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26 August, 2013

Comments concerning the Joint Public Advisory Committee of the Commission for Environmental Cooperation Public Review of the First 20 Years of NAFTA and the NAAEC

The twentieth anniversary of the North American Free Trade Agreement (NAFTA) and the North American Agreement on Environmental Cooperation (NAAEC) offers a valuable opportunity to reflect upon the Commission for Environmental Cooperation's (CEC) progress and achievements to date, current activities and to look forward to the future.

While without a doubt progress has been made on environmental issues in the three jurisdictions over the past twenty years, ongoing challenges remain and new ones continue to present themselves. The Monarch Butterfly, the symbol of the CEC, has just been recorded at one of its latest migrations with the lowest population ever. This demonstrates the interconnectivity of ecosystems and the environment in North America which ignores the political boundaries of Canada, the United States of America and Mexico. Further work needs to be done in integrating cooperation in areas such as Species at Risk especially in the light of the current and foreseen impacts of climate change.

It is not solely animals which have had political boundaries drawn through their territories as there are indigenous communities in North America whose traditional territories predate the establishment of Canada, the U.S.A. and Mexico and subsequently are situated across present-day borders. These indigenous communities often find themselves dealing with two or more jurisdictions with completely different regulations that they are forced to comply with. This also includes at the least a doubling of government authorities, departments and other organizations with which the communities must deal with on a regular basis. These come with different networks, procedures and levels of funding. Consequently some indigenous communities are burdened by the extra workload and are faced with the unusual situation of complying with multiple regulations and policies which do not necessarily smoothly overlap in the same community. This is compounded by the fact that each country addresses its environmental issues based upon its own priorities. The CEC should focus on cross-border indigenous communities to assess how they are able to address environmental issues, what challenges they face and how they can be overcome when working within multiple jurisdictions. This can lead towards recommendations to the Joint Public Advisory Committee (JPAC) on how cooperation between the three countries can be improved to the benefit of shared ecosystems, Indigenous Peoples and border communities.

The CEC should prioritize engagement with Indigenous Peoples as Indigenous Peoples are among the most vulnerable populations in North America, many of whom live in poverty with worse health outcomes to the general population, live in environmentally sensitive areas, continue to live off the natural resources and food provided by the land and hold valuable traditional ecological knowledge. Due to strong physical, spiritual and cultural connection to the land and environment, Indigenous Peoples risk being more affected by environmental issues – and in different ways – than the general population.

The recent rail disaster in Lac-Mégantic has highlighted the inherent danger of transporting hazardous materials across North America, yet such a practice remains crucial to our shared economies. Prior to the disaster in Lac-Mégantic, a derailment in Northern Ontario near the Pic Mobert First Nation and Pic River First Nation caused a significant oil spill which potentially threatened the communities' water source. Chief Michano of Pic River First Nation has stated that he wants to know what is being transported on the trains that pass through his community and he is not alone. There are many indigenous communities in Canada and across North America that are dissected by major transportation routes including rail, road and waterway. Yet these indigenous communities are not made aware of the quantity and type of hazardous substances that are being transported through their communities. These hazardous substances would pose a threat to the environment and health and safety if a spill or leak occurred. This has far reaching impacts upon communities' ability to respond in the face of a spill or contamination of their lands. The CEC can play a facilitative role in promoting discussions on how to keep local and indigenous communities informed when hazardous materials which would pose a risk to the environment during a spill situation are being transported through their communities. This would lead to better emergency preparedness during a spill to minimize the effect upon the environment and human health.

The CEC has worked in the past to promote the comparability of Canada's National Pollutant Release Inventory, the U.S.A.'s Toxics Release Inventory and Mexico's Registro de Emisiones y Transferencia de Contaminantes. However, as the threshold required to report substances, the list of substance and even the method of release continues to evolve and change across all three programs, further work is needed to promote and integrate the programs. While releases of pollutants to air and waterways are known to inadvertently cross national borders, it is also known that certain Persistent Organic Pollutants accumulate in the north and therefore disproportionately affect Canada's Indigenous Peoples. The CEC needs to undertake further efforts to promote these pollutant release inventories and their interpretation and meaningfulness for Indigenous Peoples. Crucial to this work is looking at sources of pollutants that are beyond national borders and grounded in localized monitoring programs to assess their potential impact upon environmental health.

