



Commission for Environmental Cooperation (CEC) of North America

Regular Session of the Joint Public Advisory Committee (JPAC) 11-03: Public Forum

7 November 2011

Hilton Garden Inn
111 W University Ave.
El Paso, Texas, 79902

Summary Record¹

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America held JPAC Regular Session 11-03 on 7 November 2011, in El Paso, Texas, United States. The session consisted of a public forum to examine submitters' experiences with the Citizen Submissions on Enforcement Matters (SEM) process, and the cross-border movements of chemicals in North America. The results of the public forum will be considered as possible Advice to Council.

This summary record reports on each agenda item, records all decisions made by the Committee and identifies action items and responsibilities. (Please refer to Annex A for the agenda and Annex B for the list of participants.)

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

Welcome and Opening Remarks, by the JPAC Chair, Irasema Coronado

The JPAC Chair, Irasema Coronado, welcomed the participants to El Paso and the public meeting. She stated that it had been an honor and a privilege to serve as Chair throughout 2011 and that this would be her final meeting. She thanked the JPAC members for supporting the meeting in El Paso and called upon those from El Paso to welcome the guests in attendance. Ms Coronado then briefly outlined the segments of the public forum that comprised the public agenda for the day.

The Chair provided an overview of the Commission for Environmental Cooperation (CEC), noting that the CEC was established under the North American Agreement on Environmental Cooperation (NAAEC; the Agreement) as an adjunct to the North American Free Trade Agreement (NAFTA). The mission of the CEC is to foster the conservation, protection and

¹ Disclaimer: Although this summary was prepared with care, readers should be advised that while JPAC members have approved it, it has not been reviewed nor approved by the interveners and therefore may not reflect their statements verbatim.

enhancement of the North American environment, through facilitating collaboration and public participation, for the benefit of present and future generations in the context of increasing economic trade and social links among Canada, Mexico and the United States (the Parties). Ms Coronado outlined the role of the Joint Public Advisory Committee (JPAC) in seeking balanced public input on key environmental issues, in promoting continental cooperation in the achievement of a sustainable North American society and in preparing Advice to Council (senior ministers of the environment from Canada and Mexico, and the administrator of the Environmental Protection Agency of the United States).

Ms Coronado explained that JPAC has three public meetings per year, rotating hosts among the countries. This meeting in El Paso was the third and last public meeting of the year, and the first day was open to the public. She announced that the events would be broadcast and be viewed by many other participants watching the proceedings on the Web. She added that JPAC was making extensive use of technology such as Facebook and Twitter to ensure balanced discussions and wide access for public participation. The Session would be simultaneously broadcast in Spanish, French and English over the Web, and translation services were available to those who were in the audience.

Chair Coronado reviewed and approved the agenda for the public meetings, noting that there would be opportunities for questions and answers as well as discussions. She thanked everyone responsible for organizing this Regular Session public forum. She then asked that each member of JPAC introduce him/herself to the audience. Biographies of the attending members of JPAC are available on the CEC website.

Public Forum on Submissions on Enforcement Matters (SEM)

The Chair then opened the public forum by welcoming and introducing the first speaker, Dane Ratliff, the Director of the Submissions on Enforcement Matters Unit at the CEC, to provide his status report. Presentations and biographies of the speakers are available at the CEC website, <www.cec.org/Page.asp?PageID=924&ContentID=25112#Q11>.

Presentation, by Dane Ratliff, Director, Submissions on Enforcement Matters (SEM) Unit, CEC: Overview of the SEM Process, and Status Report on Submissions

With the aid of a slide presentation (available on the CEC website), Dane Ratliff, the SEM Director, provided a detailed overview of the SEM process and outlined the various steps involved, from initial submission to the preparation of a factual record. Once a factual record has been published, it is up to the Parties to determine what action, if any, will take place in response to it. Mr. Ratliff emphasized that SEM was not intended to be a substitute for the court or litigation processes. He added that SEM was intended to be non-adversarial and that any NGO or person residing in North America is eligible to make a submission.

Mr. Ratliff then gave some statistics on the SEM activities. There have been 76 submissions filed with the CEC as of 18 October 2011. These submissions include 27 concerning Canada, 39 concerning Mexico, 9 concerning the United States, and one concerning both Canada and the

United States. As of 4 November 2011, there were ten submissions pending that are currently under review.

Mr. Ratliff emphasized that the SEM Unit is continuously trying to improve the timeliness of the process, adding that relatively recent determinations were well within historic averages. The SEM Unit had adopted internal timeliness guidelines, and timeliness varies depending on the complexity of the submission as well as on other factors such as workload and staff capacity. There has been consideration given to modernizing the submission process and making it more accessible through the development of an online portal to assist submitters, which Mr. Ratliff portrayed through the use of slides.

After a review of the current submissions, Dane Ratliff closed his presentation, adding that he would be happy to entertain questions.

Chair Irasema Coronado thanked Dane Ratliff for his very informative presentation and opened the floor to questions from the audience and the Internet.

Question/Comment: Geoffrey Garver thanked the speaker for providing the overview and congratulated him for the progress that has been made in improving the SEM process thus far. He asked how long the factual record votes had been pending. He also asked if Mr. Ratliff could describe the utility of the Special Legal Advisors from each country, which positions were established in 1995 to assist the Secretariat with confidentiality issues.

Response: Dane Ratliff replied that some of the factual records have been pending for as long as four years. With respect to the Special Legal Advisors, he stated that the CEC has made more use of them recently than in the distant past. He saw them as a useful resource going forward.

Question/Comment: A member of the public from the audience asked about PCBs (polychlorinated biphenyls) being transferred from El Paso to Mexico, which has become a current issue. He stated that he had previously worked at a toxic plant (ASARCO) in El Paso and as a result, he had severe health issues. The plant was being dismantled but the material waste was going into Mexico. The people on the Mexican side of the border were not being told of the toxic hazards involved with the transfers. He would like to know how to make a submission to draw attention to this issue.

Response: Dane Ratliff replied that he was very sorry to hear about the participant's illness and the matters that he has brought forth. He said that there was a segment in the afternoon in which the cross-border transportation of hazardous materials would be discussed by JPAC, and that the participant's issue was more germane to that session. Regarding whether the participant could submit this issue to the CEC, he said that the determining factor would be whether a Party was failing to enforce its environmental law. He added that there were resources online to assist with such a submission.

Question/Comment: Glen Wright asked if there was any requirement or traditional guidelines for Council to respond within a certain period of time, adding that taking four years would indicate that there is a problem with the SEM process. He asked if establishing timelines for Council

would affect the core Agreement. He also asked if there were any reasons why Canada and Mexico would have significantly more submissions than the United States.

Response: Dane Ratliff replied that there are no established timelines for Council to respond to an Article 15(1) notification that a factual record is warranted by the Secretariat. He added that he was not able to provide advice as to whether Council could embrace a self-imposed timeline without affecting the Agreement. The issue of the variances in submissions between the United States and the other two countries had been treated academically in the past. One theory is that in the United States there is more access to the court system and that lawsuits are more common. There were other theories as well but the issue was treated more as an academic topic and had not been verified or processed further.

