

COMMISSION FOR ENVIRONMENTAL COOPERATION  
*PROPOSAL TO  
EXAMINE THE GOVERNANCE OF THE CEC  
AND THE IMPLEMENTATION OF THE NAAEC*

**Introduction**

On June 24, 2009, the Council of the Commission for Environmental Cooperation (CEC) met in Denver, Colorado for its annual Regular Session. This Council Session marked the 15<sup>th</sup> anniversary of the *North American Agreement on Environmental Cooperation* (NAAEC) and served as an important milestone to reflect on the progress the Parties have achieved on environmental cooperation under the NAAEC.

In doing so, Council committed to renew, revitalize and refocus the CEC to better serve the environment and citizens of the three countries. The new policy direction set by Council will ensure the CEC is focused on the key environmental priorities of North America, namely:

1. Healthy Communities and Ecosystems
2. Climate Change – Low-Carbon Economy
3. Greening the Economy in North America

Council also tasked officials to return with a proposal to examine the governance of the CEC with a view to enhance accountability; improve transparency of the Secretariat's activities; ensure alignment with the Council priorities; and, set clear performance goals. Council also agreed to operational changes to the CEC, and associated these changes to the objectives of transparency, accountability, effectiveness, and relevance.

Council has taken this opportunity to set up new environmental priorities that will govern the work of the CEC through the 2010–2015 Strategic Plan and to conduct an unprecedented review and renewal of the governance and operations of the Secretariat, in order to better equip it to deliver on the new priorities, to better respond to the current environmental challenges, and to be more effective and efficient in the face of the global economic crisis. Therefore, the proposal places emphasis on examining and adjusting the structure and functional model of the Secretariat, in order to deliver on the priorities agreed to by Council.

## The Secretariat's Functional Model and Structure: Accountability, Transparency, Alignment and Performance

### Objective

- To adapt the Secretariat into one that delivers on the new environmental priorities established by Council, by strengthening the Secretariat's support and coordination function, with streamlined operational costs, a reallocated budget to increase cooperative programs, a flexible structure that is responsive to emerging issues, and a five-year projection of the structure.

### Rationale and authority

- Examining and adjusting the functional model and structure will enhance alignment with the new environmental priorities established by Council, will be conducive to reprioritizing its expenditures, and in addition, the process will generate information about operational practices and proposals to adjust them, enhancing transparency and accountability.
- Authority based on Denver Ministerial Statement, and Articles 9(5)c, 10(1)c, and 11(5) of the NAAEC.

### Description of issues to be examined

- The NAAEC establishes that the Secretariat's primary functions regarding the cooperative work of the Parties is to provide technical, administrative and operational support to the Council, to committees and groups established by Council, and such other support as the Council may direct.
- The NAAEC does not establish a particular structure for the Secretariat, except that it will be headed by an Executive Director, who shall appoint and supervise the staff of the Secretariat, regulate their powers and duties and fix their remuneration in accordance with general standards established by the Council.
- These general standards have not been revised since their adoption and a review and adjustment would be timely.
- In coordination with the Executive Director, this review could include an assessment of the current organizational chart of the Secretariat and the development of a transitional plan to achieve a leaner, more flexible, less costly structure. More specifically, such a review could include, *inter alia*:
  - Determining an objective goal, according to international standards, of the appropriate ratio between operational costs and resources dedicated to programs;
  - Redefining and/or strengthening, as appropriate, the roles and performance goals of staff to facilitate cooperation, through support functions, rather than management of, engagement in, or expert advice for the programs; and,
  - Assess the number and functions of external permanent and *ad-hoc* consultants, review rules and procedures for hiring external

consultants, and explore mechanisms to draw expertise from, and promote the involvement of North American universities.

### Preliminary Assessment

Currently, the Secretariat is comprised of 59 employees, of which 30 support specific programs and working groups, 5 administer the citizen submission process, 3 support the Joint Public Advisory Committee and Council, and 21 provide general support to the Secretariat, including in the areas of Executive Office and administration, publications, and conference services.

