



Commission for Environmental Cooperation of North America

Joint Public Advisory Committee Session No. 02-01

**8 March 2002
Mexico City, Mexico**

Summary Record

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America held a regular session on 8 March 2002, in Mexico City, Mexico immediately following a joint meeting with the Expert Advisory Board on Children's Health and the Environment in North America.

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, and Annex B for the list of participants, Annex C for Advice to Council 02-01 on Children's Health and the Environment in North America, Annex D for Advice to Council 02-02 on the North American Fund for Environmental Cooperation (NAFEC), Annex E for Advice to Council 02-03 on Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15, Annex F for Advice to Council 02-04 on the CEC and the North America and the North American Free Trade Agreement (NAFTA) Chapter 11, and Annex G for Advice to Council 02-05 on the Executive Director of the CEC].

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 while JPAC members have approved it, it has not been reviewed nor approved by the intervenors and therefore may not accurately reflect their statements.

Welcome and Overview by the Chair

The Chair welcomed everyone to Mexico City. He noted the absence, with reasons, of Cam Avery and Serena Wilson. He also explained that JPAC has recently been advised of the replacement of three Mexican members, Daniel Basurto, Raúl Tornel and Blanca Torres. JPAC was awaiting formal notification from Mexico as to their replacements. On behalf of JPAC, he warmly thanked the three members. He also expressed JPAC's pleasure at the reappointment, by Canada, of Donna Tingley for another three-year term.

Approval of the Provisional Agenda

Two items were added to the agenda: North American Free Trade Agreement (NAFTA) Chapter 11, and JPAC follow-up on future participation with the North American Working Group on Enforcement and Compliance Cooperation (EWG).

The Chair also informed the public that JPAC would have an informal meeting with the Alternate Representatives in the afternoon. JPAC would report on the outcomes from this meeting and would discuss, among other matters, CEC vision, Articles 14 and 15, Chapter 11 and the next Council Session.

Activities Report from the CEC Secretariat and Question Period

The CEC Executive Director invited the public and JPAC to review her detailed written report, noting that the Secretariat was well along in a very focused implementation of the work program, with targeted results and actions.

She elaborated on the means through which the Secretariat was responding to specific Council directives. First, regarding water issues, a report has been completed on transboundary water management. This complements another report on the subject that was recently updated. In addition, further work is planned for issues pertaining to pricing and watershed management. An overview report on water will be delivered to Council in November 2002, containing recommendations for a way forward and options for future work.

Second, the Executive Director discussed the CEC's work on financing and positive market forces, explaining how it can strengthen and enhance environmental protection. The CEC has already had good success in this area—innovating such mechanisms as the *Fondo para Proyectos de Prevención de la Contaminación* (FIPREV). The Secretariat is exploring other approaches, such as an agricultural fund for shade-grown products, and will work with the financial services sector to try and actualize their stated interests in investing in the environment.

Third, she reported on the Assessing the Environmental Effects of Trade Liberalization meeting, hosted by the CEC in January 2002, focusing on assessment approaches and the environmental implications of agricultural trade liberalization. The next step will be to apply these methodologies. She informed JPAC that the second symposium on environment and trade, to be held in December 2002, will focus on agriculture and energy.

Fourth, she informed JPAC that the Secretariat is updating the 1999 report entitled "Public Access to Government-held Environmental Information." The updated report will contain a new section for each country, summarizing rules governing non-disclosure of information on the basis of confidentiality. The new sections on exceptions to disclosure are being developed in response to Council's request for a summary of confidentiality provisions applicable to disclosure of environmental information.

Finally, she noted that the Secretariat's Article 13 report on electricity is scheduled to be completed this month and that the CEC participated in the recent meeting of Health and

Environment Ministers of the Americas and showcased the DDT elimination in Mexico ‘success story.’

Before opening the floor to comments, the JPAC Chair commented that the success of DDT elimination in Mexico, and the CEC’s role in that effort, is a wonderful example of the benefits of cooperative interaction between public health and environment officials and workers.

A JPAC member asked the Executive Director to elaborate further on water pricing and technology work. She replied that because water is such a broad issue, the challenges vary in each country. The challenge for the CEC is how to define meaningful work at a North American level that is relevant to each country and provides added value. The Secretariat is now engaged in a scoping exercise to get direction on issues that can be addressed through North American cooperation.

Another JPAC member noted that the results of the CEC Symposium on Environmental Challenges and Opportunities of the North American Electricity Market, held in San Diego last November, brought into high relief the need for transboundary management, particularly regarding the siting of facilities. He asked if this emerging issue could be a driver for progress on transboundary environment impact assessment.

