



Ms. Jane Gardner
Joint Public Advisory Committee
Chair for 2008
Commission for Environmental Cooperation
393 St. Jacques Street West, Suite 200
Montréal QC H2Y 1N9



Dear Ms. Gardner:

On behalf of the Council of the Commission for Environmental Cooperation (CEC) and the Alternate Representatives, I would like to thank the Joint Public Advisory Committee (JPAC) for its recent Advice 08-01 entitled "Submissions on Enforcement Matters: From Lessons Learned to Following up Factual Records." The Council would like to offer the following response, as well as some clarifications and comments, on points raised in the advice.

As we have indicated in the past, we are committed to supporting public participation, transparency and a strong Submissions on Enforcement Matters (SEM) process. We value the work of JPAC and will continue to take its advice into account as we work together to ensure an effective process.

As you are aware, the SEM process is truly unique in that it allows for the consideration of non-governmental assertions that one or more Parties to the *North American Agreement on Environmental Cooperation* (NAAEC) are failing to effectively enforce their environmental law. The process is designed to be a collaborative one whereby the Secretariat is responsible for screening submissions, making recommendations as to whether a factual record should be prepared for a particular submission, and undertaking to perform the actual fact gathering and preparation of factual records. The Council, however, is responsible for deciding whether to instruct the Secretariat to prepare a factual record and, if prepared, whether to make it available to the public.

The Council wishes to convey that we were pleased to have our respective government officials observing the JPAC's Regular Session 07-04 in San Antonio, Texas on December 6, 2007. It should be noted that Party officials did not participate actively or express the views of their respective governments.

Timeliness

As JPAC has acknowledged, the SEM process has worked well, in general terms. Fifteen factual records have been prepared and published, although admittedly sometimes with delays. As the process has become more complex, extended delays and increased costs have resulted. We look forward to discussions with JPAC and the Secretariat on how to improve timeliness, as well as accessibility and broader public interest in the SEM process.

Visibility, Transparency and Outreach

The Council supports the functions of the Secretariat as outlined in the NAAEC. In an effort to increase public awareness of the SEM process, we also support the development of an outreach program directed at those groups/persons not presently engaged in the process. Further, in an effort to promote the use of the SEM process, we would encourage the Secretariat to work with the Parties to develop updated information materials.

Regarding this section of the JPAC advice, we would like to clarify the following two statements in the advice. First, it is the Secretariat's task to determine whether a submission meets the criteria listed under Article 14(1) of the NAAEC, not that of the Council. Second, the types of information that are considered confidential, and therefore not made public in a factual record, vary among the Parties in accordance with the national laws that address confidential business and privacy issues.

Decision-Making

We are pleased that JPAC fully supports the voluntary work of Special Legal Advisors as a source of legal advice and feedback. The Council also recognizes and appreciates their valuable contributions.

Follow up

The Council wishes to clarify that the submissions process as established under the NAAEC does not contemplate any action by the Secretariat or the Council after the publication of a factual record. The publication of a factual record is the final step of the submission process as described in Articles 14 and 15 of the NAAEC as well as in the *Guidelines for Submission Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*. Therefore, any type of action by the Parties to follow up on factual records is a matter of domestic policy as opposed to a requirement of the NAAEC.

The Council has noted JPAC's intention to undertake a yearly initiative to review published factual records. However, the Council believes that any such action would be beyond the scope of the NAAEC.

Council Resolution 00-09

As previously expressed in the Council's response to JPAC Advice 04-03, the Council takes notice of JPAC's intent to conduct its own review of the operation and effectiveness of Council Resolution 00-09.

Once again, we would like to thank JPAC for its valuable advice on the Submission of Enforcement Matters process. We look forward to working with JPAC and the Secretariat in finding ways to continue to improve the process and make it more relevant to the public in our three countries. As always, we will continue to take into consideration the advice provided by JPAC as we continue the implementation of the terms of the NAAEC.

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Yours sincerely,

A handwritten signature in black ink, appearing to read 'DM', followed by a long horizontal flourish.

David McGovern
Alternate Representative for Canada

c.c.: Ms. Scott Fulton, Alternate Representative for the United States
Mr. Enrique Lendo Fuentes, Alternate Representative for Mexico
Ms. Jane Gardner, Chair of the Joint Public Advisory Committee
Mr. Felipe Adrián Vázquez-Gálvez, CEC Executive Director
Ms. Marcela Orozco, JPAC Liaison officer