A new structural model could be developed and would represent an opportunity to move away from the Secretariat managing the various projects, towards a staff better equipped to support and facilitate the work of the Parties in accordance with the Secretariat's stated NAAEC mandate to "*provide technical, administrative and operational support*" to Council.

### Related Issues

Once the review of the functional model and structure of the Secretariat is completed, the Parties could, in coordination with the Executive Director, examine and clarify the following issues as part of the work to develop the 2010-2015 Strategic Plan:

#### Define appropriate performance goals

Define appropriate performance goals for CEC staff consistent with the new priorities, and the renewed functional model and structure. The process to evaluate the performance goals should also be defined along with a schedule for periodic review.

Performance goals for the Executive Director would be set by the **Council**.

#### Rules of operation

Review existing CEC rules (both written and verbal) to ensure they are still appropriate for today's context, and ensure they are all in written form in order to strengthen operational transparency. For example, currently Article 11(2) and 11(3) of the NAAEC is construed as requiring Council approval only for new staff appointments, but not for renewal of contracts.

This should also include a review of the rules of operation of JPAC, in order to:

- adapt them to the new strategic direction established by Council,
- improve communication,
- ensure transparency and accountability of expenditures, and

- strengthen mechanisms regarding the relevance and timeliness of advice sought and received by Council.

## Additional Changes to Strengthen CEC and NAAEC

### The Denver Statement

The Denver Statement enumerated other operational changes associated with the objectives of transparency, accountability, effectiveness, and relevance. The sections below provide details on what these changes could encompass.

#### Streamlining the cooperative work program

The cooperative work program (i.e., Operational Plan) represents the projects the Parties agree to undertake trilaterally on an annual basis. Each year, the working groups along with the Secretariat, develop projects that aim to address environmental issues that concern our region. The new environmental priorities for the CEC established by Council and the process of renewing the structure and functional model of the Secretariat require streamlining the next cooperative work program (2010) accordingly.

In addition, the Parties could incorporate the trilaterally-approved project selection criteria into the Strategic Plan to ensure individual projects are more results-focused and relevant to the three countries. It is understood that the existing project selection criteria (created in 2008) may be revised to reflect current Party considerations and to reflect the outcomes of the Denver Council Session.

In addition, the Parties and the Executive Director should ensure the development of more effective Operational Plans with greater impact by:

- focusing efforts on fewer and interrelated projects with more significant results;
- changing the work program and budget planning cycle from annual to biennial to increase program efficiency and reduce the transactional costs associated with its development; and,
- implementing a performance measurement framework.

With respect to this latter recommendation, it is worth noting the Secretariat hired an outside consultant—Eastern Research Group—to look at various issues, including how the CEC can improve its performance measurement framework. ERG noted that while the CEC has been successful at meeting its stated outcomes, it noted that: (1) in many cases, the CEC's outcomes do not link well to performance indicators; (2) in many cases, the CEC's performance indicators are not based on objective data; (3) the CEC's outcome statements are often vague and open to interpretation; and (4) some of the CEC's outcome statements

are not challenging and the bar should be set higher. The final ERG report could provide important insight on setting clear performance goals.

#### North American Fund for Environmental Cooperation

In 1995, the Parties created the North American Fund for Environmental Cooperation (NAFEC) as a means to fund community-based projects in Canada, Mexico and the United States that promoted the goals and objectives of the CEC. From 1995 to 2003, NAFEC awarded 196 grants for a total of C\$9.36 million and leveraged an additional C\$5 million contribution from other sources. NAFEC projects funded a wide range of activities, including some related to biodiversity, green goods and services, energy, human health and air quality. The CEC terminated the NAFEC in 2003 “as a result of budget constraints.” An internal review of NAFEC in June 2000 concluded that NAFEC was achieving specific and substantial results and was making a significant contribution to the CEC’s goals. The NAFEC played an important role in capacity development, promoting grassroots community participation, particularly in Mexico, and in expanding the CEC’s constituency.

Council members should reinstate the NAFEC.