The Executive Director replied that this question would be best put to the Alternate Representatives. The process has stalled, particularly around the issue of equivalency and the roles of national and subnational governments.

Another member asked if there would be any follow-up on JPAC’s letter to the Secretariat regarding work on Lake Chapala. The Executive Director replied that until the scoping effort on water issues was complete, a framework developed and future steps decided on by Council, work through the CEC would not be considered.

A member of the public asked the Executive Director for her thoughts on the outcomes of the Health and Environment Ministers of the Americas meeting. She replied that there was a remarkable level of agreement among the 30 or more countries participating. The benefits of regional cooperation were discussed, for example, the success in North America in eliminating lead in gasoline and DDT in Mexico, and now efforts being made to expand such work to countries in Central America. Children’s health was a stated common concern.

Another member of the public asked whether the methodology developed for trade and environment would apply to impacts on the health of the general population—and that of children specifically. The Executive Director replied that while the issue was brought forward, it is not yet clear how it will be included.

Status Report on Issues Related to Articles 14 and 15 Submissions and Question Period

The Director of the Submissions and Enforcement Unit was invited to make a status report. He provided an update on the new submissions. He explained that his unit has made significant progress in reducing the time it takes to process submissions. He further reported that the unit

now has five factual records in progress. He referred to recently received letters from the Sierra Legal Defence Fund—regarding two BC submissions (BC Logging SEM-00-004 and BC Mining SEM-98-004) and asking Council to reconsider their decision to limit the scope of the factual records—and advised that if Council chooses to expand the scope, the unit is prepared.

A JPAC member commented on the importance of understanding the positive changes a factual record can provoke. In Cozumel, for example, the reef is now declared as a protected area, the development project was downsized, there have been legal changes and a management plan is in place. He also thanked the Director for his unit's efforts and success in expediting the submissions process.

Another JPAC member remarked on the importance of capturing the outcomes of factual records and suggested that perhaps members of academia or NGOs could be encouraged to do so.

Another JPAC member asked if there would be value in doing the broad work now on the four factual records for which Council limited the scope of the work, in the event that Council reconsiders. The Director offered that this was an interesting suggestion, however, it would be difficult to do so in light of Council's instructions.

A member of the US Governmental Advisory Committee (GAC) asked the Director to provide details on the comments received from the United States on the Migratory Birds submission (SEM-99-002). The Director replied that they were not very substantive. He did offer that the unit did not consider the work plans as drafts when provided to the Parties for comment.

A member of the public asked if there was a policy on how information was provided to interested parties, other than the federal government, i.e., a state government. The Director replied that their point of contact is with the US Environmental Protection Agency (EPA). At the factual record development stage, outreach would be made.

Report from the National and Governmental Advisory Committee Representatives

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

No representatives from the Canadian or Mexican committees were present at the meeting.

The representative of the US NAC remarked that attending the JPAC sessions was very beneficial to them in their role of advising their government. He noted that the EPA provides funding to permit this participation. The US NAC has not met since October. They will focus on increasing the interaction between the CEC and the US government by sending representatives to CEC meetings and workshops.

The representative of the US GAC reported that the GAC had not met since the last JPAC meeting and the next meeting, to be held on 2–3 May in Washington, DC, will focus on the upcoming Council Session. She reminded JPAC that the US GAC is there to support JPAC in its efforts to ensure the proper implementation of the Article 14 and 15 citizen submission process.

She noted that after hearing the presentation of the Director of the Submissions and Enforcement Unit, she was less concerned about the issue of the Secretariat having to provide work plans to the Parties for comment.

A JPAC member thanked the US NAC and GAC for their continued support and asked that they explore, with the US government, the need to ensure that any Free Trade Area of the Americas Agreement (FTAA) contain at least environmental provisions comparable to NAFTA/NAAEC.

At this point the Chair informed the public that JPAC had met privately this morning to discuss personnel matters and an advice to Council had been prepared. It will be public once it is transmitted to Council (see Annex G for Advice to Council 02-05).

Before beginning the next portion of the meeting, the Chair noted that a decision had been taken to share draft advice with the public, in the interests of transparency, and to allow the public to better follow the discussions. However, he noted that this comes with the responsibility not to distribute drafts outside the room.

