



## **Commission for Environmental Cooperation of North America**

### **Joint Public Advisory Committee Session No. 02-02**

**17–19 June 2002**

**Ottawa, Canada**

### **Summary Record**

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America held a regular session on 17–19 June 2002 in Ottawa, Canada in conjunction with the 9th Regular Session of the CEC Council.

This Summary Record reports on each agenda item, records all decisions made by the Committee and identifies action items and responsibilities. (See Annex A for the agenda, Annex B for the list of participants, Annex C for Advice to Council 02-08 and Annex D for Advice to Council 02-09.)

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

**DISCLAIMER:** Although this summary was prepared with care, readers should be advised that it has not been reviewed nor approved by the intervenors and therefore may not accurately reflect their statements.

**PLEASE NOTE:** It is with great sadness that JPAC learned of John Wirth's sudden death soon after the meeting in Ottawa. He was one of the original members of JPAC appointed by the US and an inspiration to us all. His views during this meeting are recorded with the deepest respect.

### **Welcome and Overview by the Chair**

The Chair welcomed everyone to Ottawa. He then introduced three new Mexican members, Mindahi Crescencio Bastida, Adriana Nelly Correa and Carlos Sandoval. He reviewed the program over the next three days. He reminded the public that JPAC had created space in the program for the public to hold a networking session prior to the public portion of Council. He noted that Peter Berle would be arriving the next day.

### **Approval of the Provisional Agenda**

The agenda was approved.

### **Remarks by Janine Ferretti, Executive Director, and Question Period**

The Chair introduced Janine Ferretti, Executive Director of the CEC, after sincerely thanking her on behalf of JPAC for the contribution she had made to the CEC over the past eight years.

Ms Ferretti explained that she would be making a full report at the opening of the Council session and therefore would limit her comments to providing an overview of the recommendations contained in the recently released Secretariat NAEEC Article 13 study of the opportunities and challenges associated with North America's evolving electricity market.

The Chair asked for an update on NAEEC Article 14 and 15 matters. The Executive Director explained that seven factual records were currently under development. She thanked the Parties for responding to requests for information in a timely manner. She noted disappointment expressed by JPAC and submitters concerning the issue of limiting the scope of factual records and Council not authorizing a public review, and commented that this may be leading to the public and submitters questioning the value of the citizen submission process.

A JPAC member asked about the status of a transboundary environmental impact assessment (TEIA) agreement, reminding that NAAEC requires governments to conclude an agreement by 1997. He noted that the Secretariat report on electricity again raised this important matter.

The Executive Director explained that a substantive outline for TEIA had been developed; however, due to the significant constitutional differences between the countries, an agreement has not been concluded. Until the legal impediments are overcome, she said, it may be very difficult to make progress.

### **Report from the National and Governmental Advisory Committee Representatives**

The Chair then invited the National and Governmental Advisory Committees (NACs and GACs) representatives to make their presentations.

The representative of the Canadian NAC reviewed the committee's last three submissions of advice: on the Secretariat work plan, NAEEC Articles 14 and 15 and identification of topics for the trade and environment ministerial in 2003. He went on to describe the working priorities, namely: energy issues, economics and resources, environmental quality, trade liberalization and the environment, and working to engage other Canadian provinces in NAAEC.

The representative of the US NAC began by thanking the outgoing Executive Director. He reviewed the NAC's advice on the work plan, NAEEC Articles 14 and 15 and trade and environment issues. He explained that committee members attend, when possible, CEC meetings. He highlighted the current "budget crunch" in the CEC and urged that the original commitments be met. He suggested this was the time for a strategic five-year review. He urged that the CEC participate at the World Summit on Sustainable Development (WSSD) as a model for regional environmental cooperation highlighting partnership, governance, north/south cooperation, public participation and the novel citizen submission process—all subjects of significance to the WSSD process.