Question/Comment: A member of the public brought up a case from 2007 which still had associated open files, preventing it from reaching a conclusion. The case involved the oil contamination of communities nearby a company. She asked if there were any resources or mechanisms that were available to follow up on why the authorities have not acted. She added that over all these years the company continues to discard waste, affecting the surrounding communities.

Response: Dane Ratliff replied that the only mechanisms available to submitters are what are contained in the Agreement under Articles 14 and 15. He reiterated that the SEM process is not a substitute for the courts or domestic legal recourse and that other recourses may be available to the member of the public.

Question/Comment: Martin Gutiérrez said that it was evident that the SEM process appeared to be confusing to the public. He stated that the CEC should assist citizens with clear, unambiguous guidance on the SEM process. He asked if JPAC could be more involved in assisting the public with the issues and what type of mechanisms could be used when there is a delay in the SEM proceedings, to keep the submitters involved and from not feeling abandoned. He also asked how much the SEM process costs the CEC and if the submissions that have been processed could be analyzed so that the costs could be added to the costs outlined in the JPAC SEM questionnaire on submitters' experience, to determine a cost-benefit analysis.

Response: Dane Ratliff replied that the question suggests modifications to the SEM process or the development of an alternative to the SEM process, and that JPAC could be responsible for some of the proceedings. Such suggestions would have to be considered by Council. The SEM Unit must maintain an independent and neutral position and cannot go back to the submitters and help them in the ways suggested. Mr. Ratliff stated that it would be very difficult to do the types of things implied by the question. With respect to assisting the submitter, there are improvements underway to assist with the understanding of the reasoning at the various stages. He added that he considers it important for submitters to read and understand the Guidelines that have been prepared by the Secretariat. With respect to the internal costs, Mr. Ratliff stated that it was an issue of quantifying the time, translation, editing and staff costs and any outside expertise costs required throughout the life of a submission. Because of this, there is no hard and fast number applicable to every submission.

Question/Comment: Linda Angove said that one of the recommendations from the JPAC questionnaire was for the SEM Unit to do a two-year follow-up to summarize the status of a particular submission and what various governments have done in response to it. She asked if that would be feasible for the CEC.

Response: Dane Ratliff replied that beyond the Article 14 and 15 procedures and the Guidelines, there are no other authorized procedures. The process that has been described is not in place and would require Council involvement to make the change.

Question/Comment: A question from the Web asked if there was any information on the impact of the SEM process on the Parties' enforcement policies or on environmental compliance or environmental protection. Would developing information about the effectiveness of the process affect the citizens' use of the process?

Response: Dane Ratliff replied that he would hope that was something that JPAC could consider as it was an excellent question. He suggested that it was an academic exercise requiring subjective analysis. He said that there was a research project underway regarding the effectiveness of the process, by the North American Consortium of Legal Education (NACLE), who will present later in this program.

Chair Irasema Coronado thanked Mr. Ratliff for his presentation and the public audience for the subsequent dialogue. She informed the audience that JPAC had conducted a survey of the experiences of past submitters, and that the results are available to the public (JPAC Questionnaire on Submitters' Experience with the Citizen Submission Process under NAAEC Articles 14 and 15, available online) She then adjourned this segment of the Session.

Chair Irasema Coronado turned the floor over to Diane Takvorian, JPAC Member for the United States, to moderate the next segment, on the overview of responses by submitters to the previously administered JPAC SEM questionnaire and a discussion of experiences and views on the associated Citizen Submission Process by a panel of experienced citizen submitters from each of the three counties.

Ms Cornado explained that there were 15 questionnaires representing 24 submissions that were received. She said that JPAC would like to sincerely thank all those who took the time to complete the questionnaire, adding that they are assisting JPAC in improving the SEM process. She said that SEM was an important element within the NAFTA Agreement and may be the only option available for some people to redress serious environmental problems within their communities.

² See <http://www.cec.org/Page.asp?PageID=924&ContentID=25124&AA_SiteLanguageID=1>.

Panel Presentations and Discussion on JPAC Questionnaire and Submitters' Experiences with the Citizen Submission Process

Facilitated by Diane Takvorian, JPAC Member for the United States

Diane Takvorian suggested that the main message from the JPAC Questionnaire on Submitters' Experience with the Citizen Submission Process under NAAEC Articles 14 and 15 was that there are serious environmental justice problems that are continuing unresolved and that affect public health. She stated that 92% of the submitters were dissatisfied with the outcome of the SEM process. It was evident from the data that the process is clear, the Guidelines are helpful and the CEC staff assistance is useful. Timeliness, methods of decision-making and the ultimate outcomes appear to be the most significant areas of dissatisfaction.

Ms Takvorian then introduced the three panel members, as follows (biographies are on the CEC website):

- Albert Koehl, staff lawyer from Ecojustice, in Canada;
- Gustavo Alanís-Ortega, President, *Centro Mexicano de Derecho Ambiental* (CeMDA—Mexican Center for Environmental Law), in Mexico; and,
- Scott Edwards, former Senior Attorney for the Waterkeeper Alliance, in the United States.

Ms Takvorian asked each of the panelists to make a brief presentation before opening the floor and the Internet to questions and comments, which she would moderate.

Albert Koehl, Staff Lawyer, Ecojustice, Canada

Albert Koehl led off the panel presentation, stating that a common criticism of international bodies is that they shut out the public and don't have to account for the impact of their decisions. He remarked that while the SEM process is a modest answer to such criticisms, it is a practical and important answer. The review of public submissions by an expert body allows for transparency in government decision-making and sheds light on government policies and accountability. He said that unfortunately the Citizens' Submission Process is broken but that the reasons are easily identified and easily remedied.

Mr. Koehl outlined three SEM submissions that he categorized as "the good, the bad and the ugly" (one submission in each category). He provided details of each submission and why it should be categorized as he suggested.

He advised that the recommendations to Council should embrace guidelines that suggest timelines of 30–60 days at the Council level. He added that Council should respect and approve the recommendations of the Secretariat, which is, in fact, Council's own expert environmental body. Finally, he suggested that Council refrain from limiting the scope of factual recommendations to investigations that no one wants. Failure to implement these recommendations, he said, would undermine the concept of transparency, accountability and openness.

He added that the SEM process actually serves the governments well and that governments need not fear a well-functioning SEM process. If civil servants see it as their job to protect their higher-ups from scrutiny, the governments themselves should see the bigger picture: that respecting public participation that is scrutinized by the experts within the Secretariat is far more beneficial.

Gustavo Alanís-Ortega, President, *Centro Mexicano de Derecho Ambiental* (CeMDA—Mexican Center for Environmental Law), Mexico

Gustavo Alanís-Ortega outlined his thoughts regarding the first case before the CEC, in January 1996, involving Mexico and the SEM process. He described the details of the SEM submission, noting that the issue was resolved by the Mexican Government. The outcome over the subsequent years set a precedent and was positive. He added that, from his experience, nothing will happen if the government does not respond within 30–60 days. There is no provision for exceptional circumstances within the SEM process and governments can take as long as they wish to respond, regardless of what is happening to the environment. He also said that there are no guidelines for how long it should take to go from Article 14(1) to 14(2) and literally years can be taken. He added that there is no need for citizens to determine if there is damage to the environment, stating that it is up to the Secretariat to determine this and not the petitioner.