Follow-up and Discussion on a Potential Advice to Council on Children's Health and the Environment in North America

A member of the JPAC working group reviewed the draft advice. A discussion of several points was held and it was agreed to make several additions and adjustments. The new text would be circulated for approval immediately following the meeting. (See Annex C for Advice to Council 02-01.)

**Action: JPAC Working Group, JPAC,
Experts Board on Children's Health, Council**

Follow-up and Discussion on a Potential Advice to Council on the Opportunities of the North American Electricity Market

The Executive Director noted earlier that the report would be forwarded to Council later this month. The Chair informed the audience that JPAC has not yet received a reply to its letter to Council of 15 February 2002, requesting that the report be made public.

A JPAC member reminded the public that extensive background papers are available which strongly indicate there is a looming problem of increased emissions despite whatever scenarios are selected to manage increased generating capacity.

Action: Council

Discussion and Potential Advice on the Review of the North American Fund for Environmental Cooperation (NAFEC) Administration and Funding Guidelines

The NAFEC Coordinator provided an overview of the revisions and a proposed alternative structure. A JPAC member asked if the NACs had been contacted about their possible

participation on the NAFEC Selection Committee. It was noted they had not. However, the NAFEC Coordinator will contact the NAC chairs. A discussion of some points was held and it was agreed to make minor adjustments. Advice was adopted. (See Annex D for Advice to Council 02-02.)

Action: Secretariat, Council

Follow-up on Articles 14 and 15

a) JPAC Advice to Council 01-09

The Chair provided an overview of Council's recent reply to JPAC's request for authorizing a public review of the issues pertaining to limitations placed on the scope of factual records and the Secretariat being required to submit work plans to the Parties for comments. He also noted the recent letters from the Sierra Legal Defence Fund asking Council to reconsider their decision on two submissions (BC Logging SEM-00-004 and BC Mining SEM-98-004).

A member of the JPAC working group reviewed the proposed public review process for the work plan issue. A JPAC call for written comments is recommended. A schedule is proposed which will permit the development of an advice to Council prior to the June Council meeting. The proposal was approved by JPAC.

Action: JPAC

A draft Advice 02-03, concerning Council's decision not to authorize a public review on the issue of limiting the scope of factual records until the relevant factual records are completed, was discussed and approved. (See Advice to Council 02-03)

Action: Council

b) JPAC Report to Council on Lessons Learned

The Chair informed the meeting that a letter had been received, dated 6 March 2002, from Ms. Norine Smith on behalf of the Alternate Representatives, indicating they were not prepared to take up the remaining four recommendations from the Lessons Learned Report. A member of the JPAC working group provided an overview and rationale for each.

It was agreed to take up the matter at the informal meeting scheduled with the Alternate Representatives that afternoon.

Action: JPAC

c) The North American Free Trade Agreement (NAFTA) Chapter 11

A draft Advice 02-04, concerning the growing concerns surrounding the environmental implications of NAFTA Chapter 11, was presented and approved. (See Annex F for Advice to Council 02-04.)

Follow-up on the Pollutant Release and Transfer Register Project

The CEC program manager for Pollutants and Health gave an update on the Pollutant Release and Transfer Register (PRTR) project, including a report on recently passed Mexican legislation mandating a publicly accessible PRTR; a workshop held on 6 March in Mexico City; and the ongoing trilateral work to improve comparability among the three national PRTR programs, including the development of an action plan for potential consideration and adoption by Council.

Report on Assessing the Environmental Effects of Liberalized Trade and the meeting on Article 10(6) of the North American Agreement on Environmental Cooperation

A JPAC member who attended these meetings, held in January 2002, reported that they had been very interesting and mentioned that he reminded the Alternate Representatives during the Article 10(6) meeting of the importance of involving the public in the process. (See Annex F for Advice to Council 02-04.)

Action: Council

Report on the North American Working Group on Environmental Enforcement and Compliance Cooperation (EWG)

A JPAC member, who attended this meeting, held in January 2002, reported it had succeeded in generating some interest in improving public participation in the EWG's work. One possibility offered was to organize a joint public meeting (EWG-JPAC) in 2003. JPAC also emphasized there is clear interest from the public on enforcement issues, particularly in the area of priority-setting. The EWG was also reminded that JPAC did not support ongoing EMS work by the CEC.

After discussion, JPAC agreed to propose a joint meeting in 2003. The JPAC chair will send a letter to the EWG Chair.