The representative of the US GAC spoke about the debates surrounding NAFTA Chapter 11 and the "battle for public opinion" and the importance of reassuring the public by taking firm decisions demonstrating the positive consequences of cooperation and trade liberalization. Now

is the time for Council to act decisively, he said. He went on to urge Council to appoint a new executive director as soon as possible and to look at increasing the CEC's budget. He further urged that Council move to activate the NAAEC Article 10(6) process and support the principles of transparency and due process in Chapter 11 discussions. Then he underlined the importance of involving indigenous peoples in the work of the CEC and the fact that earlier steps taken within the Conservation of Biodiversity program area had unfortunately not been sustained. The US GAC also attaches great importance to work on environmental factors affecting children's health, law and policy, freshwater issues and the pollutant release and transfer register. Finally, he called for ensuring a place for public participation in any discussions on changes to NAFTA.

A JPAC member asked if the Canadian NAC had commented on the current NAAEC Article 14 and 15 issues. The NAC representative replied no, not yet.

### **Plenary Session on Sound Management of Chemicals (SMOC)**

The Chair reviewed the purpose of this plenary session. He reminded participants that a background paper had been prepared on capacity building and education and had been made available to all registered participants. He then asked the SMOC Working Group Chair, Williams Saunders, to review SMOC's activities in relation to capacity building and education.

By way of background, the Program Manager, Sound Management of Chemicals, presented an overview of the North American Regional Action Plans, followed by a video on Mexico's experience with the eradication of DDT use. The Chair of the Expert Advisory Board on Children's Health and the Environment in North America reviewed its work and, finally, a JPAC member reviewed the last JPAC Advice to Council on SMOC.

The Chair then opened the floor to questions or comments on this first part of the plenary session.

- A member of the public drew attention to the toxic and neurological effects of manganese and cautioned against its use as a replacement for lead in gasoline.
- Another member of the public enquired if water was being monitored for DDT, using Lake Chapala as an example where no monitoring is conducted. She further informed the meeting that what data are gathered from analyses conducted by the National Water Commission in Mexico are not made available to the public.
- A representative of the CEC Secretariat speaking as a member of the public confirmed that the SMOC program is looking at substances beyond the "dirty dozen" and is also carefully considering alternatives. He noted the good working relationship between the three countries and that the trust that has been built allows for more in-depth exploration of alternatives, understanding that alternatives can be worse than the substances they're designed to replace.
- A member of the public asked how community participation was remunerated in the DDT work shown on the earlier video presentation. A representative from the CEC Secretariat replied that in this region there is a cultural tradition of volunteering in community projects. The sponsors of the work provided training and transportation costs. A member of the public commented that while volunteerism of course is very important, funding for public participation should be seen by governments and funding agencies as an investment, not as an expense.

- A member of the public questioned the approach of “managing” chemicals, noting that the objective should be elimination instead. She went on to highlight the significant contribution by coal-fired generators to mercury and lead emissions. She urged the CEC to demonstrate leadership and call for elimination of these production facilities.
- Another member of the public talked about the effects of contaminants in food on children. The Chair of the Expert Advisory Board replied that they have been making progress on this subject and would be discussing their findings with Council.

### **JPAC Session on Capacity Building Opportunities for SMOC**

Merrell Anne Phare, JPAC member, and Rocio Alatorre from the SMOC Working Group introduced the session. The floor was then opened to the public, who made the following comments:

- Capacity building raises many complex issues, including the need to access financial resources, human relations, improvement of analytical tools, science, technology and best practices.
- SMOC has initiated a leveraging strategy to expand delivery, for example, monitoring efforts at the community level.
- Efforts are required to remove toxic products left behind as plants close. For example, in Mexico there is a serious problem with hexavalent chromium in drinking water.
- Capacity building and access to reliable and useful information are interconnected.
- Industries could devote more resources, as a basic management function, to making information more publicly available. Post–September 11 there is an increasing resistance to making information public.
- Mexico is not a large producer of chemicals, but a big importer. Mexico needs a better inventory of substances entering the country.
- Information is government held, privately held (e.g., industry) and individually and community held (e.g., information held by indigenous peoples). Each requires different approaches.
- Resources are required to establish collaborative efforts with indigenous peoples to better understand their perspectives on sustainable development. This is particularly worrisome as indigenous peoples become more marginalized and lose their knowledge base.
- The philosophy of “managing” chemicals does not do justice to the severity of the issues. There was a strong call not to extend this same philosophy to the capacity building work. A “pollution prevention” philosophy, promoting the use and transfer of best possible technologies, is required.
- Use the new Monitoring and Assessment North American Regional Action Plan (NARAP) as a framework and forum for people to get together to develop capacity building opportunities and reach out more broadly to a wider constituency.
- Use radio and television to disseminate information. There are many people who have no access to Internet-based information. Government should create permanent network space for environmental issues. There are interesting initiatives in other countries (such as Brazil), and these should be investigated.
- Monitoring should extend throughout the life cycle of a substance.

