



## **Public Plenary Session on CEC North American Environmental Enforcement and Compliance Cooperation Program**

**23 June 2003**

**Washington, DC**

### **Summary Record<sup>1</sup>**

#### **Opening Remarks**

Gustavo Alanís-Ortega, the 2003 chair of the Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC), made introductory remarks. He explained the mandate and role of JPAC. In its Advice to Council 02-11 on the proposed CEC Program Plan and Budget for 2003–2005, JPAC recommended that a public meeting with the North American Environmental Enforcement and Compliance Working Group (EWG) be held in conjunction with the June 2003 Regular Session of Council to seek input on a long-term strategic plan.

In March 2003, JPAC met with the EWG to present a draft agenda for the June joint meeting and outlined a possible long-term strategic plan as follows:

1. Identify gaps in domestic legal systems and international agreements that may impede transboundary enforcement cooperation, focusing on:
  - a) The movement of substances that pose a threat to public health, the environment, and endangered species; and
  - b) Instances where a Canadian, Mexican or a US company may have “used the border as a shield” to avoid environmental liability in another NAFTA country (i.e., a *Metales y Derivados* type of situation).
2. Provide recommendations to Council on building up information systems and improving domestic legal systems and policies based on the gaps identified in the first point.
3. Seek linkages related to enforcement issues with the other CEC programs, in particular, with Pollutants and Health.
4. Promote transparency in the development and the implementation of the EWG program to maximize public involvement.

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<sup>1</sup> **DISCLAIMER:** Although this summary was prepared with care, readers should be advised it has not been approved by the intervenors or the Parties and therefore may not accurately reflect their statements.

The JPAC chair encouraged the active participation of the attending public to assist JPAC in developing a focus for its continuing involvement with the North American Environmental Enforcement and Compliance Working Group (EWG).

José Campillo Garcia, chair of EWG, presented the draft Strategic Plan. He stressed the importance of developing networks, focusing on trade in hazardous waste, and training customs agents. He further explained that an upcoming CEC Workshop on Environmental Legislation will focus on gaps in legal systems that could prevent effective cooperation, the need for increased cooperation and coordination, the importance of voluntary mechanisms, including working with small and medium-size enterprises, and the role of citizens.

Tim Whitehouse, head of the CEC Law and Policy Program, welcomed the participants and explained the purpose of this public session—stressing the power of public knowledge and the need to focus on issues and concrete results that improve the environment and protect public health. He thanked JPAC for its involvement.

### **Overview of Country Enforcement Priorities**

#### **Office of Enforcement and Compliance Assurance, US EPA**

Phyllis Harris, deputy assistant administrator for the US EPA, thanked JPAC for pursuing transparency and public participation. She explained that the US EPA also strives for public participation in identifying priorities and has recently produced a policy document on public participation. She described the “Smart Enforcement” program, which uses the most appropriate tools to address the most significant problems and achieve the best outcomes:

- Addressing significant environmental and public health compliance problems,
- Using data,
- Using the most appropriate tool to achieve the best outcome,
- Evaluating effectiveness, and
- Evaluating outcomes.

She elaborated on her agency’s support for environmental management systems, corporate environmental stewardship and generating environmentally relevant information, along with the need for public disclosure and information sharing.

She explained that EPA’s sister agency, the Fish and Wildlife Service is working to restore the nation’s enforcement capability by training and hiring new agents with a focus on the illegal trade in wildlife and the conservation of species of international concern.

#### **Environmental Protection Service, Environment Canada**

Daniel Couture, deputy director of Environment Canada’s enforcement branch, explained the unique challenges in Canada, where jurisdiction is shared with the provinces and territorial

governments. The lead federal agencies are Environment Canada and the Department of Fisheries and Oceans. At the federal level, the focus is on wildlife conservation and pollution prevention.

Regarding wildlife, the priorities are:

- Implementing the new Species at Risk Act,
- Determining joint approaches for effective protection, using all available legislation,
- Focusing on organized crime networks, and
- Pursuing intelligence gathering, capacity building and cooperation.

Regarding pollution prevention, the focus is on:

- Transborder hazardous waste, particularly ozone-depleting substances;
- New control instruments, smart regulations, pollution prevention plans, increased focus on biosecurity; and
- Interagency cooperation.

He concluded by saying that Canada is now focusing on enhancing capacity to acquire knowledge and information and apply it to effective enforcement.