Action: JPAC Chair

Report on the Workshop on the North American Biodiversity Information Network (NABIN)

A JPAC member who attended the NABIN meeting reported that the workshop, held in February 2002, had been very useful in addressing issues related to the proliferation of databases and the need to integrate them and reduce duplication. Time was spent on determining a niche for NABIN, the challenge now being to show results. A display will be set up at the June Council Session.

Follow-up and Discussion on the next Council Session

The JPAC round tables on the Sound Management of Chemicals (SMOC) and JPAC Regular Session 02-02 will be held in conjunction with the Council Session on 17–19 June 2002 in Ottawa.

The JPAC chair described the objectives of the JPAC round tables on education and capacity-building opportunities related to SMOC.

It was decided that Steve Owens would present JPAC Advice 01-08 on SMOC at the plenary session on this issue. Merrell-Ann Phare will co-chair the round table on capacity building and Laura Silvan de Durazo on education. The other co-chairs of these round tables will be representatives from the SMOC Working Group.

Administrative Issues

a) Next JPAC Regular Sessions

The Chair reviewed the schedule for next meetings.

17–19 June 2002 in Ottawa, Ontario

Day 1: JPAC regular session and JPAC round tables

Days 2–3: Public portion of the Council Session, JPAC regular session and joint meetings with Council

Fall 2002 in the United States (*Dates and Location to be confirmed*)

Day 1–2: CEC Summit on Air Quality

Day 2 (afternoon): JPAC regular session

December 2002 (*Dates and Location to be confirmed*)

Day 1–2: Second Symposium on Environment and Trade

Day 2 (afternoon): JPAC regular session

b) JPAC working groups: member appointments and rotation

It was agreed during an informal meeting that Gustavo Alanís-Ortega will replace Daniel Basurto on the Articles 14 and 15 working group and that Laura Silvan de Durazo replace Raúl Tornel on the children's health working group. Also, it was agreed that the NAFTA Chapter 11 working group members are Gustavo Alanís-Ortega, Peter Berle and Merrell-Ann Phare.

The Chair proposed, and it was agreed, to wait until the new Mexican members are appointed before modifying the other working groups.

Observers' Comments

A member of the public thanked JPAC for its support and interest in children's health issues.

Regarding NAFEC, another member of the public asked if the CEC had explored the opportunities for funding from industry, as many large corporations now host foundations for the

environment. She echoed the importance of including reference to water in JPAC's advice to Council pertaining to children's health.

Another observer remarked that it would take some innovative thinking to have a functioning registry at the federal level in Mexico and asked JPAC to consider how to assist in this process.

Another member of the public thanked JPAC for providing financial assistance allowing him to participate. He found the experience informative and was reassured by the level of openness and quality of the discussions over the two days.

Finally an observer thanked JPAC for its initiative on NAFTA Chapter 11.

A JPAC member thanked the CEC and the Program Manager for Technical Cooperation for assistance in achieving mandatory emissions reporting in Mexico.

Another JPAC member replied to an earlier intervention, indicating JPAC would be including water in its advice to Council on children's health and the environment.

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 ON 5 APRIL 2002



Commission for Environmental Cooperation of North America

Joint Public Advisory Committee Regular Session 02-01

Friday, 8 March 2001

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Provisional Agenda

Chair: Jon Plaut

- 8:00 – 8:15 Welcome and overview by the JPAC chair
a) Approval of the provisional agenda
- 8:15 – 8:45 Report from the CEC Secretariat and question period
a) Activities report by the CEC representative including project evaluation
b) Status report on issues related to Submissions under Articles 14 and 15
- 8:45 – 9:00 Report from the National and Governmental Advisory Committee representatives*
- 9:00 – 9:30 Follow-up and discussion on a potential advice to Council on Children's Health and the Environment in North America*
- 9:30 – 10:00 Follow-up and discussion on a potential advice to Council on the Opportunities of the North American Electricity Market*
- 10:00 – 10:30 Discussion on a potential advice on the review of the North American Fund for Environmental Cooperation (NAFEC) Administration and Funding Guidelines*
- 10:30 – 11:30 Follow-up on Articles 14 and 15*
a) JPAC Advice to Council 01-09
b) JPAC Report to Council on the Lessons Learned
- 11:30 – 11:45 Follow-up on the Pollutant Release and Transfer Register project
- 11:45 – 12:15 Follow-up and discussion on the next Council Session*
- 12:15 – 12:45 Administrative issues*
a) Next JPAC Regular Sessions
b) JPAC working group: member appointments and rotation
- 12:45 – 13:00 Observers' comments
- 13:00 End of the session

* Session open to the public as observers.