- Technology transfer often simply exports problems. Sustainability should drive the selection of best available technologies. Now it is market driven and often does more harm than good.

### **JPAC Session on Education Opportunities for SMOC**

Laura Silvan de Durazo, JPAC member, and James Riordan from the SMOC Working Group introduced the session. The floor was then opened to the public, who made the following comments:

- Language and lack of translated materials are important considerations. For example, many indigenous peoples cannot read documents produced by the CEC.
- The CEC should create a committee to study how best to communicate with and involve indigenous peoples.
- Capacity building and education are interconnected. Capacity cannot be built without public awareness, and vice versa.
- Efforts should be made to better involve local governments. In Canada, for example, there exists the Federation of Canadian Municipalities. One of the objectives of this organization is to promote environmental responsibility. This would be a logical group to connect with.
- We have to put “tools in the hands of the people.” Capacity building, education, language, traditional knowledge are all interrelated. In northern Canada, for example, there are active community colleges where CEC-related issues could be built into the curriculum.
- Using existing education institutions and building information into the curriculum would be a positive step for the CEC.
- Information should be provided in layman’s language.
- Develop “train the trainer” programs in partnership with educational institutions. Properly trained, students are a very important resource.
- Informal educational materials are also very important to get information to affected populations.
- Monitoring is an area where local people can directly participate in creating an information base.
- Encourage exchanges between NGOs and academics. NGOs can convert scientific information into layperson’s language.

### **JPAC Session on Chapter 11 of the North American Free Trade Agreement**

The JPAC Chair introduced the session, explaining that JPAC had decided to involve itself in this issue as a result of mounting public concern and as a result of its own internal discussions. He then introduced Aaron Cosby from the International Institute for Sustainable Development, who had prepared a discussion paper for JPAC to use in stimulating dialogue at this session. The paper was made available to the public prior to the meeting.

Mr. Cosby reviewed his paper. An interactive session with JPAC members and the public then proceeded, during which the following points were raised:

- There is a direct link between the obligations of Council under NAAEC Article 10(6) and the work of the NAFTA Free Trade Commission. Studies and work regarding NAFTA Chapter 11 are being undertaken without any input from the CEC via NAAEC Article 10(6).
- A frequent criticism is that Chapter 11 appears to challenge the sovereignty of states. Why do we need an investment chapter in a trade agreement where rights are given without corresponding obligations?
- Industries too suffer from these provisions. Space is created for corporate lawyers to achieve things that are not in the public interest. Risks reduce investment in sustainable development and in areas such as waste reduction.
- There are enough cases to date to justify reforms to Chapter 11.
- There is no consensus that amendments are required now. Allow the judicial process to function to develop a set of case law.
- NAAEC Article 10(6) is an obligation on Council. We should tell Council to “do their job.”
- What is the effect of Chapter 11 on indigenous-owned lands? In Arctic Canada, hundreds of thousands of square miles of land are Inuit-owned through the Nunavut Land Claims Agreement. Permits are issued to foreign companies to engage in a variety of activities.
- Corporate power is bypassing national laws and compromising environmental integrity. There are dozens of pending cases. Canada has been stung by Chapter 11. Now it is the turn of the US and hopefully this will trigger them to act, as a matter of public policy. JPAC and civil society should be enraged at corporations’ being compensated where national laws would prohibit the activity.
- JPAC can be a voice of the people because it’s a direct link to Council. JPAC should file as a friend of the court in the case of US chemical manufacturer Crompton Inc., which has given notice of its intention to sue the Canadian government over restrictions the latter has imposed on the toxic and persistent pesticide, lindane.
- The courts have the capacity to deal with these cases. Wait until case law has developed. There are many mistruths surrounding Chapter 11. There is a need to strike a working group to do an in depth analysis. Complaints are being exaggerated.
- The lack of public participation is appalling. Permits are issued along the Mexican border by the federal government without any impact assessment or public notice even to local governments.
- Governments are spending already scarce public resources to protect themselves against investors that damage the environment.
- It is difficult to know where to begin to develop substantive law on “takings.” This level of uncertainty is undesirable for any judicial system.
- This is an era of emerging jurisprudence and it would be imprudent to prejudge without a body of law. The challenge is to “get it right.” Investment can lead trade. The panelists are experienced arbitrators.
- The entire process is not flawed. These provisions can be viewed as exporting the US rule of law to other jurisdictions (afford the same protection to foreign investors as to domestic investors) as a means of spreading economic development and environmental protection. Some improvements, of course, are needed. Rushing to change prematurely can have a downside of slowing progress towards improving peoples’ lives.
- There is no consensus on the impacts and effects of Chapter 11. There are concerns that attempts at reform will weaken the provisions.

