

ENVIRONMENTAL LAW, POLICY AND ENFORCEMENT

Through the [North American Agreement on Environmental Cooperation](#) (NAAEC), Canada, Mexico and the United States “expressed their desire to support and build on international environmental agreements and existing policies and laws, in order to promote cooperation between them”(Preamble). The objectives of NAAEC include: to “strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;” to “enhance compliance with, and enforcement of, environmental laws and regulations;” and to “promote transparency and public participation in the development of environmental laws, regulations and policies” (Article 1(f), (g), (h)).

Through NAAEC, each Party also assumed obligations and commitments related to enhancing environmental law, policy, enforcement and compliance, such as:

- to promote education on environmental matters, including environmental law (Art. 2(1)(c));
- to ensure its laws and regulations provide for high levels of environmental protection and continue to improve them (Art. 3);
- to effectively enforce its environmental laws and regulations (Art. 5);
- to ensure private access to remedies (Art. 6) and procedural guarantees (Art. 7);
- to strengthen cooperation on the development, improvement and compatibility of environmental laws and policies in North America (Art. 10(3)); and
- to develop recommendations within a 3-year timeframe regarding transboundary environmental impact assessment (Art. 10(7)).

Under Articles 14 and 15, NAAEC creates a process for citizens to raise alleged failure by any of the parties to effectively enforce their environmental laws.¹ The CEC implements the submissions on enforcement matters (SEM) process independently from the cooperative work program.²

In the early years of the CEC, the Law and Policy Program addressed obligations and commitments in NAAEC related to environmental standards and their implementation, with an overall focus on improving environmental performance and compliance and on strengthening enforcement of environmental laws in the context of trade and illegal trafficking. Currently, enforcement and compliance cooperation work is included in the project entitled Enhancing Environmental Law Enforcement in North America.

¹ A separate *Background* summarizes the implementation of the submissions on enforcement matters process. The assertions of failure to enforce environmental law effectively made through the SEM process are examined in individual factual records, when appropriate; but the issues raised in the SEMs have not been the subject of the CEC’s cooperative agenda on environmental law enforcement.

² Other work of the CEC has, however, exceptionally addressed environmental issues raised in a SEM (not the enforcement matter *per se*); notably: the issue of spent lead-acid battery recycling, which was at the heart of the 1998 [Metales y Derivados](#) submission and is the subject of the most recent Secretariat independent report: [Hazardous Trade? An Examination of US-generated Spent Lead-acid Battery Exports and Secondary Lead Recycling in Mexico, the United States and Canada](#).

Compliance and Enforcement of Environmental Laws and Policies

The CEC Council initiated an Enforcement Cooperation Program in 1995, and issued [terms of reference](#) for the North American Working Group on Environmental Enforcement and Compliance Cooperation, commonly referred to as the [CEC's Enforcement Working Group](#) (EWG). The EWG is a network of senior-level environmental and wildlife enforcement officials designated by the Parties to work on enforcement and compliance cooperation under the CEC framework.

Indicators of Effective Environmental Enforcement – In 1997 the CEC initiated a project to explore development of indicators or criteria for evaluating the performance of the Parties in implementing policies and programs for effective environmental enforcement.

- In May 1998, the CEC organized a North American Dialogue on Indicators of Effective Environmental Enforcement. Issues for discussion included: What are the key issues and challenges in developing and applying indicators of effective enforcement of environmental laws? Should indicators of effective enforcement be linked with indicators of overall environmental performance? If so, what are the implications for both sets of indicators and what are the possible mechanisms for linkage? Are existing indicators adequate to evaluate the use of both traditional approaches to enforcement and more innovative or voluntary approaches? Do domestic or international indicators or performance evaluation processes already exist which could provide useful models for this exercise?
- In December 1998, JPAC provided [Advice to Council](#) in support of the work on compliance indicators.
- The [Dialogue Proceedings](#), published in 1999, include presentations, a summary of the discussions and a list of participants, as well as the reports commissioned by the CEC as background and baseline documents. The project did not lead to the development of joint compliance indicators.

Environmental Management Systems – In June 1997, the CEC Council directed the EWG to explore [Future Cooperation regarding Environmental Management Systems and Compliance](#).

- The EWG convened a public workshop in April 1999, at which it received comments from experts and interested members of the public on the use of such systems to improve environmental performance and compliance with environmental laws.
- Regarding this initiative, JPAC expressed its view that EMSs should not be construed as replacing regulation and enforcement, first in its advice regarding the report on [Environmental Management Systems and Compliance](#), published in 1998 ([Advice 99-02](#)) and later in its advice on the *DRAFT Guide: Elements for Improving Environmental Performance and Compliance through Effective Environmental Management Systems* ([Advice 00-02](#)).
- In 2000, the CEC published the EWG's [Guidance Document: Improving Environmental Performance and Compliance: 10 Elements of Effective Environmental Management Systems](#) and the Council adopted [Resolution 00-05](#) encouraging its use. JPAC provided [Advice to Council](#), noting that the final version of this guide addressed the concerns JPAC had previously expressed.