Mr. Alanís-Ortega said that one of the problems is that the government has a vested interest in the process because when the submission is at the factual record stage, the government votes on investigating itself. He suggested that because there is no timeline to vote on a factual record, the process can be delayed indefinitely, which assists the vested interest of the government. He added that a factual record is not binding on a government—there are no recommendations, no penalties, just the facts. He declared that we need to ascertain whether there has been a deliberate attempt over the years to weaken this process. Changes to Articles 14 and 15 need to be made in a positive way and in conjunction with a public consultation process such as through JPAC. Clearly, something needs to be done. We need to honor the public with respect to the environment.

Scott Edwards, former Senior Attorney, Waterkeeper Alliance, United States

Scott Edwards began his presentation by stating that the CEC SEM process fills a role in the United States that it does not fill in Canada or Mexico. There are a whole series of environmental laws that have been passed in the United States and any violation can be remedied through the US court system. While citizen suits are common in the United States, they are less common in Canada and Mexico, which explains the comparatively low rate of SEM submissions from the United States. He added that, while the US legal system can get immediate action, the SEM process can be useful in certain other circumstances.

He noted that the previous speakers have suggested many ways to improve the process. One of the areas that needs improvement is to make the process easier. The process can be a huge burden, in spite of the Guidelines. Citizens would have a difficult time on their own putting together a submission at the level of detail that is needed, without legal and other assistance.

Taking away some of the burden on submitters would improve the SEM process. Many citizens do not know where to turn or what the first step in the process should be. Mr. Edwards stated that he would like the process to be more of a grassroots effort that creates a dialogue around the issue, supported by a case officer to help lead communities through the process. Currently it takes a lawyer to put these submissions together and it shouldn't.

Mr. Edwards then outlined some specific submissions that had been made. With his examples, he made the case that there needs to be a way to follow up on submissions, not only when factual records are denied but also when they are created, to find out what is going on after the decision is made. More affirmative oversight would be helpful in lending credibility to the process.

He added that, with respect to timeliness, there are good reasons for delays and there are bad reasons and that he supported the establishment of guidelines depending on the complexity of the specific cases. There needs to be a way to depoliticize the submission process, which is often the source of bad delays. The SEM process is not political and does not attempt to gain political advantage but merely is an attempt to bring serious matters to the attention of the Parties. He added that there could be some consideration given to putting some teeth into a factual record such that the government experiences consequences if a factual record is ignored.

Diane Takvorian thanked the panelists for their thoughtful presentations. She added that the panelists represented well what we want to keep in mind, which is that this process aims to avoid having people suffer and having the environment harmed. She then turned the floor over to questions and comments from JPAC, the public in attendance and the public on the Web.

Question/Comment: Gabriel Calvillo asked what the panelists thought about the types of consequences that could be proposed with respect to the establishment of timelines.

Response: The panelists replied that a very strong step would be to get Council to agree that it would respect timelines as part of the Guidance. No one believes it would be easy to reopen NAFTA or to put something in the side-agreement [NAAEC], but a commitment to respecting the timelines would go a long way toward making sure that it would be done.

Question/Comment: A comment from the public suggested that it would be very timely to make a recommendation to Council using everything that has been expressed through past efforts as background. JPAC should make the Council see the limitations of the SEM process and make recommendations for improvement. This could be done through the Enforcement Working Group as well.

Response: The panelists suggested that perhaps a mechanism could be put in place that states that, if the Parties don't respond in a timely manner, they waive their right to respond and that the Secretariat would proceed based upon the submitter's submission. It doesn't do anyone any good to let these issues languish year after year. There is no reason why timelines cannot be in place that would force the actual vote on the factual record.

Question/Comment: Rodolfo Lacy commented that not all SEM submissions have the same priority. Some affect human health and wildlife or a living coral reef while others do not.

Sometimes the lack of response to a SEM submission has to do with the attitudes of the people involved or a predisposition not to take action. Once a serious public health issue is part of the SEM process, is there not a consequence for the act that is being committed? Persons who knowingly harm people are negligent and should be sanctioned. We should recommend that such information be handled differently. Also, the Commission should map the SEM issues, to focus light for the public on the areas of the environment that are being damaged.

Response: The Citizens' Submission process is a narrow focus that only applies in certain situations to allow people a voice. It is a process that can be fixed and we should focus on that as a first step before we work toward some of the good ideas that [Mr. Lacy has] talked about. The problem with Article 14 is that it is not effective in enforcing a law that results in damage to health. You would have to use some other mechanism for that unless you show that there is a lack of enforcement of the law associated with a health issue.

Question/Comment: Rodolfo Lacy stated that many times the problem is that there is not a law to enforce. In Mexico, for example, there is not a law related to mercury with respect to coal-fired power plants. You cannot talk about non-enforcement if there is no law whatsoever. That is what Mr. Lacy calls negligence.

Response: The panel replied that tort law is a way to bring about a legal remedy for health issues, but addressing the issue of the government not creating a law where it should is a totally different issue. There is a big gaping hole in some instances and it doesn't excuse governments from creating standards where standards should be created.

Question/Comment: Jonathan Waterhouse stated that the poor and disenfranchised communities are usually the most affected by environmental issues. Could there be a pool of pro bono attorneys who could help such citizens through the process?

Response: The panel replied that, if the issue is relevant, they do the work for people without charge. However, they would not engage in the SEM process if all they were doing is misleading people into believing they would get a good response. Currently the process is a waste of resources as the outcome is not worth the investment.

Question/Comment: Geoffrey Garver stated that he wanted to thank the panelists for pointing out that the benefits of this process could be to the people, to North America as a whole and to the governments as well. To hear that Ecojustice is considering not using the process is very alarming.

He asked if the panelists, in making submissions, wanted to know how the laws were being enforced or did they want to know if the ways in which the countries enforced their laws was effective. Would it make a difference if the Agreement was defined in one way or another? He pointed out that the difficulty one has in getting information can result in long timelines, and putting a strict time limit on aspects of the process could result in an incentive to merely play out the time before the information can be obtained. Instead of having a hard deadline, would it not be useful to have an obligation for whoever is taking an abnormal amount of time to explain their

reasons for the delay? Also, given the remoteness of the CEC from some of the disadvantaged communities who might be affected, how would the CEC provide such assistance?

Response: The panel replied that in many instances the cases are complex and involve ground-breaking issues. These kinds of issues are better debated without being in front of a judge listening to unique legal theories. The SEM process involves a high level of detail, thoughtfulness and professionalism from the CEC. The feedback and learning from these issues is useful, which is part of the attraction for filing, from a legal perspective.

To the second question, there does need to be flexibility in the process to address some of the complexities involved. With respect to the third question, there are always members of the public who are willing to talk about their personal stories. It would be ideal if they had a local resource they could turn to. It would be useful if they could leave here today with a phone number to call or a point of contact. People come to these meetings seeking help. Some way to access a resource within the CEC to provide that help would be most worthwhile. One of the issues is that not many members of the public know about the CEC, and that should be fixed.