### **The Federal Attorney for Environmental Protection (Profepa)**

Gabriel Calvillo, director of Profepa's Federal Environmental Crimes and Litigation unit, explained recent changes in legislation regarding public disclosure of information and integration of public policy in enforcement. Priorities for Profepa are:

- Inspection and monitoring,
- Enforcing laws,
- Voluntary controls,
- Investigation,
- Illegal traffic in hazardous waste,
- Remediation and fines, and
- Encouraging public involvement in identifying violators.

The strategy for 2003 will be to inspect high-risk facilities, developing voluntary mechanisms particularly for small or medium-size enterprises (SME), air pollution and implementing international obligations (Kyoto).

Concerning natural resources, the priorities are investigation of criminal activities with a focus on forests, implementation of international conventions, biotechnology and genetically modified organisms (GMOs) and data collection.

### **Question Period**

Questions posed included:

In the case of Canada and the US, what are the opportunities of public participation in existing legislation?

Also, in Mexico, what is being done to promote public denunciation of violators?

Finally what does each country want to do to better enforce their laws?

Replies:

In the US, there are many areas for public participation, including the Toxics Release Inventory (TRI) and other data systems, citizen suit provisions, and public comment on settlements, to name a few. Through the regional offices, citizens can make reports and file complaints. The Superfund provides for extensive public participation in clean up. Just recently, Governor Whitman released a policy on public participation in all EPA programs.

In Canada, regarding pollution prevention the Canadian Environmental Protection Act (CEPA) allows a citizen to request an investigation. Reports that are produced for parliament are public documents. A new web site—Greenline—provides all this information along with a registry of cases and enforcement actions.

Canada has committed new resources to increase the number of inspectors and enforcement officers. Under CEPA, they are accorded the same powers as peace officers.

In Mexico, the media and the Internet are used to encourage citizen complaints. However, it is understood that a large part of the population does not have access to electronic media and so new means of communication are being developed. There is now a new unit on illegal activities that publishes lists of violators. New programs for environmental controls are also being developed especially for SMEs.

Question/comment:

JPAC is trying to establish links between environment performance and financial performance. How is this being pursued in the three countries?

Replies:

In the US, the EPA has been working with the Securities and Exchange Commission (SEC) on issues related to the disclosure of environmental information, particularly the disclosure of environmental legal proceedings, in accordance with SEC's existing regulations. EPA shares information with the SEC on an ongoing basis for investigation and enforcement purposes.

In Canada, there is no such formal agreement. In specific investigations, Environment Canada works with the Royal Canadian Mounted Police to make the link with financing.

Question/comment:

How are indigenous peoples involved in setting standards for enforcement and compliance? In Canada, for example, the situation is quite adversarial. Efforts are required to change that. Indigenous peoples have their own customs and elders should be involved in developing enforcement mechanisms. For indigenous peoples, the main test is whether or not the environment remains healthy—then the people will be healthy. There exist international conventions (Convention on Biological Diversity and Convention 169, concerning Indigenous and Tribal People in Independent Countries, of the International Labour Organisation) where the rights of indigenous peoples are recognized. These need to be implemented domestically. One way is to allocate the resources necessary to build capacity for indigenous peoples to do their own monitoring and enforcement.

Replies:

In Canada, there are requirements to consult with indigenous peoples (and others) when developing new regulations. In many instances, partnership agreements are developed with individual aboriginal communities. Clearly more is needed.

In the US, the government has a fiduciary responsibility with tribes. The focus is on capacity building to help them develop and administer their own programs and set their own standards on tribal lands. Key areas where the EPA is focusing are on drinking water and management of solid wastes.

In Mexico, Profepa concentrates on supporting community controls to implement the law. There are continuing efforts to develop better mechanisms to involve indigenous peoples in conservation and land issues.

Question/comment:

We attempt to measure enforcement by counting violations and complaints rather than by measuring results. Laws and regulations should be tools, not goals. What is the impact of legislation on the environment should be the key question. In Mexico, enforcement could be improved by providing regular updates and information on regulations. Lack of information and the complexity of the system encourage noncompliance. Also, salaries of inspectors need to be increased. The turnover is too high and corruption results. At the border, more resources are required for the volume of traffic. The border is paralyzed by load-by-load inspections.

Replies:

In Mexico, we agree that we should not be measuring compliance by counting complaints and violations and rather should be developing new indicators to measure results. We also agree that there is a need to improve training and salaries and develop a cadre of professionals who will stay on the job.

