing the Council that it considers that submission SEM-97-006 warrants developing a factual record

### **Item 3.2 Guidance on the development of factual records**

The Alternate Representatives are expected to discuss the scope and calendar relating to the elaboration of guidance for the development of factual records, and at the request of Canada, discuss the Secretariat's internal procedures for preparing factual records.

#### **DOCUMENTS:**

- a) Issues paper (to be distributed by Canada)
- b) Secretariat's Internal Procedures for Preparing Factual records (distributed 18-05-99)

### **Item 4 Council's responses to pending public inquiries**

The Alternate Representatives are expected to discuss process and/or finalize the Council's responses relating to inquiries received from the public.

#### **Item 4.1 Centro Mexicano de Derecho Ambiental (CEMDA) re: Cozumel factual record**

##### **DOCUMENT(S):**

- a) Letter from CEMDA dated 10 November 1998 (distributed 25-11-98)
- b) Acknowledgement of receipt from CEC Executive Director dated 14 April 1999 (distributed 14-04-99)
- c) April 14<sup>th</sup>, May 10<sup>th</sup> and May 17<sup>th</sup>, 1999 draft responses (distributed 27-8-99)

#### **Item 4.2 Alberta Wilderness et al, re: Articles 10(6)(a), 20(3), 21(1)(2) of NAAEC and compliance of Government of Alberta with Articles 3, 4, 20(3)**

##### **DOCUMENT(S):**

- a) Letter from Alberta Wilderness et al. dated 8 March 1999 (distributed 10-3-99)
- b) Acknowledgement of receipt from Canada's Minister of the Environment dated 10 May 1999
- c) Revised draft Canadian discussion paper and draft response (distributed 1-10-99)

#### **Item 4.3 Sierra Club of Canada, Council of Canadians, and Greenpeace Canada re: NAFTA Chapter 11 and Suspension of S.D. Myers, Sun Belt Water Inc. and Pope & Talbot Inc.**

##### **DOCUMENT(S):**

- a) Letter from the Sierra Club of Canada, Council of Canadians, and Greenpeace Canada dated 22 April 1999
- b) Response from Canada's Minister for International Trade dated 14 May 1999
- c) Response from Canada's Minister of the Environment dated 9 June 1999
- d) Letter from Sierra Club of Canada, Council of Canadians, and Greenpeace Canada dated 17 September 1998

- e) Response from CEC Council dated 1 December 1998
- f) Letter from CEC Council to FTC dated 1 December 1998

**Item 4.4 Sierra Club of Canada, Council of Canadians, Greenpeace Canada et al. re: Methanex Corp NAFTA Investor Dispute concerning California's notice to ban gasoline additive MTBE to Promote Clean Water**

DOCUMENTS:

- a) Letter dated 28 June 1999 from Sierra Club of Canada, Council of Canadians, Greenpeace Canada et al.
- b) Acknowledgement of receipt from the CEC Executive Director dated 29 July 1999
- c) Revised draft response (to be distributed by the US)

**Item 5 Discussion on 1999 projects**

The Alternate Representatives may wish to discuss the status of 1999 projects, in particular, the orientation of the Emerging Trends project for the remainder of 1999.

DOCUMENTS: No document

**Item 6 2000 Regular Session of the Council**

Considering the number of comments the CEC has received from the JPAC, the NACs and the public in general over the years as a result of the late issuance of the notices relating to regular sessions of the Council, the Alternate Representatives may wish to set a strict calendar for the selection of a date and venue for the June 2000 session. The Alternate Representatives may also wish to report on any development in that regard.

DOCUMENTS:

- a) JPAC Advice 99-12: Methods to Improve the Public Portion of the Council Session

**Item 7 Other issues**

**Item 7.1 Status of NAAEC Article 28 Model Rules for dispute resolution**

Considering the Parties' commitment to have the Article 28 Model Rules ready for public review at the same time as the draft guidance on Article 15, the Alternate Representatives may wish to note that the next Model Rules negotiating session is scheduled for the week of 6 December 1999 in Mexico City.

DOCUMENTS: No document

**Item 8 Next sessions of Alternate Representatives**

Attendance of the Alternate Representatives to the following meetings, to be held in Montreal,

has been confirmed:

**Item 8.1 Session 99-10 on 21-22 October 1999**

This session will focus on the review of the proposed 2000-2002 Program Plan and approval of the 2000 Program and Budget contained therein.

DOCUMENTS:

- a) Proposed schedule of sessions of Alternate Representatives C/C.01/98-08/PLAN/01/Rev.5

**Item 8.2 Session 99-11 on 18-19 November 1999**

This session will focus on the approval of the revised 2000-2002 Program Plan and approval of any outstanding projects contained in the 2000 Program and Budget. The afternoon of 19 November is to be devoted to a joint meeting with PRTR experts.

DOCUMENTS:

- a) Proposed schedule of sessions of Alternate Representatives C/C.01/98-08/PLAN/01/Rev.5

**Item 8.3 Environment and Trade workshop and Environment and Trade officials' meeting on 13-14 December 1999**

As agreed to by the Alternate Representatives at Session 99-08, a workshop on Environment and Trade has been convened for 13 December 1999 at the CEC Secretariat. The workshop will be followed on 14 December by an Environment and Trade officials' meeting pursuant to Article 10(6).

DOCUMENTS:

- a) Proposed schedule of sessions of Alternate Representatives C/C.01/98-08/PLAN/01/Rev.5

**Item 9 Closure of the session**

The Chairperson is expected to close the session.