8 mars 2002

Session ordinaire du Comité consultatif public mixte

8 March 2002

Regular Session of the Joint Public Advisory Committee

8 de marzo 2002

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ADVICE TO COUNCIL: No. 02-01

Re: Children's Health and the Environment in North America

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

IN ACCORDANCE with Article 16(4) of the NAAEC, 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”;

HAVING held a very productive joint public meeting on 7 March 2002 with the Expert Advisory Board on Children's Health and the Environment in North America, reviewed and received comments on the draft *Cooperative Agenda for Children's Health and the Environment in North America*;

REITERATING our view that children's environmental health is a very important issue meriting the CEC's continuing attention;

UNDERSTANDING that children's health and the environment is a broad, cross-cutting issue touching most, if not all, of the CEC's program of work;

SEEKING to build on the Children's Health and the Environment initiative to enhance synergies and linkages between health and environmental sectors, within and outside of government;

AWARE that the Expert Advisory Board on Children's Health and the Environment in North America will be providing its detailed advice to Council;

JPAC offers the following recommendations:

- That a children's health focus be fully integrated into the work of the CEC, particularly in the Pollutants and Health program area. Among others, the following activities or features should be included:
 1. Development of a systematic approach for effectively linking children's health with broader issues related to the health effects and risks of pollutants and toxic substances;
 2. New North American Regional Action Plans (NARAPs) should identify the status of current data and discuss the risks to children's health. It is also considered very important that the NARAP on monitoring and assessment, currently under development, contain these features;
 3. Future work on lead, mercury, particulates and diesel fuel emissions should incorporate the need to better understand and prevent or reduce effects on children's health and other vulnerable groups, and continue to build on work already underway;
 4. Consider a focus on children at higher risk, such as indigenous children and children of migrant farm workers;

5. Risks and exposure to children should be incorporated into the substance selection criteria for candidate chemicals that are considered for future NARAPs;
6. Support the publication of a special report on toxics and children's environmental health as part of the *Taking Stock* series (currently in preparation) to inform policy makers and increase public awareness in North America; and
7. Capitalize on the experiences gained through the North American Fund for Environmental Cooperation (NAFEC) projects in particular those on Children's Health focus.

Regarding further development of the Cooperative Agenda for Children's Health and the Environment in North America, JPAC recommends the following:

- The precautionary principle should guide the work on children's health and the environment;
- There should be increased efforts to coordinate with other groups, agencies or institutions doing related work providing value-added to the work of the CEC and reducing duplication. This may be particularly relevant in the area of pesticides, bio-monitoring and health surveillance;
- Encourage the development of a common North American data base on children's health and the environment;
- Efforts should be made to identify target audiences for education, capacity building and training activities, for example, health advocates and other 'front line' workers;
- Indoor air quality issues should feature in the work, particularly in buildings where children congregate; and
- Focus on remediation and preventing exposure even in absence of full scientific certainty.

On related matters, JPAC further recommends the following:

- Authorize the development of a NARAP for lead as previously recommended by JPAC in Advice to Council 00-06;
- Include children's health when building the CEC's agenda on water;
- Explore the opportunities to link children's environmental health issues with the work program of the Enforcement Working Group;
- Invite the Expert Advisory Board to attend the June 2002 Council Session to present the results of their work to date, and to share their views with Council to refine and reinforce priority issues and directions for future work;
- Encourage broad participation in the work plan, beyond government officials, to benefit from the wide range of medical, research, educational and policy expertise available among NGOs, the North American community and beyond, for example, expertise related to the UN Convention on the Rights of the Child. As a start, Council should consider broadening the Trilateral Children's Environmental Health Team; and
- Allocate additional financial resources to fulfill this ambitious cooperative agenda.

APPROVED ON 8 MARCH 2002



ADVICE TO COUNCIL: No. 02-02

Re: The North American Fund for Environmental Cooperation (NAFEC)

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

IN ACCORDANCE with Article 16(4) of the NAAEC, 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”;

CONTINUING to recognize the important role of the North American Fund for Environmental Cooperation (NAFEC) in promoting grass roots participation in the work of the CEC as previously stated in Advice to Council 00-04;

UNDERSTANDING that the level of funding for NAFEC will likely not be increased in the near future and the resulting need to adapt the *NAFEC Administration and Funding Guidelines* to better suit the realities of a more limited program;

HAVING reviewed proposed modifications to the *NAFEC Guidelines* prepared by the Secretariat;

HAVING also reviewed the *Proposal for an Alternative NAFEC Structure* prepared by the Secretariat;

JPAC strongly supports the proposed modifications, particularly those related to streamlining administrative costs, including eliminating the pre-proposal stage, and assuring direct links to current CEC Program Plans;

JPAC recommends that the following clarifications be brought to the revised document and that Council then approve it:

- The ceiling for single grants should be established each year in relation to available budgets;
- The Selection Committee should be independent and its decisions transparent. Appointees to the Selection Committee should have experience with the CEC and its vision of trinational cooperation as well as experience with the NGO community. In this regard, membership should be drawn from JPAC and the National Advisory Committees (NACs); and
- A performance evaluation of NAFEC should be conducted every three years rather than every two years.