- The only way to change priorities is through public outreach. Ultimately, decisions will be taken in other forums. There is a need to put a human face on environmental problems. Outrage will change public policy.
- Why wait? If your children were being affected by funds being diverted to pay off these huge claims, you would be more concerned. These so-called benefits from investment are so transparent we can't see them at the community level.

### **Discussion on a Potential Advice to Council on Capacity Building and Education Opportunities for SMOC**

Advice to Council 01-10 containing JPAC's recommendations was approved. (See Annex D.)

**Action: Council**

### **Discussion on a Potential Advice to Council on NAFTA Chapter 11**

A broad and varied discussion took place among JPAC members, reflecting the complexity of the issue. It was agreed that a draft advice would be developed, circulated to the JPAC Working Group for review, then to JPAC for a decision and possible Advice to Council.

**Action: JPAC Working Group, JPAC members, Council**

### **Follow-up on Council Session**

It was agreed that the Chair would write a letter asking Council how it intends to proceed on JPAC's revised recommendation on monitoring and follow-up of factual records. In this same letter, JPAC would again express its disappointment that Council had chosen not to reconsider its decision to postpone a public review of the matter of limiting the scope of factual records.

**Action: JPAC Chair, Council**

### **World Summit on Sustainable Development (WSS)**

It was agreed that the Chair would write a letter expressing disappointment that Council has chosen not to have the CEC directly represented at the WSSD and suggesting topics that each of the three countries could highlight in its own plans for participation.

**Action: JPAC Chair, Council**

### **Secretariat NAAEC Article 13 Report on Electricity Market**

For the record, Donna Tingley, JPAC member, made the following statement: "My organization, the Clean Air Strategic Alliance, is developing a management approach including air quality standards for electricity in Alberta. My role in this process is a neutral one; accordingly I will not be able to participate in the discussion of any recommendations on this topic."

After discussion, it was agreed that this was a very timely and important topic. It would be premature for JPAC to provide an advice on the recommendation. JPAC will closely monitor progress and response to the recommendations and will discuss the topic again at the next regular session.

**Action: JPAC members**

### **JPAC Members Appointments and Rotation and JPAC Working Groups**

The following working groups were created.