With respect to the timelines, that particular issue has always been with the Council. By that stage, the work has already been done. There should be no reason why excessive timelines are needed by that stage. The desire is to know whether governments are, in some way, enforcing the law. It doesn't have to be solely through prosecutions. It's really about whether the objectives of the law are being met.

The CEC has a pool of lawyers from the three countries. It would be useful to know if they are being used wisely. Perhaps they could be engaged more efficiently so that cases could proceed faster. The SEM mechanism is to improve enforcement. There should be an understanding within the three countries that the required information is to be made available. Accessing the information through the freedom of information process is most time-consuming and should not be required.

Question/Comment: Adriana Nelly Correa asked if the long timelines are the result of lack of knowledge on the part of the submitter. Since there are some constraints that the process has from the beginning, is there any way that those who know the process might assist those who need assistance in making a submission? Could we provide guidance to future submitters on the issues that we know will encounter time constraints within the process?

Response: Under Article 14(2), there are Secretariat criteria that determine whether the case should go forward or not. This was one reason why the Guidelines were created. It would be worth having a window on the CEC webpage that shows how to get access to the SEM Office. The fact that you are looking at a panel of three lawyers today speaks volumes—it takes lawyers to make this process work and this should not be necessary. JPAC should examine ways in which SEM has become an adversarial process and determine how to make it less so. This process exists for a reason and it can work very well. Priority one should be to improve it where it is not working well.

Question/Comment: Martin Gutiérrez commented that there is a feeling of frustration and disenchantment surrounding the SEM process. We are saying that we should try to find a way to improve and enhance it. We need to make the CEC better known if we are to enhance the SEM process. We need involvement from the media, academia and the business arena. They are not at these meetings. We need to explore how we can make others more involved. Is it worth it to do this with the few SEM submissions that we currently have? Can we generate more social involvement and would it be worth doing so?

Response: Yes, it absolutely would be worthwhile. The power of communications is very important. There is absolute value in doing so. The stories that are embedded in the SEM processes need to be told and known by the general public and the press.

Question/Comment: A member of the public stated that the SEM process has turned into a battle between the public and the government. The CEC and JPAC should help the public and governments come together to increase trust and collaboration and decrease the adversarial nature of the process. It is important to help the public prepare their petitions. Can a request be made to create a coalition of lawyers and experts to help the public? The government and the public should come together to fight the polluters, not each other.

Question/Comment: A member of the public asked why the tourist environmental standards are so different between Florida and Cancun, suggesting that there is an unfair trade advantage in Cancun.

Question/Comment: A member of the public said that in the United States, they have been sent from one government agency to another while attempting to have an issue resolved. Attempts to involve tort lawyers have failed because there is not enough money involved and the issue no longer is about the environment but about money instead.

Question/Comment: A member of the public wanted to request assistance. She stated that in Sunland Park (New Mexico) there is a large dumping site that is affecting people's health. She has been requesting help for over twenty years. She added that there is plenty of proof and that 90% of the material is coming from El Paso/Juárez and other areas in Mexico.

Question/Comment: A member of the public from the Web asked if it was possible to include a mechanism for monitoring the enforcement of environmental laws following the publication of factual records. A second question from another member of the public from the Web asked if there could be faster answers within the SEM process in lieu of waiting for a factual record. It seems that both the Secretariat and the governments need to prioritize the SEM submissions and provide more-timely answers where there is urgency.

Responses: The panel replied that the questions are representative of precisely the frustrations that people have. They don't know where to go when they have environmental problems. The governments created the SEM process that is supposed to deal with this frustration and anger, and then have their own lower-level civil servants cause the process to inflame the frustration. We need to fix this process and then move on to resolving other environmental issues.

There is no doubt that the will exists to do the right thing and unfortunately the political leaders sometimes do not have that same will. They create a false tension between the economy and the environment but there is no doubt that good environmental policy is good economic policy. Unfortunately, the powers that be choose not to see that. It is very important to set a trust and collaboration foundation with the government. We need to cooperate together as a group.

Diane Takvorian thanked the three panelists for a very vibrant conversation and for their input. She thanked the JPAC members for their valuable perspectives, and the audience, both present and on the Web, for their questions and comments. She added that the one thing that hasn't changed is that everyone is committed to making this process work.

Chair Irasema Coronado adjourned this segment of the Session. She then turned the floor over to Professor LeRoy Paddock, Associate Dean for Environmental Law Studies at the George Washington University Law School, and a member of the North American Consortium on Legal Education (NACLE), to make a presentation on SEM issues and research related to Articles 14 and 15. Professor Paddock's biography is available on the CEC website.

Presentation, by Professor LeRoy Paddock, Associate Dean for Environmental Law Studies, George Washington University Law School, and Member of the North American Consortium on Legal Education (NACLE): SEM Process Issues and Research

Professor Paddock began his presentation (available on the CEC website) by outlining the background of the North American Consortium of Legal Education (NACLE), which comprises eleven participating law schools in Canada, the United States and Mexico. The Consortium brings together law professors to discuss common interests and approaches to legal issues. The Consortium was created as a result of NAFTA and is considered part of NAFTA. Its purpose is to promote increased understanding of the legal systems involved within the North American countries, in order to increase the capabilities of each member to provide quality legal education and research appropriate to the demands of the legal professions involved.

He stated that their focus on the Submissions on Enforcement Matters (SEM) process is addressing many of the issues from various perspectives and has the potential to contribute to the overall improvement of the SEM process. NACLE's SEM-related activity currently consists of three topics, as follows:

- the process of narrowing submissions, and other methods of limiting submissions;
- the evaluation of other analogous international mechanisms similar to the submissions process; and,
- the use of the process, and public engagement in the submissions process.

Professor Paddock stated that their focus on SEM had only just begun, was a modest effort and was not a funded research project. Their involvement was for the purpose of making the process work better—both short- and long-term. Students are now involved from each participating law school, their involvement began in September, and they are currently doing preliminary background research.

Professor Paddock said that he recognized that a lot of work has been done on the submissions process and while he expects the project to draw on this work, he does not intend to duplicate any of the efforts underway elsewhere. The initiative is to bring a unique three-country academic perspective to the research and also to bring the perspectives of several leading academics to focus on the future and the alternatives related to the submissions process.

The Chair thanked Professor Paddock for his presentation and introduced the question-and-answer session.

Question/Comment: Geoffrey Garver wished Professor Paddock success with NACLE's SEM project. He suggested that the participants might find it useful to explore European mechanisms and other public complaint programs. Given the strong public interest in establishing a source of assistance for people who do not know where else to turn, exploring how the CEC could provide such assistance without changing the Agreement would be worthwhile. He also suggested that the Chapter 11 process might be worth exploring in comparison.

Response: Professor Paddock replied that mechanisms for pointing people at other resources were particularly appealing as an area to research. He thanked Mr. Garver for the suggestions.

Question/Comment: Martin Gutiérrez asked when the results of the NACLE work would be available and whether or not they would be made public.

Response: Professor Paddock replied that the first stage of the work would be available in early spring. It would definitely be made public and the results are intended to be linked to the other work that is underway.

Question/Comment: A member of the public asked how support could be provided to the NACLE project, especially by those who do not belong to the associated universities, remarking that many others are willing to support this project.