In the US, the Smart Enforcement program is moving away from just counting complaints and violations and looking at ways to measure outcomes. More effort is also needed on identifying geographic areas. The EPA also encourages companies to submit remedial projects in lieu of fines (supplemental environmental projects).

Question/comment:

There is an urgent need to develop a trilateral cooperative approach to regulating cruise ships. There are 2000 calls per day in Cozumel for example! There are huge damages to the coral reefs. How can the CEC help?

Replies:

This will be a topic for the EWG. It is a serious problem in all three countries. This is a prime area for international cooperation.

Question/comment:

Regulations and legislation need to be more flexible and respond to community situations. For example, in many instances local police cannot enforce laws and yet it is at the local level that day-to-day effects are encountered and suffered by local people. Coal-fired power plants located close to poor communities and trucking routes through populated areas are examples.

Replies:

In the US, coal-fired power plant emissions constitute a major priority for the EPA, as are diesel engines. New regulations will be announced soon. The EPA is proceeding with aggressive negotiations and linking environmental harm to enforcement settlements. Funds are then created to retrofit school buses, for example.

Question/comment:

The focus on economic development is creating serious problems for indigenous peoples in northern Canada. North of the 50<sup>th</sup> parallel, the lands and waters are essentially still pristine, but that is changing quickly. When a region gets opened up to development, roads are built and non-indigenous peoples move in. Language is lost and culture destroyed. The land is contaminated and wildlife moves out. If the environment is destroyed, we are destroyed.

Inequities in enforcement must be addressed. In the Oaxaca region, for example, an indigenous person was arrested for possessing turtle eggs that are part of his peoples' traditional diet. Turtles are protected. However, in the same area is located one of the country's largest oil refineries, which is known to be severely polluting the waters and destroying turtle habitat—but nothing happens to the owners of the refinery.

Replies:

In Profepa, there is now a shift from strict environmental protection to environmental justice. This is a good example in support of this shift. There must be a balancing of interests. For

example, exemptions should be put in place for plants and wildlife that are part of traditional diets and religious practices of indigenous peoples.

#### Presentation on the Illegal Traffic of Ozone-depleting Substances

Bruce Pasfield, assistant chief, Environmental Crimes Section, Environment and Natural Resources Division, US Department of Justice, explained that we are at the peak of the thinning of the ozone layer. In 1920s and 30s, industrial chemicals began to be widely used. In 1950s, the substances that made them so useful were discovered to make them harmful to the ozone layer. Because it takes so long for these chemicals to get up to the ozone layer, we are seeing most effects only now.

The 1978 Montreal Protocol set up a process to gradually phase out the use of these chemicals. From 1978–86 the phase-out schedule was voluntary. Then phase-out caps were created with a target date of 1996 for the elimination of these chemicals by developed countries. Developing countries were given until 2010. From an enforcement standpoint this is a problem.

Mexico is a CFC-producing country, the third-largest in the world, producing 7500 tons of CFCs every year. A good portion exported to other developing countries. Two to five tons come into the US annually through illegal markets. The CEC Task Force has been instrumental in working on solutions. We meet every three to four months and are making good progress.

Mexico is just entering its phase-out schedule, which began in 2000. There is good cooperation on specific cases. The CEC could provide assistance in helping develop a better licensing system in Mexico for tracking that would be more consistent with the systems in the rest of North America. The CEC sponsored a conference in February 2003 in Monterrey, Mexico. Until there is a better legislative framework in Mexico, capacity building will be hampered. Now we need to focus on the second generation of these chemicals—replacement chemicals. They, too, are restricted, with phase-out targets in 2010.

Training also needs to be coordinated between environmental protection, tracking of hazardous wastes, wildlife and trade in endangered species. UNEP, for example, is developing a program to train on all these issues. He urged the CEC to encourage integrated training—to achieve a “Green Customs.”

#### **Presentation on the Environmentally Sound Management and Tracking of Hazardous Wastes**

Rick Picardi, Office of Solid Waste, US EPA, explained the differences in hazardous waste requirements in the three countries and the mandate received from the CEC Council to work on ‘cradle to grave’ monitoring in North America. While most substances stay in North America, once they cross a border, they can get ‘lost.’ This causes hazardous waste “spikes” from one country to another.

He went on to explain the work of the Hazardous Waste Task Force, which focuses not just on enforcement but on achieving a better understanding of the situation. Currently the Task Force is working on a comparative analysis of selected hazardous waste requirements in three countries

and identifying tracking processes in each country and assessing the feasibility of linking national tracking systems.