Air: Cam Avery, Peter Berle, Laura Silvan de Durazo, Steve Owens

Private Sector in Sustainable Development: Cam Avery, Jon Plaut, Carlos Sandoval

Freshwater: Mindahi Crescencio Bastida, Merrell-Anne Phare, Donna Tingley

Conservation of Biodiversity: Adriana Nelly Correa, Liette Vasseur, American representative to be appointed

Children's Health: Serena Wilson was added to the working group

### **Next JPAC Meetings**

3–4 October, in Santa Fe, New Mexico

JPAC Regular Session

Public session to discuss the CEC Secretariat's scoping document on freshwater

9-10 December, in Monterrey, Nuevo León

JPAC Regular Session

Public session on financing and the environment

### **Observers' Comments**

A member of the public drew attention to an article he had written on Chapter 11 matters. He referred particularly to the fact that the Free Trade Commission had issued its first interpretive statement last July addressing a substantive matter related to expropriation which overturned a tribunal interpretation. He went on to respectfully disagree with a statement during the plenary session that no harmful decisions had yet been made, citing decisions in the cases of Metalclad and SD Myers, both of which he referred to as "aggressively wrong." He fully supported JPAC's efforts in getting the public involved in discussions on Chapter 11 and praised efforts at transparency and inclusiveness supported by scholarly interpretations.

Another member of the public expressed concern that economics and environmental affairs are going in two different directions. She strongly recommended using sustainable development as a paradigm for consolidating the two matters. She noted that Council should be concerned with ethics, not simply legal interpretation.



Another member of the public also congratulated JPAC on its work to involve the public in Chapter 11 issues. She drew attention first to past work of the CEC in preparing a series on trade/environment and water; second, she noted a recent paper of the Sierra Club of Canada on the role of the private sector in sustainable development cautioning that inviting private sector participation raises the possibility of trade disputes; third, she informed JPAC that the NGOs present were issuing a press release raising the matter of Council's responsibilities under NAEEC Article 10(6).

Another member of the public expressed sympathy with JPAC in its frustration with being ignored by Council. He wondered what was the point of all this effort if advice was not even responded to. Lip service is being paid only. The environment is clearly taking second place to trade and investment. He strongly encouraged JPAC to pursue the matter of follow-up for factual records.

Another member expressed her hope that JPAC would continue to advocate on behalf of citizens concerned with water and human health. She shared her concern that sustainable development is now being profit driven.

Another member suggested that those industries that have environmental management systems in place would be recognized as having made a contribution to the objectives of SMOC. This would provide positive reinforcement. She also commented on how frightening the prospect is that industry can scare governments by raising investment disputes. She will also send a letter to Council urging that the CEC be represented at the WSSD.

Another member of the public, who has long advocated that JPAC members should be remunerated, suggested that, minimally, the Chair should receive payment. He expressed concern that the time may come when people will not be able to devote so much time voluntarily. He reinforced the need for the CEC to reestablish its original funding, at US\$5 million per country. Finally, he urged industry to begin acting to participate in fulfilling SMOC's objectives.

It was noted by a member of the public that while JPAC is a good start in providing citizen participation, more is required. JPAC has a "voice but no clout." These large meetings are too cumbersome and expensive. More interaction is needed between networks of NGOs, industry, etc. Three minutes once a year is not enough.

### **Adjournment**

The Chair then thanked the members, the participants, the interpreters and the JPAC staff and adjourned the session.

Prepared by Lorraine Brooke

APPROVED BY JPAC MEMBERS ON 22 JULY 2002



**Commission for Environmental Cooperation (CEC) of North America  
9th CEC Regular Session of the Council and Joint Public Advisory Committee (JPAC) Meetings  
17-19 June 2002**

**Château Laurier Hotel  
1 Rideau Street  
Ottawa, Ontario Canada  
Phone: (613) 241-1414 • Fax: (613) 562-7031**

**Preliminary Program of Public Events (as of 10 June 2002)**

**Sunday, 16 June 2002**

18:00–20:00 Accreditation of participants (*Foyer area of Drawing Room*)

**Monday, 17 June 2002** (*Meetings will be held in the Canadian Room located on the lower level*)

8:00–20:00 Accreditation of participants

**9:00–10:00 Opening of JPAC Regular Session 02-02**

- Opening Remarks and overview by Jon Plaut, JPAC Chair
- Approval of the provisional agenda
- Remarks by Janine Ferretti, Executive Director
- Report from the National and Governmental Advisory Committee representatives
- Question period