Response: Professor Paddock thanked the participant for the offer of support and said that NACLE desires the support and that he would explore how to make the involvement happen. He provided an email address for those who are willing to help with the project (elfaber@central.uh.edu).

Question/Comment: Glen Wright commented that academic institutions have significant independence and are able to develop independent thinking without being overly controlled. He suggested that perhaps, as a collective of academic institutions, NACLE could develop and publish some of the thinking on possible solutions in the form of an academic paper that would carry weight with the three governments as a research paper.

Chair Coronado thanked Professor Paddock and everyone for their participation throughout the events of the morning. She then invited everyone to a networking luncheon with the public to continue the discussions in a more social setting. She strongly encouraged those who could help the members of the public who were in need of assistance to sit with them and reach out to them to help them with their challenges.

Upon reconvening the afternoon segment of the Session, the Chair Coronado introduced Evan Lloyd, the CEC executive director, who would provide a report on CEC activities since the last JPAC Session.

Report on CEC Activities, by Evan Lloyd, Executive Director, CEC

Evan Lloyd stated that his presentation (available on the CEC website) would focus on the work being done at the CEC and would be in the form of an update on the activities that have taken place since the last meeting of Council, in June 2011 in Montreal. Mr. Lloyd stated that two very significant events have taken place since then. The first was the adoption of the 2011–2012 Operational Plan, which was significant in that it covered a two-year timeframe for the first time. He added that this change in timeframe had already resulted in an increase in the efficiency of the CEC. The other item of significance was the Council's adoption of the community grants program, NAPECA—the North American Partnership for Environmental Community Action.

Mr. Lloyd emphasized that the Operational Plan supports the Strategic Plan, as set forth by Council, and that the projects approved in the Operational Plan are in the process of being implemented. He touched upon a few of them throughout his presentation.

He then drew attention to the Alaska Indoor Air Quality Project, which is a pilot project. The CEC had received approval of the project protocol from The Centers for Disease Control (CDC) Institutional Review Board, the Alaska Area Institutional Review Board, and the Executive Board of Directors for the Yukon-Kuskokwim Health Corporation, and the selection of communities is underway. He said that this was an issue of importance to women and children and has very real environmental outcomes, and that it will involve a consortium of local community agencies.

He also drew attention to the North American Grasslands Project, which is currently compiling best management practices to promote sustainable ranching and biodiversity conservation. He described several meetings that had taken place and said that more meetings are planned for the future and that the project will also involve the monitoring of migratory and native bird species in Mexico.

Mr. Lloyd then went on to describe operational activity concerning the engagement of communities to conserve marine biodiversity, the Big Bend/Río Bravo collaboration efforts, work supporting the North American Invasive Species Network, progress with air quality and pollutant releases, and the sound management of chemicals. He stated that there had been improved comparability of emissions data, methodologies and inventories among the three North American partners. There had been an engagement of experts and strengthened information-sharing in support of addressing climate change and a low-carbon economy. Progress was underway in support of improved private-sector environmental performance in North America with respect to green building and there had been economic and environmental work in support of the North American automotive industry supply chain as well as continued work with the sound management of electronic wastes.

Mr. Lloyd stated that the CEC has been making every effort to communicate with all of the stakeholders on as wide a range as possible to ensure that outreach is extensive. He added that the CEC had received some five hundred preliminary applications for the NAPECA grants program and that he expected that initial awards would be announced by December of this year. Many of the submissions were excellent and the choices would be difficult. Mr. Lloyd emphasized that the projects are all in support of the three strategic priorities of Council, adding that project summaries are available online, at <www.cec.org/projects>.

Chair Irasema Coronado thanked Evan Lloyd for his presentation and for his leadership at the CEC. She then turned the floor over to questions and comments.

Question/Comment: Geoffrey Garver thanked Evan Lloyd for describing what the CEC was able to do with very limited resources and offered congratulations for keeping so many of the projects going. He asked what was next with the Article 13 initiative.

Response: Mr. Lloyd replied that the CEC had expended significant effort in completing the Article 13 study this past year and had made a concerted effort to promulgate the work as broadly as possible. The work was basically completed now and one last meeting was scheduled. The Council has continued to support funding for this activity, and by the end of the year there will be some new activity in this regard.

Question/Comment: Rodolfo Lacy asked, with regard to the five hundred NAPECA proposals, if it would be possible to have an overview along with the criteria. He assumed that the activities that would be approved would be supportive of the projects that are already in place. He asked what the selection criteria would be for the proposals.

Response: Evan Lloyd replied that the criteria were precisely those presented by the Council last June, adding that, in general terms, they speak to the three priorities of the Strategic Plan. He remarked that it was surprising how often the submitters made reference to two or more of Council's priorities. It was a well-balanced set of submissions with virtually every topic at a community level being represented. The information is available on the CEC website.

Question/Comment: Diane Takvorian posed a comment regarding the hazardous waste notice exchange and asked if more information could be provided.

Response: Evan Lloyd replied that the project began in 2003, with a directive from Council. The Task Force is representative of all three countries. More information is contained in the publication entitled *Crossing the Border*, which is an excellent publication in that it contains a great deal of information for those who wish to contribute to or participate in this activity. He said that the system has been refined and in December of this year the CEC will be transferring the system software and mechanics over to the Parties for use at border points. This will significantly enhance the movement of materials across borders as well as have the potential for informing the public-at-large, which will be at the discretion of the Parties and not the CEC.

Question/Comment: Glen Wright referred to the grant program, suggesting that we will undoubtedly be pleased with the results. Because JPAC aggressively represented the pursuit of

this program, it might be important for JPAC to acknowledge the success of the first round of grants and to encourage the continuation of it. The program is not significantly expensive and this would be a way for JPAC to make a difference. Will this be a continued program?

Response: Evan Lloyd replied that currently the program is in place for a two-year period but that at some point in time there will have to be consideration given to extending it beyond that period. If JPAC is of a mind to reflect on the 2011 period and provide an Advice that would be most timely.

Question/Comment: A member of the public from the audience commented that the work done by the CEC is very relevant, especially in Mexico. She commented briefly but appreciatively on the PRTR (Pollutant Release and Transfer) program. However, she was concerned about the contemporaneity of the data being collected by the e-waste project on the cross-border flow of obsolete equipment. She knew, for instance, of some sources of data that had not been consulted and others where the data was old but had been consulted. She suggested that the CEC should be careful not to use old data or estimates may not be current.

Response: Evan Lloyd replied that it was very important to have the continued influence of the public and other organizations to help ground the CEC's work. In terms of the electronics information, the current work is intended to create a methodology to develop reliable up-to-date information for a handful of products. These products are indicative of the risks involved. Based upon the work underway, the CEC hopes to emerge with reliable data on the flow of electronic waste in North America and solid data is important at this stage. The CEC will then inform the Parties on how they can take action at their level.

Question/Comment: A member of the public from the Border Environment Commission congratulated the CEC on its work, noting it is currently being put to good use by many organizations. She asked if more information could be provided on the stages that the climate change and electronic waste studies were at, where she saw a lot of opportunity for collaboration.