#### Modernizing the Submissions on Enforcement Matters (SEM) process

One of the key mechanisms under the NAAEC meant to enhance compliance with, and enforcement of, environmental laws and regulations is the citizen submission process. Described in Articles 14 and 15 of the Agreement, this process allows any person or nongovernmental organization residing or established in the United States, Canada or Mexico, to make a submission to the Secretariat asserting that one of the Parties is “failing to effectively enforce its environmental law.”

This mechanism is intended to be a non-adversarial process that facilitates understanding of environmental law and the enforcement policies of the Parties, and supports NAAEC objectives to promote public participation in the domestic enforcement process.

Concerns have been raised that the process takes too long and that the NAAEC, by its terms, terminates the SEM process once a factual record is prepared and made available to the public. In this context, the following actions could be taken:

- Current technological developments may provide opportunities to modernize and produce a more efficient and timely SEM process within the scope of the NAAEC. The process will be reviewed within a specified time-frame and deliver proposals to improve, modernize and make it more efficient in a manner consistent with the NAAEC. This approach is

consistent with recommendations articulated by the current executive director in Denver.

- Once the process has been modernized, the Secretariat CEC could then be tasked to launch an outreach campaign to improve the public's understanding of the purpose of the SEM process.

#### Reprioritizing and increasing transparency of expenditures

With an annual budget of US\$9 million, the Secretariat has accrued a surplus of nearly C\$3 million. The Parties could work with the Secretariat to analyze the causes for accrual of surpluses and propose the mechanisms to reallocate it systematically in the future. The Parties will work with the Secretariat to reallocate the current surplus as part of the next Operational Plan.

To further strengthen the CEC in this area, the Council could direct the Secretariat to implement actions and policies such as:

- public disclosure of all Secretariat and JPAC travel and hospitality expenses (i.e., quarterly web posting)
- limiting Secretariat travel to workplan implementation, Council and JPAC meetings, SEM-related issues and other travel required to carry out essential NAAEC-related duties (e.g., Art. 13 reports).
- limiting JPAC face-to-face meetings to three per year, including the CEC Council Session
- detailed annual budget forecasting
- providing a clearer accounting of project costs
- providing quarterly budget reports to working group leads which inform budget allocation

#### Clear direction to future executive directors at start of term

The Executive Director of the CEC Secretariat plays an integral role in delivering on governance issues and new priorities. As agreed in Denver, clear direction will be provided to future executive directors at the start of their term. This is an opportunity for the Council to highlight areas that require special attention in a particular context. For example, taking steps to address NAAEC Article 11(2)(c) regarding geographic and gender balance within the Secretariat or following up on the process to renew, revitalize and refocus the CEC, initiated by Council.

## Other opportunities - Strengthen the application of the NAAEC

Key provisions of the NAAEC provide for the development of rules and recommendations pertaining to environmental protection and enforcement. With a view to strengthening the application of the NAAEC, Council could direct their officials to:

- Review options for “model rules”, in the event of a dispute resolution.  
A core obligation of the NAAEC is for the Parties to effectively enforce their environmental laws. This obligation is made enforceable through the availability of formal dispute settlement proceedings contained in Part Five of the NAAEC that can lead to penalties or trade sanctions for “a persistent pattern of failure to effectively enforce environmental laws.” Under Article 28 of the NAAEC, the Parties committed to negotiate model rules of procedure to govern proceedings under this dispute settlement structure. The Parties began negotiation of the model rules in 1997, but those negotiations were suspended in early 2000 and never concluded.
- Develop recommendations regarding transboundary environmental impact assessment, notification, consultation and mitigation. Many transboundary environmental issues have a significant bilateral nature. To this end, Council could direct officials to consider and develop recommendations with respect to the (a) assessment of the environmental impact of projects likely to cause significant adverse transboundary effects; (b) the notification, provision of relevant information and consultation between countries with respect to such projects; and (c) the mitigation of the potential adverse effects of such projects, in accordance with Article 10(7) of the NAAEC.

## Timeline

A timeline to undertake work related to this Governance Proposal will be developed by the Executive Director in consultations with the Parties.