**10:00–11:15 Plenary Session on Sound Management of Chemicals (SMOC)**

- Introduction by William Sanders, Chair of the Sound Management of Chemicals Working Group
- Overview of North American Regional Action Plans (NARAPs) by José Carlos Tenorio, Program Manager, Sound Management of Chemicals
- Introduction by Hernando Guerrero, Director of the CEC's Mexico Liaison office and presentation of a video on Mexico's experience on the eradication of DDT's use
- Overview of Children's Health and Environmental Exposures, by Irena Buka, Chair of the Expert Advisory Board on Children Health and the Environment in North America
- Presentation of the last JPAC Advice to Council on Sound Management Of Chemicals by Steve Owens, JPAC Member
- Question period

**11:15–11:30 Break**

**11:30–13:00 JPAC Session on Capacity Building Opportunities for SMOC**

- Introduction by Merrell-Ann Phare, JPAC Member and Rocío Alatorre, SMOC Working Group Representative
- Audience participation

**13:00–14:30 Lunch (not provided)**

**14:30–16:00 JPAC Session on Education Opportunities for SMOC**

- Introduction by Laura Silván de Durazo, JPAC Member and James Riordan, SMOC Working Group Representative
- Audience participation

**16:00–16:30 Break**

**16:30–18:00 Networking Session for the public**

**18:00–20:00 Welcoming Reception (*Adam Room*)**

## PRELIMINARY PROGRAM PUBLIC EVENTS

**Tuesday, 18 June 2002** (*Meetings will be held in the Ballroom located on the ground floor*)

- 8:00–17:00      Accreditation of participants
- 9:40–10:20      Official opening of the 9<sup>th</sup> Regular Session of the Council of the CEC**
- Opening remarks by David Anderson, Canadian Environment Minister
  - Remarks by Víctor Lichtinger, Mexican Secretary for Environment and Natural Resources
  - Remarks by Christine Todd Whitman, Administrator US Environmental Protection Agency
  - Report by Janine Ferretti, CEC Executive Director
- 10:20–10:30      Break**
- 10:30–12:30      JPAC Session on Chapter 11 of the North American Free Trade Agreement (NAFTA)**
- Overview by Jon Plaut, JPAC chair
  - Presentation by Aaron Cosbey, International Institute for Sustainable Development
  - Floor opened to the public
- 12:30–15:00      Lunch (not provided)**
- 15:00—17:00      Public Portion of the Council Session**
- Opening of the Public Session
    - Opening remarks by David Anderson, Canadian Environment Minister
    - Introduction on the conduct of the session by Jon Plaut, JPAC chair
  - Summary of the JPAC Session on Capacity Building and Education Opportunities for the Sound Management of Chemicals, by Merrell-Ann Phare and by Laura Silván de Durazo
  - Oral statements by pre-selected presenters, followed by comments from the Council members on the following themes:
    - Environment and Trade
    - Conservation of Biodiversity
    - Pollutants and Health
    - Law and Policy
    - Specific Obligations under NAAEC
  - Floor opened to the public
    - Presentations by selected rapporteurs on the results of the Networking Session
  - Closing of the Public Session
    - Closing remarks by David Anderson, Canadian Environment Minister; Víctor Lichtinger, Mexican Secretary for Environment and Natural Resources; and Christine Todd Whitman, Administrator US Environmental Protection Agency
- 17:00—17:30      Break**
- 17:30–18:30      Joint Public Advisory Committee Regular Session 02-02 \*\***
- Discussion on potential Advice to Council
  - Observers' comments

**Wednesday, 19 June 2002** (*Meetings will be held in the Ballroom located on the ground floor*)

- 9:00–12:00      Accreditation of participants**
- 9:30–12:00      Joint Public Advisory Committee Regular Session 02-02 \*\***
- Follow-up on Council Session
  - JPAC member appointments and rotation, and JPAC working group
  - Next JPAC meetings
  - Observers' comments
- 12:30              End of the sessions**

\*\* Session open to the public as observers

**Liste des participants – Lista de participantes - List of Participants**

**Neuvième session ordinaire du Conseil, 17, 18 et 19 juin 2002, Ottawa, Canada  
 Novena sesión ordinaria del Consejo, 17, 18 y 19 de junio de 2002, Ottawa, Canadá  
 Ninth Regular Session of the Council, June 17, 18 and 19, 2002, Ottawa, Canada**