Response: Evan Lloyd replied that the matter of the climate change policy is complex and work is being done with the remote sensing agencies within the three countries. The work will monitor land cover change and relate it to the issue of carbon and climate change. Results will be reported in the digital North American Environmental Atlas, which will provide a view of annual land cover and land cover change. With this new Atlas tool (to be released in March 2012), you will be able to track changes over time at a scale of 250 meters to show progress and identify areas that could be managed better from a climate and conservation perspective. This will be complementary to the work underway on climate change.

Question/Comment: Martin Gutiérrez asked if Evan Lloyd could speak about the enhancements to the communications strategies that were mentioned during the last meeting with JPAC.

Question/Comment: A member of the public commented that there is a disconnection between the CEC and natural disasters at the international level. She posed the question of how the community at the local level could be made more aware of the environmental issues concerning natural disasters.

Response: Chair Coronado replied that the communications strategy is vital and that work is being done on it. She stated that she would propose, during the upcoming private meeting on the topic, the establishment of a Communications Task Force and that she would volunteer to lead it. She added that there are many things going on in communities and wonderful things being done at the CEC and that there seems to be a major disconnection. JPAC has been pushing this issue for a long time and needs to hear from the public.

Chair Irasema Coronado thanked Evan Lloyd for his presentation and hard work and concluded this segment of the Session. She encouraged members of the public to avail themselves of the CEC material on display in the foyer. She then introduced Gabriel Calvillo to facilitate a presentation and a panel discussion on the cross-border transfers of toxic contaminants in North America.

Public Forum: Cross-border Movements of Chemicals in North America

Facilitated by Gabriel Calvillo, JPAC Member for Mexico

To begin the public forum on the Cross-border Movements of Chemicals in North America, Gabriel Calvillo introduced Orlando Cabrera, the Program Manager for Air Quality and PRTR, to make a presentation on analysis of PRTR data concerning the cross-border transfers of toxic contaminants in North America.

Presentation, by Orlando Cabrera, Program Manager, Air Quality and PRTR, CEC: Cross-border Transfers of Toxic Contaminants in North America—Analysis of PRTR Data

Orlando Cabrera began by providing a brief overview of the PRTR program, describing the three national systems that report to the PRTR system. (His presentation is available on the CEC website.) He described how the system works, what its limitations are and how the information is presented to the public through the Taking Stock Online initiative. With this tool the transfers from one country to another can be read, as well as the types of transfers and their source facilities.

Mr. Cabrera displayed mapped data for the year 2009, emphasizing that the data represented only about 10% of the actual transfers. Over 181 million kilograms were transferred across North American borders and 119 pollutants were transferred (mainly to recycling) by 24 industrial sectors. He then went into detail describing the various toxic materials that were being transferred, the countries involved and why the transfers took place.

He concluded that the PRTR system was a useful tool but that the varying reporting requirements within the three NAFTA countries created some information gaps that needed to be addressed to improve its effectiveness.

Gabriel Calvillo thanked Orlando Cabrera for his presentation and commented that improving the tool and reducing the gaps in the system were very important.

Panel Discussion: Government, Industry and Community Efforts in Addressing Cross-border Movements of Chemicals in North America

Gabriel Calvillo then introduced the first of the four panel members, Marisa Jacott (biography available on the CEC website), who is the Executive Director of *Fronteras Comunes*, to make a presentation.

Marisa Jacott, Executive Director, *Fronteras Comunes* (Common Frontiers), Mexico

Marisa Jacott described some of the work that her organization was doing, specifically in the area of batteries as hazardous waste. She described some of the studies that had been carried out.

Then she highlighted concern over the alarming increase in toxic waste and concerns about lead poisoning and other hazardous consequences resulting from the cross-border movement of spent lead-acid batteries in Mexico. Data provided suggested that since 2007 there has been a very significant increase of spent lead-acid batteries crossing the border to Mexico, with a very disturbing increase of 112% in 2010 over the previous year alone. She stated that 237 million kilograms of batteries were involved and predicted that the numbers would be even greater for 2011. There is an urgent need to call attention to this issue. Lack of reporting and other inconsistencies were troublesome issues that needed to be followed up. The problem was definitely affecting the health of women and children as well as of the elderly. She added that this is clearly a cross-border trade issue and that the NAFTA programs for the environment should be used to change this deplorable situation.

Ms Jacott referred to the CEC's December 2007 report, *Practices and Options for Environmentally Sound Management of Spent Lead-acid Batteries within North America*, which reviewed the legal regulatory regimes in each country and set out standards and best practices for the environmentally sound management of lead-acid battery recycling. She said the impact is severe and that the concerns identified in the CEC's report have worsened since the report was written. She asked for help for the workers, inhabitants and especially children in the communities adjacent to the recycling facilities, who are regularly exposed to levels of lead toxicity that are extremely dangerous to human health.

Gabriel Calvillo thanked Marisa Jacott for her presentation, remarking that this was undoubtedly a topic of importance for the Mexican government and that the PRTR reporting system was important in addressing this.

Mr. Calvillo then introduced the second of the four panel members, Norman Bebon (biography available on the CEC website), who is the Assistant Port Director for Trade for the Department of Homeland Security, to make a presentation.

Norman Bebon, Assistant Port Director for Trade, Department of Homeland Security, United States

Norman Bebon began by describing what the responsibilities of the Department of Homeland Security are at the Port of El Paso. He said that they process about 2800 trucks per day, and they

also process hazardous materials. The companies use an electronic portal to transmit their information in advance of the arrival of the commercial merchandise at the border. The three main commodities typically seen at the port are electronics, computer parts and auto parts. There are also rail and air border-crossings. All these crossings are considered foreign trade zones, which are duty-free zones.

Mr. Bebon described some of the hazardous materials and chemicals that are exported and imported through the border crossing. Most of the materials come via rail or truck. The Department of Homeland Security has the authority to determine what materials may or may not be allowed into the US; there is a wide variety of waste materials involved and over 400 laws are at play. Other responsibilities include anti-terrorist interdiction, and weapons of mass destruction. He described the radiation portal monitor, which is capable of detecting radiation in support of the Homeland Security responsibilities.

Gabriel Calvillo thanked Norman Bebon for his presentation, observing that it was informative to know what is crossing the border and how the certification is carried out.

Gabriel Calvillo then introduced the third of the four panel members, César Flores (biography available on the CEC website), President, *Transquímica Binacional*, who is a specialist in the transboundary movement of hazardous materials, and invited him to make his presentation.

César Flores, President, *Transquímica Binacional* (Binational Cross-chemistry), Mexico

César Flores began his presentation by describing the binational agreement that was signed in 1983 to intensify environmental cooperation to reduce, eliminate or prevent the contamination of air, water and soil in the border areas between the United States and Mexico. As a result of NAFTA, a bilateral agreement created in November of 1993 enhanced the 1983 agreement.

Mr. Flores outlined the definitions in the agreement of hazardous wastes, describing the agreed-upon labels and required containers for the transportation of various hazardous materials. He then outlined the various crossing procedures for export and import that had to be used when crossing the borders between the United States and Mexico.