Future work will include a public workshop in cooperation with JPAC on best practices in electronic tracking of hazardous waste, proposing a Council Resolution for 2004, working on environmentally sound management (ESM), possibly developing voluntary guides on ESM best practices, and finally evolving a pilot project on electronic transmission of export notices.

### **Presentation on Wildlife Enforcement**

Yvan Lafleur, director of wildlife enforcement, Environmental Canada, described NAWEG's mandate as:

- Fostering regional approaches to enforcement obligations,
- Building regional capacity and expertise, and
- Sharing information to deliver wildlife enforcement programs.

The group's focus is on combating illegal activities despite the limited resources in each country. He reviewed the capacity building work of NAWEG over the last seven years, as well as other activities in publications, outreach and training. NAWEG is now recognized by international agencies as the contact for the North American region.

NAWEG is open to public involvement in development and direction of the program. It is more difficult, however, to have public involvement in actual cases and investigations.

Strategic Plan for NAWEG (2002):

- Supports the objective of the trilateral committee (must be trilateral—not bilateral),
- Compatible with the EWG's proposed strategy,
- Supporting the mandates of partners (three countries) in conserving wildlife, and
- Open to public involvement.

Next Steps:

- More interaction with Caribbean and Central American wildlife enforcement agencies. NGOs and trade industry perspectives are invited.
- Seminars on intelligence gathering, analysis and sharing, wildlife enforcement and management, and invasive species. A lot of illegal trade occurs via the Internet.
- Participation in GWEN—Global Wildlife Enforcement Network.

He noted that funding remains a major limitation in improving capacity and capability.

## **Presentation on Environmental Management Systems**

Lorenzo Thomas, director of environmental auditing, Profepa, explained that the EMS Task Force began in 1996 and he reviewed its work over the past seven years. In June 2000, the Task Force issued a *Guidance Document: Improving Environmental Performance and Compliance – 10 Elements of Effective Environmental Management Systems*. He reviewed those 10 elements. (Please note the document is available on the CEC web site at <[www.ccemtl.org](http://www.ccemtl.org)>.)

He noted that several years ago, JPAC recommended that CEC move out of this area and leave it to national processes. The Task Force feels that there is still much to do and Council agreed, highlighting the needs in the 2001 and 2002 Council Communiqués. In 2003, the focus of the work will be on training for inspectors and prevention versus penalties.

### Comments:

- EMS is very important for the private sector, particularly for small and medium-size businesses. How can Profepa, with its limited budget, increase the number of inspectors to work with these industries? (JPAC was encouraged to bring this to the attention of Council. The lack of resources is overwhelming in Mexico.)
- It would be useful to work directly with industry to inventory and evaluate progress.
- It is important to develop indicators of effectiveness to measure the impact of the work—successes and failures.
- Counting seizures can still be a good barometer for measuring the scale of problems.
- The EMS's 10 elements document has been helpful. Now it would be important to acknowledge progress through seals of performance.
- More attention is required on the Mexican border. The situation is becoming dramatic for its impacts on human health. The increase in border patrols has now funnelled people into the harshest areas, resulting in many deaths. People used to drown in the Rio Grande; now they die in the desert. The fences and other 'blocks' are also inhibiting the movement of wildlife. The US is now proposing to build a 10ft-high concrete and steel wall along the border with stadium-level light and a high-speed highway in between. This will have dreadful impacts on people and wildlife.

## **Long-term Strategic Plan for the CEC North American Environmental Enforcement and Compliance Cooperation Program**

The members presented the long-term strategic plan. It will be put out for a 60-day public comment period and is available on the CEC web site at <[www.ccemtl.org](http://www.ccemtl.org)>.

### Comments:

- The infrastructure and technology need to be adequate to implement the plan.

- Ensure that the Parties commit themselves to undertaking the necessary reforms so that the legal framework addresses the deficiencies.
- Keep abreast of what other groups are doing and provide a North American perspective.
- Link with the outcomes from the World Summit on Sustainable Development
- Make training needs more explicit.
- Disseminate information to promote enforcement.
- Link activities with national audit systems (Canada's Environmental Auditor, US Inspector General and Mexico's Attorney General's Office).
- Members of civil society, and particularly indigenous peoples, need to be included in the work.
- Ensure compliance with NAFTA's Chapter 11.
- Engage all levels of government (municipal up to national).
- Prioritize and focus. Do not take on too much at first.
- Pay attention to vulnerable communities and promote environmental justice.

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