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**ADVICE TO COUNCIL: NO. 02-08**

**Re: Capacity Building and Education Opportunities within the Sound Management of Chemicals (SMOC) Program**

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America:

IN ACCORDANCE with Article 16(4) of the North American Agreement on Environmental Cooperation (NAAEC), which states that JPAC “may provide advice to the Council on any matter within the scope of this agreement (...) and on the implementation and further elaboration of this agreement, and may perform such other functions as the Council may direct”;

RECALLING that JPAC, in its Advice to Council 01-08, advised Council it would be consulting the public on the education and capacity building opportunities that could be created through the Sound Management of Chemicals Program (SMOC) during the 2002 Regular Session of Council;

HAVING conducted two very successful public sessions on these topics in conjunction with this Regular Session of Council and having benefited from constructive thinking and useful comments, all aimed at improving our understanding of the complexities and challenges presented by efforts to develop effective capacity building and educational strategies;

UNDERSTANDING the importance of moving the discussion into more concrete recommendations for Council to consider;

JPAC offers the following advice for moving forward:

- Efforts to improve capacity building and education within SMOC must go hand-in-hand. Capacity building cannot occur without public awareness and vice versa. Education and capacity building initiatives should be constructed as a result of dialogues between civil society and governments—not imposed from the top down. This will require some institutional changes in the way SMOC tasks are approached.
- As recommended in our earlier Advice to Council 01-08, the SMOC Working Group (currently made up exclusively of government representatives) and the various task forces should be more opened to broader stakeholder involvement. The group of stakeholders involved in the SMOC Working Group and task forces should be expanded to include

- ENGOs, industry and the private sector, and academics, as well as representatives from other levels of government and the public-at-large. In addition, a clear process should be developed and articulated regarding how stakeholders are nominated and selected, and their responsibilities, roles and level of accountability should be clearly defined. This process must be fully transparent.
- Special efforts are required to seek out and engage local and traditional decision-making authorities who operate outside the framework of governments, as previously called for in Advice to Council 99-05. This is a necessary approach to working with indigenous peoples and other rural communities.
- The challenges for capacity building and education are not limited to any one country. Each country should set new and higher standards for capacity building and education, including evaluating and utilizing best practices and best available technologies and culturally appropriate formats.
- When determined by the relevant SMOC task forces that the use of particular substances should be limited or banned, it must be ensured that replacement substances are safe for human health and the environment. Increased public participation through capacity building and education can assist this effort.
- Financial resources may limit the extent to which the CEC and the SMOC program can undertake new initiatives in capacity building and education. It is very important, therefore, that SMOC collaborate with groups that have existing outreach networks, such as ENGOs, industry and the private sector, local governments, academia and indigenous organizations, professional associations, and other organizations involved with education, health and chemical substance pollution.
- Working with these networks will facilitate the identification of appropriate outreach materials and information to educate and involve civil society. These outreach tools should build on existing capacity, taking into account available information technology, education levels, local languages and cultural practices, and other factors that affect the ability of civil society to actively and effectively participate in the SMOC process. The progress towards total elimination of DDT in Mexico is a good example of this model where, through partnerships and cooperation at the regional and local level, people have been empowered through information and a common purpose to help themselves.

**Other matters include:**

- The SMOC program should become better informed and sensitized to requirements for a comprehensive approach to its work on substance selection, the development and implementation of NARAPs and monitoring and assessment activities that respond to the needs and realities of affected people and environments.

- The SMOC program should develop an effective process to monitor the disposition and fate of existing inventories of substances, such as DDT, whose use is being limited or banned.
- As previously detailed in Advice to Council 02-01 on Children's Health and the Environment in North America, the interface between the SMOC program and the initiative on children's health is crucial. In this regard, JPAC reiterates its call for the development of a NARAP on lead.
- The SMOC Working Group should continue efforts to secure funding from other sources to assist in supporting the costs of implementing NARAPs.