Mr. Flores stated that part of the problem that has been generated by the inadequate management of hazardous waste consists in the differing classifications between the two countries. Hazardous waste in one country may not be hazardous waste in the other. A recommendation to promote the creation of a comprehensive list based on environmental information has been tabled. Adequate management of environmental hazardous waste is important, as is training in this area. Equally essential is the creation of a culture of conservation of the environment at the family level. He emphasized that education was important in achieving this. He added that future businessmen must have a basis of respect for environmental law, supported by the federal government through enforcement.

Gabriel Calvillo thanked César Flores for his presentation on the transboundary movement of hazardous materials.

Mr. Calvillo then introduced the final panel member, César López (biography available on the CEC website), who is the Director of the Environment Committee, *Consejo Nacional de la Industria Maquiladora y de Exportacion*.

César López, Director del Comité Ambiental (Director, Environment Committee), Consejo Nacional de la Industria Maquiladora y de Exportacion (National Council of the Maquiladora Industry and of Exportation), Mexico

César López began his presentation by outlining the border manufacturing (maquiladora) sector's statistics for Mexico, noting that this sector provides the largest tax base for the economy. This sector must compete with other global manufacturing sectors, and many of the latter's environmental standards must be adhered to as well.

With respect to hazardous materials and waste, it is necessary to meet the legal requirements that are in place. This sector has been the target of scrutiny to ensure that the laws are being adhered to. What has been done recently is to transfer hazardous waste in accordance with Customs authorities of the various countries. It is important to ensure that the same hazardous wastes that arrive into the country also leave the country. Documentation ensuring the proper destination and disposal of hazardous waste is required and carefully tracked. Audits are used to see how the hazardous waste is managed and to check on compliance.

Mr. López stated that it was important to highlight the goodwill between the Customs and environmental authorities, as they make sure that the procedures have been implemented in the proper way. He concluded by saying that it has been possible to have a practical means to manage the issues of cross-border movements of hazardous wastes at a fair cost for the benefit of all.

Gabriel Calvillo thanked César López for his presentation on the maquiladora industry sector's transboundary movement of hazardous materials. He then opened the floor to questions and comments.

Question/Comment: Adriana Nelly Correa led off the question-and-answer session by stating that a past workshop on e-waste had explored the standardization of certification with respect to recycling. She asked whether continuity had been given to that initiative. She stated that she was aware that there is not a complete follow-up on the destination of all of the contaminants that cross the borders.

Response: The reply was that Mexico does not have what is in place in other countries. Mexico does not have the capability to hold companies responsible for taking charge of their products at the end of their life cycle.

Question/Comment: Martin Gutiérrez asked how many companies and people use PRTR information on the Web. What is the program that informs people that batteries crossing the border are hazardous waste?

Response: In answer to the first question, the online PRTR numbers have increased significantly. The publication was downloaded by a large number of people. In the study, only automobile batteries were included. No further progress has been made in this area but the imports of batteries are very contaminating.

Question/Comment: Diane Takvorian posed a comment regarding the PRTR gaps and asked what the rate of compliance is. She believes that reporting should be much more than it currently is. She stated that there is a need to cover PRTR from a sector approach, adding that disposal fees incent companies to reduce their waste and that in California it is all done by sector.

Response: In Mexico the PRTR program covers only businesses that are under federal jurisdiction. Many businesses do not have to report PRTR data because of this. A sector approach is being used by the PRTR but there are still inequalities. The discrepancies with respect to lead-acid batteries are significant and there are 273 million kilos of batteries, all of which contain lead, that are part of the problem. While hazardous waste is federal, there are also joint PRTR projects with the state but more progress is required as state reporting is not required by the federal PRTR program.

Question/Comment: Geoffrey Garver asked what tracking checks are in place to assess the level of compliance.

Response: The panel replied that there are internal tracking mechanisms but there is nothing in existence for determining what materials should be coming back or items that should be returned.

Question/Comment: Gabriel Calvillo asked if anyone on the panel could address how gaps in the system are being addressed.

Response: This is being done through the permits or request documents, where the amount is specified. That data can be checked. A tracking system was attempted several years ago but there was a lack of resources. The information is currently tracked through the permits and is available. Everything that is being returned is being reported to the authorities in the manufacturing sector.

Question/Comment: Rodolfo Lacy stated that there are some gaps in information and this issue may be able to be worked with law enforcement. Can we bring this topic to the enforcement working group?

Response: Trinational PRTR is a success story at the CEC. Some of the activity that has been considered this year is to work with the individual PRTR programs to review and revise the work done so far and to explore how to address new priorities. With respect to e-waste, we need to define what e-waste is and what the hazardous waste is and we need to find out how companies are handling these two differently regulated materials.

Question/Comment: An online member of the public asked what is being done with respect to the ASARCo-generated hazards from dismantling the plant in El Paso.

Question/Comment: An online member of the public asked if the US could be added to the Basel Convention and if the [environment] ministers from Canada and Mexico could be asked why their countries have not been added to the 1995 amendments.

Question/Comment: An online member of the public asked what the classification is for the export of used batteries to Mexico.

Question/Comment: An online member of the public asked how is it possible to encourage US owners to enforce environmental certification in Mexico with a win-win outcome. Is there a proposal being recommended in that sense?

Question/Comment: An online member of the public asked why the manufacturing industry thinks everything is perfect in the process. Why are there still issues of pollution in the border areas?

Question/Comment: An online member of the public asked if the panel could comment on the 2020 rules and regulations [Border 2020] and how they are being enforced.

Question/Comment: A member of the public from the audience commented that these programs have been put in place to determine who is generating and who is receiving hazardous waste. Is it possible to include information on accidents and spills?

Question/Comment: A member of the public from the audience commented that with respect to the ASARCo smelter, the rules were not being applied to this site because the demolition of the site was exempt from being tested and the materials that were being sold for scrap were exempt from the rules. Is this an issue of concern?

Response: Regarding the issue of ASARCo, what they were once producing is historical data as they are no longer producing hazardous materials. We have no information about the hazardous state of the demolition of the site.

With respect to the previous recommendations from past JPAC meetings, the Advice has been given to Council and there is no follow-up reply on that topic.

With respect to Border 2020, we have been working with several groups on GHG [greenhouse gas] and work is underway, in terms of PRTR, for certification of this program.

With respect to the categorization of batteries, we may need to answer that question offline.

Gabriel Calvillo thanked the panelists and the participants from both the audience and the webcast for a fruitful and enlightening discussion. He then turned the floor over to the Chair, Irasema Coronado, who thanked everyone for their inputs, stating that the next agenda items would be verbal reports by telephone from the representatives of the National and Governmental Advisory Committees.

The Chair thanked Gabriel Calvillo for facilitating the proceedings and the panelists for their participation.

She then introduced the next segment of the Session, stating that a provision of the Agreement was for each country to have a national advisory committee (NAC) and a governmental advisory committee (GAC). She said that it is customary to have presentations by those groups as part of the agenda for the day, adding that Canada and Mexico currently do not have active national and governmental advisory committees. She then asked each of the representatives from the US National and Governmental Advisory Committees to make their presentations, through a pre-arranged phone-in line.