Key to the abovementioned pollutant release programs is an evolving understanding of the potential risks that specific chemical substances may pose to human and environmental health. New chemical substances are introduced to commerce daily and transparent and effective risk assessment must be undertaken before new substances can be allowed to be introduced to the environment. It is not only legacy pollutants that turn out to be persistent, bioaccumulative, or both. As such, chemical risk assessment programs such as Canada's Chemicals Management Plan, the U.S.A's action under the Toxic Substances Control Act and similar work within Mexico need to keep pace with and inform each other and come to similar conclusions in order to protect environmental health. Indigenous Peoples are often considered to be a vulnerable population due to the environmental health risks of consumption and exposure to contaminated traditional foods, air and water. Furthermore, Indigenous Peoples hold a cultural and spiritual connection to their traditional lands, medicines, plants, animals and waters. Often, alternate suggestions to avoid a contaminated food or geographic area are not culturally appropriate. Low-levels of contaminants not seen to impact health from a western scientific perspective can also be

seen as unacceptable from a holistic indigenous perspective on environmental health, especially as concerning traditional medicines. Better risk assessment and management of chemicals as can be promoted through the CEC could address some of the concerns raised by First Nations and lead to more effective programs in Canada, the U.S.A. and Mexico.

The impacts of climate change on the most vulnerable in North America are often exacerbated by the fact that these vulnerable people live in a perpetual state of poverty and extreme poverty. Indigenous Peoples, including First Nations in Canada are hyper-vulnerable to the changes and impacts brought on by a changing climate, because they often lack the resources (human and financial) to properly research, address, plan and adapt to on-going and/or current changes in their environment.

The shared historical experience of Indigenous Peoples, and their Tribal- and Nation-based knowledge of the environment serve as key benchmarks in understanding, and therefore, adapting to climate change. Recent meetings (2013) between First Nations and Tribal representatives in Bangor, ME, USA and Fredericton, NB, Canada brought to light that there is an immediate need to focus on better cooperation between and among Indigenous Peoples and mainstream climate change research, activities and processes. It is all but essential, if not for creating a comprehensive understanding of the climate change challenges facing all North Americans, but for the physical and cultural survival of geographically isolated Indigenous Peoples who exist in poverty and are susceptible to the impacts of climate change that necessary and sufficient supports be identified and allocated to foster capacity among Indigenous Peoples throughout North America.

The development of Indigenous Peoples' capacity to address climate change impacts and adaptations is essential, as the participants from the First Nations and Tribes stressed during their deliberations. The CEC can support this process by enhancing its focus on vulnerable communities, including more focused research and process that provides knowledge and skills transfers to and among Indigenous Peoples.

In light of the abovementioned concerns, the CEC should take steps to promote the profile of Indigenous Peoples in North America including their environmental concerns, knowledge and solutions. Further capacity building is needed in order for Indigenous Peoples to address their environmental problems in light of continued risks posed by activities that originate in the broader North American economy, legislative and regulatory regimes. Trade, economic and environmental legislation, regulation and policy within North America needs to be grounded in the principle of free, prior and informed consent for indigenous communities, and other communities that stand to be potentially affected by the legislation, regulation or policy in question. The CEC can raise awareness of the environmental impacts that the North American Free Trade Agreement has had upon Indigenous Peoples and the opportunities that it has presented. One way in which this can be achieved is by ensuring that Indigenous Peoples are included in the National Advisory Committees and the JPAC. However, a more effective means might be to establish an Indigenous Advisory Committee to advise the CEC with regular opportunities for all of the committees to meet to discuss issues, share perspectives and advance joint recommendations.