APPROVED ON 3 JULY 2002



**ADVICE TO COUNCIL: NO. 02-09**

**Re: The Commission for Environmental Cooperation (CEC) of North America and the North American Free Trade Agreement (NAFTA) Chapter 11**

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America:

IN ACCORDANCE with Article 16(4) of the North American Agreement for Environmental Cooperation (NAAEC), which states that JPAC “may provide advice to the Council on any matter within the scope of this agreement (...) and on the implementation and further elaboration of this agreement, and may perform such other functions as the Council may direct”;

RECALLING that JPAC, in its Advice to Council 02-04, dated 8 March 2002, among other matters, expressed serious concern about potential negative effects of NAFTA Chapter 11 provisions on government’s ability to act in the public interest and offered several recommendations, further developed in this present advice, for action;

REMINDS Council that no reply to Advice to Council 02-04 has been received, despite the importance JPAC and the public attach to this matter, as evidenced by the substantive views and information exchanged in JPAC’s public session on this matter, which was organized for the 2002 Council Session in Ottawa and held on 18 June 2002;

WORKING on the premise that NAFTA Chapter 11 was constructed to attract transnational investment by minimizing the risk for investors, but given the information gathered during the JPAC session, the impact of Chapter 11 may be to put at risk the governments’ ability to legislate to protect the environment, human health and the public good, in general; and

BASED on exchanges with the public and on further discussion by JPAC during its regular session, the following are recommended as concrete steps Council might take in fulfilling its clear obligations under NAAEC Article 10(6) to “cooperate with the NAFTA Free Trade Commission to achieve the environmental goals and objectives of NAFTA”:

1. Understanding the sensitivity and complexity of managing the reduction of risk to investors and minimizing risk to the environment and the public good, Council should encourage its trade counterparts to make every effort to resolve conflicts through an interpretative approach (to Chapter 11 language) that builds on the principles of transparency, due process, openness and accountability.

2. As a follow-up to the Council statement, made at the June 2001 Regular Session in Guadalajara, and to be consistent with NAAEC Article 10(6), Council should move forward to “explore with our trade counterparts the possibility of convening a joint meeting between the CEC and the North American Free Trade Commission, aiming for 2003.”
3. As a follow-up to the Council statement, made at the June 2002 Regular Session in Ottawa, to take immediate “steps to facilitate public input on the work on Chapter 11 of the North American Free Trade Agreement (NAFTA) underway by the Chapter 11 Experts’ Group of the NAFTA Free Trade Commission”<sup>1</sup> and to “work with [its] trade counterparts to arrange a forum where interested parties can express their views on the operation and implementation of the Chapter,” Council should make the appropriate arrangements with its trade counterparts in order that the Chapter 11 Experts’ Group of the NAFTA Free Trade Commission involve JPAC and the public and that a JPAC representative be invited as an observer to their meetings and that their reports be made public.
4. Council is asked to confirm to JPAC that the CEC trade and environment officials of the NAAEC Article 10(6) Experts’ Group and the Chapter 11 Experts’ Group of the NAFTA Free Trade Commission will each be invited to make a report to the second JPAC public workshop on Chapter 11, to be held in conjunction with the CEC Symposium on the Environmental Effects of Trade scheduled for March 2003 This JPAC public workshop should focus mainly on transparency, due process, openness and accountability, as discussed above, and the potential parameters of the environmental, health and safety exception (the “carve out”) for stewardship by the Parties. To this end, it will be necessary to allocate additional financial resources to JPAC for 2003.

APPROVED ON 16 JULY 2002

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<sup>1</sup> NAFTA Free Trade Commission Joint Statement: “A Foundation for Future Growth”: “We reviewed the operation of Chapter 11 of the NAFTA and directed experts to continue their work examining the implementation and operation of Chapter 11, including developing recommendation as appropriate. (...)The experts are to report to Ministers on a regular basis and, at a minimum, prior to the next meeting of the NAFTA Deputies in the fall of 2002. We view this work as a necessary and highly beneficial to the effective and proper implementation of the Chapter as well as to increase public understanding of the operation of the Chapter.” (28 May 2002)