[Special Report on Enforcement Activities](#) (2000) – This report by the Enforcement Working Group (EWG) focuses on compliance promotion, compliance verification, and measurement of program results. The main body of the report includes individual sections for Canada, Mexico and the United States describing how their respective domestic environmental enforcement and compliance promotion programs address these three issues.

Hazardous Waste and Ozone-depleting Substances in North America

In 1995, the EWG formed a task force of hazardous waste officials from the three countries to identify barriers and constraints to effective tracking and enforcement of laws regulating the trade and transportation of hazardous wastes and chlorofluorocarbons (CFCs), and to pursue joint actions for improvement.³

- In 1999, the CEC published a needs assessment: [Tracking and Enforcement of Transborder Hazardous Waste Shipments in North America](#).
- In 2003, the EWG's Hazardous Waste Task Force (HWTf) was mandated to execute projects that will improve the sound management and tracking of hazardous waste in North America. Following Council Resolution [03-08](#), the CEC held a public workshop on Environmentally Sound Management and Tracking of Hazardous Wastes and Recyclables, in November 2003. JPAC provided Advice [03-04](#) to the CEC Council, regarding the need for a life-cycle approach, improved tracking and verification systems and public information, among other recommendations.
- This work was part of the project [Trade and the Enforcement of Environmental Laws](#), and is currently carried out through the project [Enhancing Environmental Law Enforcement in North America](#). The EWG developed an [online hazardous waste training course](#) aimed at environmental enforcement and border protection agencies across North America, which is available in the three CEC official languages as well as in Mandarin.
- The CEC focused efforts on [electronic tracking of hazardous wastes](#) in 2007 and in 2011 it published [Crossing the Border: Opportunities to Improve Sound Management of Transboundary Hazardous Waste Shipments in North America](#). Then, in 2012, the [Notice and Consent Electronic Data Exchange](#) created by the CEC's Hazardous Task Waste Force became fully operational.

Through its [Advice to Council 11-04](#), JPAC noted the growing concern over the cross-border movement of spent lead-acid batteries to Mexico. On 15 April 2013, the CEC Secretariat released the independent report [Hazardous Trade? An Examination of US-generated Spent Lead-acid Battery Exports and Secondary Lead Recycling in Mexico, the United States and Canada](#). The report analyzes the reported cross-border trade in lead-acid batteries and presents recommendations on how to better monitor their handling.⁴

In 2008, the CEC implemented the first-ever [online ozone-depleting substances \(ODSs\) training course](#) directed at customs and border inspectors and government personnel in Canada, Mexico and the United States.

³ The work on this issue has been conducted mostly under the CEC's Law, Policy, Enforcement and Compliance Cooperation Program (subject of a separate *CEC@20 Backgrounder*) rather than under the Pollutants and Health area.

⁴ A separate *CEC@20 Backgrounder* on Secretariat Independent Reports provides more information on this report.

Transboundary Environmental Impact Assessment

NAAEC Article 10(7) states:

Recognizing the significant bilateral nature of many transboundary environmental issues, the Council shall, with a view to agreement between the Parties pursuant to this Article within three years on obligations, consider and develop recommendations with respect to:

- a) assessing the environmental impact of proposed projects subject to decisions by a competent government authority and likely to cause significant adverse transboundary effects, including a full evaluation of comments provided by other Parties and persons of other Parties;
- b) notification, provision of relevant information and consultation between Parties with respect to such projects; and
- c) mitigation of the potential adverse effects of such projects.

In 1995, the Council adopted [Transboundary Impact Assessment Overarching Principles](#) to inform and guide the Council as it develops more-specific recommendations and considerations, pursuant to Article 10(7) of NAAEC.

In June 1997, the [Parties agreed to complete by 15 April 1998 a legally-binding agreement](#) consistent with the obligation under NAAEC Article 10(7) regarding Transboundary Environmental Impact Assessment.

In May 1999, JPAC expressed disappointment regarding the [lack of progress on a North American Agreement on Transboundary Environmental Impact Assessment](#) (TEIA) and recommended that Council ensure the negotiations move forward.

[JPAC again provided Advice to Council on TEIA](#) in December 2002, recalling the numerous recommendations previously made regarding this obligation under NAAEC and recommending, among other things, that the Council promptly create a North American TEIA Working Group, charged with the responsibility to assist Council to move forward on its obligations under Article 10(7).