Regarding the *Proposal for an Alternative NAFEC Structure*, JPAC will review any proposals put forward by Council. Until such time, JPAC recommends that the status quo be maintained.

APPROVED ON 8 MARCH 2002



ADVICE TO COUNCIL: NO. 02-03

Re: Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15

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), 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”;

BEING IN RECEIPT of Council’s reply, of 11 February 2002, to JPAC’s Advice to Council 01-09, requesting that Council authorize a public review of two issues pursuant to the *JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15*;

TAKING INTO ACCOUNT the detailed concerns raised in the letters to Council from the Sierra Legal Defence Fund of 6 March 2002, regarding the BC Logging Citizen Submission (SEM-00-004) and the BC Mining Citizen Submission (SEM-98-004);

RECOGNIZING that Council has an obligation to make its decisions, and the reasons therefore, public;

RECOMMENDS that Council reverse its decision to postpone any public review of the matter of limiting the scope of factual records until the relevant factual records (SEM-97-006, SEM-98-004, SEM-99-002, and SEM-00-004) have been completed, for the following reasons:

- This postponement defeats the spirit and purpose of Council Resolution 00-09 by effectively eliminating an opportunity for public input into this very important issue; and
- Allowing the development of the factual records to proceed in this restricted manner, particularly absent any public input and review of the implications and consequences for what will be at least one year and a half, is considered by JPAC as a *de facto* change to the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC*.

FURTHERMORE, while cognizant of its mandate under Article 16(4) of the NAAEC to seek public input on any issue, JPAC would prefer to engage in public review of the issue of limiting the scope of factual records through the review process established to implement Council Resolution 00-09.

APPROVED ON 8 MARCH 2002



ADVICE TO COUNCIL: NO. 02-04

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 on Environmental Cooperation (NAAEC), 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”;

MINDFUL of the growing concerns surrounding the environmental implications of NAFTA Chapter 11;

HAVING carefully considered the experiences with NAFTA Chapter 11 case histories to date relating to the investor-state dispute settlement process;

BECOMING increasingly alarmed, first, by the potential of these provisions to constrain governments’ ability to regulate, legislate or fulfill its obligations in the public interest and, second, by the lack of transparency and public access in the dispute settlement process;

URGES that Council build on previous efforts undertaken through the Understanding Linkages between Environment, Economy and Trade program and NAAEC Article 10(6), and

1. Instruct that summary records of the Article 10(6) Environment and Trade Officials Group be made public;
2. Instruct that meetings of the Article 10(6) Environment and Trade Officials Group be open to the public as previously recommended by JPAC.
3. Add NAFTA Chapter 11 to the agenda of the second CEC Symposium on Environment and Trade, to be held in December 2002.
4. Take the necessary steps to ensure that NAFTA Chapter 11 issues, as they relate to the environment, are included in the Environment and Trade Ministerial Meeting being organized in 2003 and that a part of this discussion be open to the public.

Finally, in order to refine further Advice to Council on this matter, JPAC will organize time during the 2002 Council Session on 17–19 June in Ottawa to hold a dialogue with the public specifically on this issue.

APPROVED ON 8 MARCH 2002



ADVICE TO COUNCIL: NO. 02-05

Re: Executive Director of the Commission for Environmental Cooperation

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), 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”;

AWARE that the term of the current Executive Director expires in June 2002 which may be renewed by the Council for one additional three-year term as per NAAEC Article 11(1);

NOTING the maturation of the Commission and future challenges;

RECOGNIZING the role of Ms Janine Ferretti in providing strong leadership and consistency of purpose;

MINDFUL of the importance to our organization of institutional history and stability, experience and personal rapport; and

RECOMMENDS that Council re-appoint Ms. Janine Ferretti to her current position as Executive Director of the CEC for another three-year term.

APPROVED ON 8 MARCH 2002