Report from the US National Advisory Committee, by Karen Chapman

Karen Chapman, Chair of the US National Advisory Committee (NAC), briefly outlined the role of the NAC, adding that the NAC exposures to the JPAC public sessions were considered valuable and important by the NAC members. She stated that she would describe some of the recent activities of the NAC and then briefly outline what the current thinking is with respect to the NAC's Advice Letter. She noted that the NAC and GAC met in Austin, Texas, on 20 October 2011, and outlined the agenda for that meeting, adding that the discussions were useful and the meeting very positive.

Ms Chapman said that one of the items they spent a significant amount of time on was the CEC communications strategy, and that they had provided feedback on the strategy. She commented that the nature of the work at the CEC does not easily lend itself to a vibrant communications message. They also discussed how the NAC members might play a role in carrying out that strategy, and they discussed the SEM process as well. She described what she thought would be the general tone of their Letter of Advice but said she would not go into detail because it has not benefitted from Committee review.

After describing the nature of several of the presentations and discussions that took place at the Austin meeting, Ms Chapman stated that the NAC very much supports the draft communications strategy in its efforts to assist the Secretariat in being more effective. She said that the NAC is encouraged that this communications strategy work is underway.

In closing, Ms Chapman commended JPAC for conducting the extensive public comment process on the SEM. She said it was incredibly important to many of her committee members and to the public and she looked forward to recommendations that would make the SEM process more effective overall. She added that she hoped the NAC's past commentary on the SEM process would be taken into account.

Chair Coronado thanked Karen Chapman for providing an update to the JPAC Public Forum. She then took the opportunity to announce that the new Chair for JPAC for 2012 was Martin Gutiérrez, who would take over his responsibilities on 1 January 2012. Mr. Gutiérrez thanked Irasema Coronado for all her efforts and hard work throughout 2011 and stated that he hoped to continue the good progress with her support.

There being no questions from the public for the NAC, Ms Coronado turned the floor over to Jeffrey Wennberg for an update on the US Governmental Advisory Committee (GAC).

Report from the US Governmental Advisory Committee, by Jeffrey Wennburg

Mr. Jeffrey Wennburg, Chair of the US Governmental Advisory Committee (GAC), briefly outlined his background and the recent meeting that took place in Austin, Texas, on 20 October 2011. He thanked those who had supported both of the committees in hosting that event.

He began by saying that, as was the case with the NAC, the GAC had not yet created a Letter of Advice, but a rough draft had been prepared. He had not yet received any Committee feedback and would briefly summarize in general terms what he believed would be the thrust of the Advice, which would be the product of the full GAC membership.

Mr. Wennburg said that their deliberations focused on the communications strategy, and that, over the years, communications had been the most recurrent concern the GAC has raised. He stated that much of the excellent work and the incredible products produced by the CEC over the years have great value and that the audiences remain unaware of the work being done. The GAC absolutely applauds the development of the draft communications strategy and he noted that it is consistent with some of the GAC's past Advice. He suggested that, given the CEC's limited budget, careful consideration would need to be given to what is in the realm of the doable, and said that the GAC is devoting considerable thought to this. Similarly to the NAC discussions, the GAC had discussed how its members might play a role in leveraging that strategy to further awareness.

After describing some of the other discussions that took place at the Austin meeting that might pertain to a future GAC Letter of Advice, Mr. Wennburg concluded his remarks and turned the floor over to the JPAC Chair, Irasema Coronado.

Chair Coronado thanked Jeffrey Wennburg for participating in the JPAC Session and for his informative report. She stated that one of the recommendations that she would like to make is that a working group or task force be formed to deal with the communications issue and that she would be willing to spearhead that issue in collaboration with the NAC and GAC to move it forward.

Closing Remarks, by Irasema Coronado, JPAC Chair

Chair Irasema Coronado provided closing remarks, noting it was a substantive Session with good and exciting input throughout the day. She added that some of the committee members present have been working on these issues for over twenty years and that there clearly is still more work to be done. Ms Coronado stated that the input received will be considered in framing a Letter of Advice to Council. She announced that all the presentations will be available on the CEC website and that further questions can be posted on the website for follow-up.

With sincere thanks to everyone and especially those who had worked so hard in supporting this very positive Session, Irasema Coronado formally adjourned the Public Forum of JPAC Regular Session 11-03.



Commission for Environmental Cooperation (CEC) of North America

**Joint Public Advisory Committee (JPAC)
Regular Session 11-03**

7 November 2011

Hilton Garden Inn
111 W University Ave.
El Paso, Texas, 79902

Draft Provisional Agenda

Monday, 7 November 2011

9:00–17:30 JPAC Regular Session 11-03

- 9:00–9:10 **Welcome and opening remarks**, by Irasema Coronado, JPAC Chair
a) Approval of the provisional agenda
- 9:10–9:25 **Overview of the SEM process and status report on the submissions**, by Dane Ratliff, Director, Submissions on Enforcement Matters Unit
- 9:25–9:50 Question and answer period
- 9:50–10:00 Break
- 10:00–10:45 **JPAC Questionnaire on Submitters' experience with the Citizen Submission Process**
- Overview by Diane Takvorian, JPAC member
- Submitters' experience and views:**
Canada: Albert Koehl, Staff Lawyer, Ecojustice
Mexico: Gustavo Alanis, Presidente, Centro Mexicano de Derecho Ambiental (CEMDA)
United States: Scott Edwards, former Senior Attorney, Waterkeeper Alliance

Survey results by Diane Takvorian, JPAC member

- 10:45–11:45 Question and answer period
- 11:45–12:00 Break
- 12:00–12:45 **Presentations on SEM Process issues and research**
- 12:00–12:10 **Research project on NAAEC Article 14 and 15 Process**, by Prof. LeRoy Paddock, Associate Dean for Environmental Law Studies, George Washington University Law School, and member of the North American Consortium on Legal Education (NACLE)
- 12:10–12:45 Question and answer period
- 12:45–13:45 **Networking lunch** (Provided)
- 13:45–14:00 **Report on CEC activities** by the CEC Executive Director Evan Lloyd
- 14:00–14:30 Question and answer period
- 14:30–14:45 Break
- 14:45–17:15 **Addressing the Cross Border Movements of Chemicals in North America**
- 14:45–15:00 **Cross border transfers of toxic contaminants in North America: Analysis of PRTR data**, by Orlando Cabrera, Program Manager, Air Quality and PRTR
- 15:00–15:40 **Panel discussion on government, industry and community efforts**
- Facilitator:** Gabriel Calvillo, JPAC member
- Marisa Jacott**, Executive Director, Fronteras Comunes
Norman Bebon, Assistant Port Director for Trade, Department of Homeland Security
César Flores, Presidente, Transquímica Binacional
César López, Director del Comité Ambiental, Consejo Nacional de la Industria Maquiladora y de Exportación
- 15:40–16:50 Facilitated discussion and question and answer period
- 16:50–17:15 **Report from the National and Governmental Advisory Committee representatives**

17:15–17:30 **JPAC follow-up and administrative matters**

a) Election of the 2012 JPAC Chair

b) JPAC priorities for 2012 and next meetings

17:30 End of session

JPAC Regular Session 11-03

El Paso, Texas, USA

7 November, 2011

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