In August 2005, the [CEC Council objected](#) to a proposal by the Secretariat to prepare an Article 13 Report on Case Studies on Transboundary Environmental Impact Assessment. The Council indicated that “the objectives of the NAAEC and the resources of the CEC would not be best served by the preparation of [the proposed] Article 13 report” given “efforts currently underway among our three countries to conclude an agreement on Transboundary Environmental Impact Assessment (TEIA) under the auspices of the Security and Prosperity Partnership of North America (SPP).” Previously, [JPAC had sent a letter to the Council](#) encouraging them to welcome this proposal.

In 2011, following a public meeting that included a discussion of NAAEC Article 10(7) and the negotiation of a TEIA agreement, JPAC in its [Advice 11-01](#) advised the Council to renew efforts to finalize a TEIA agreement. JPAC also advised the Council to “approve a review of case studies of projects or activities in North America with transboundary impacts, develop pilot projects for implementing TEIA mechanisms with respect to specific projects, and direct the Secretariat to commission a short and focused review of lessons learned in the implementation in Europe of the Convention on Environmental Impact Assessment in a Transboundary Context.” In

response, the Council said the Parties would “consider opportunities that demonstrate the most efficient and effective means to implement [TEIA] mechanisms” and that they remain open to relevant reviews by the Secretariat. Neither the Council nor the Secretariat has proceeded with any activities related to TEIA since.

The Council has not produced recommendations on TEIA and the Parties have not entered into a TEIA agreement.

Strengthening Wildlife Enforcement in North America

The [North American Wildlife Enforcement Group](#) (NAWEG) was created in 1994 when representatives of the *Procuraduría Federal de Protección al Ambiente* (Profepa) in Mexico, the Canadian Wildlife Service (CWF) and the United States Fish and Wildlife Service (US FWS) agreed to formalize the exchange of intelligence information and training related to wildlife regulations enforcement. [NAWEG publications](#) from 1996 to 2006 are available online.

In 2003, the [NAWEG Strategic Plan](#) set the group’s focus for the following 5 years, and in 2005 it published the report *Illegal Trade in Wildlife*, describing a North American perspective on the illegal international wildlife trade and the role of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the CEC and NAWEG in combating this trade.

Work on wildlife enforcement continued to 2010 as part of the project [Trade and the Enforcement of Environmental Laws](#), and currently under the project [Enhancing Environmental Law Enforcement in North America](#), including a 2011 course in [environmental and wildlife criminalistics](#).

Access to North American Environmental Law and Policy

In 1996, the CEC created a database of environmental law in North America to improve public access to the environmental law of the three parties, and as a research tool for any person or organization interested in their environmental legislation. This tool has been updated to February 2003: [Summary of Environmental Law in North America](#).

The [North American Environmental Law and Policy Series](#) compiled the Secretariat’s determinations and factual records related to the SEM process and produced the following reports:

- [Voluntary Measures to Ensure Environmental Compliance and Environmental Management Systems and Compliance](#) (1998)
- [Environmental Impact Assessment and Public Access to Government-held Environmental Information](#) (1999)
- [Transboundary Environmental Impact Assessment](#) (2000)
- [North American Boundary and Transboundary Inland Water Management](#) (2002)
- [Public Access to Government-held Environmental Information—second edition—and the Precautionary Principle in North American and International Law](#) (2003)
- [Inclusion in a Factual Record of Information Developed by Independent Experts](#) (2009)

[Environmental Legislation In North America: Experiences and Best Practices for Its Implementation and Adjudication](#) – This publication brings together the proceedings of three seminars organized by the CEC on the adjudication of environmental law held in Mexico between 2005 and 2008.

More information can be found on the CEC publications page under [background papers](#).

CEC's 2010–2015 Priorities: Healthy Communities and Ecosystems

[In 2010 the EWG agreed](#) to focus the enforcement and compliance cooperation agenda in five areas of common interest: wildlife, ozone-depleting substances, hazardous wastes, electronic wastes, and noncompliant imports—engines.

Under the CEC's 2010–2015 Strategic Plan, cooperative work on environmental law, policy and enforcement falls partly under the [Healthy Communities and Ecosystems](#) strategic priority and also under [Greening the Economy in North America](#). Projects include the following:

[Enhancing Environmental Law Enforcement in North America](#) – As part of the EWG, enforcement agencies will implement proactive approaches aimed at anticipating, disrupting, dismantling and deterring illegal trade in a more efficient and targeted manner.

EWG members will jointly embark on the following activities:

- information collection among countries, including processing and sharing of data on illegal trade to target environmental and wildlife compliance and enforcement activity;
- assessments of threats, risks and preparation of products to support decision-making, as well as dissemination of appropriate information to the North American public; and
- building strong partnerships with law-abiding parties.

[Sound Management of Electronic Wastes in North America](#) – This project will quantify and characterize imports and exports of these used electronics, providing decision-makers with information they can use to develop and implement policies and strategies that will better address this problem on a North American scale, and for the development of guidelines and training for the adoption and implementation of environmentally sound management practices in recycling and refurbishing of used and end-of-life electronics.