



**COMMISSION FOR ENVIRONMENTAL COOPERATION  
Joint Public Advisory Committee Session No. 01-04**

**30 November 2001  
San Diego, California**

**Summary Record**

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) held a regular session on 30 November 2001, in San Diego, California, in conjunction with the CEC Symposium on Environmental Challenges and Opportunities of the North American Electricity Market.

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 01-09 on Request to conduct a public review of two issues concerning the implementation and further elaboration of Articles 14 and 15 of the North American Agreement on Environmental Cooperation, Annex D for Advice to Council 01-10 on Public Portion of the Council Session.)

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 CEC's web site at <http://www.cec.org>.

**DISCLAIMER:** Although this summary was prepared with care, readers should be advised that 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 San Diego. She noted the absence, with reasons, of Gustavo Alanís-Ortega, Steve Owens, Merrell Anne Phare, Raúl Tornel, Blanca Torres, and Serena Wilson.

She reported that an invitation had been made to the Alternate Representatives to attend this meeting and provide explanation on the recent decisions on pending Article 14 and 15 submissions; however, schedules did not permit.

As this was the last meeting for Ms Donna Tingley, a Canadian member, the Chair presented her with a plaque on behalf of JPAC. Ms Tingley's remarks are noted later in this record.

Finally, the Chair announced that Mr. Jonathan Plaut had been elected to serve as JPAC Chair for 2002, and warmly congratulated him.

### **Approval of the Provisional Agenda**

Two items were added to the agenda: a potential advice to Council on the topic of project evaluation and a potential letter to the Secretariat concerning the North American Fund for Environmental Cooperation (NAFEC).

### **Activities Report from the CEC Secretariat and Question Period**

The CEC Executive Director invited the public and JPAC to review her detailed written report. In the interests of time, she limited her remarks to two important highlights. The first was to comment on the success of the CEC Symposium on Environmental Challenges and Opportunities of the North American Electricity Market. She noted the high caliber of presentations and public comments. She expressed confidence that the Article 13 report on this subject would be a milestone in the CEC's work program. It will be submitted to Council in February 2002.

She then reported with pleasure that the CEC work plan and budget had been approved during the 14–16 November meeting of the Alternate Representatives. She congratulated the General Standing Committee (GSC) and the Secretariat staff for their hard work in preparing for this meeting and facilitating the approval of the work plan in "record time." She expressed her view that this reflected maturation in working relationships within the organization.

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

The director of the Submissions on Enforcement Matters (SEM) Unit was invited to make a status report. First the director announced that the *Metales y Derivados* (SEM-98-007/Environmental Health Coalition et al.) factual record had been delivered to Council the previous day triggering the 60-day period for Council to decide whether or not it will be made public. He thanked his team for their work. He went on to review Council's decision of 16 November 2001, to move forward on the development of five new factual records, reporting that his Unit was now staffed up and committed to handling the work on a timely basis.

Several members of JPAC then requested about the nature of the Council resolutions directing the development of these new factual records. Questions were raised on the implications of the wording requiring that the Secretariat provide the Parties with its work plan and provide an opportunity for the Parties to comment.

A member asked that this record note his concern that after a prolonged period of conflict over the issue of the independence of the Secretariat, this wording was an invitation to have the

Parties define the Secretariat's work and, given the troubled background of this issue, should be a warning of re-emerging problems.

The CEC Executive Director replied that the Secretariat will engage the Parties and the expectation is that the comments will be reasonable and not compromise the integrity of the process. A JPAC member noted that if the Secretariat felt the involvement of the Parties was creating difficulties (timeliness, independence, and efficiency) the Secretariat could bring this to the attention of JPAC. He also went on to note that the actions of Council had once again raised concern about lack of transparency. The decisions taken by Council go against JPAC's advice and public opinion and there is no public record as to why these decisions were taken.

Another JPAC member asked what the effect had been of previous factual records—is there any documented evidence of results? The CEC Executive Director replied that while information was anecdotal, in the cases of both Cozumel and BC Hydro, the submitters felt that there had been positive results. In both cases the submitters, said they were able to use the factual records to support environmental protection efforts.

A member then asked the director of the SEM Unit to describe, in the case of the Migratory Birds submission, the implications of Council's conditional approval: does limiting the scope of inquiry precluded the Secretariat from looking at anything else? The director replied that he could not answer that at this time, however, he offered that the starting point in developing the work plan is the submission itself, which provides a broader context for the specific cases. The same JPAC member noted that this is the first time the Secretariat has had to cope with such a constraint when dealing with patterns of non-enforcement. The director did not disagree.

Another JPAC member asked, in the case of Aquanova (SEM-98-006), what were the opportunities for the company to be involved in the development of the factual record, given that the events took place prior to the signing of the NAAEC. The director replied that the Secretariat can certainly look at relevant facts prior to the NAAEC even though whether the law was effectively enforced will only be addressed post-NAAEC, and there will be an opportunity for the company to present information.

### **Report from the National and Governmental Advisory Committee Representatives**

The Chair then invited the Canadian National and Governmental Advisory Committees (NACs and GACs) representatives to make their presentations (note: there were no US NAC or GAC nor Mexican NAC representatives available)

The representative of the Canadian NAC reported that they had sent a detailed advice on the CEC's Program Plan. Future work of the NAC will focus on energy (emissions reduction), economy and resources (industrialized agriculture), trade liberalization and the environment (harmonizing of standards) and engaging more Canadian provinces in the NAAEC.

A JPAC member asked if the Canadian NAC had commented on the current Article 14 and 15 issues. The NAC representative replied no, not yet.

**Special Presentation by a Representative of Environment Canada**

A representative of Environment Canada kindly agreed to provide an overview of the recent meeting of the Alternate Representatives. She made clear that she was not representing Council. She reported that the meeting was very productive. The 2002–2004 Work Program and Budget were approved and Council passed five resolutions concerning the development of factual records. Further, the Alternate Representatives began a preliminary discussion on the four outstanding issues raised in JPAC's Articles 14 and 15 lessons learned report. She noted that an informal meeting between the Alternate Representatives and JPAC was being planned, with 8 March 2002 being a tentative date. Canada was asked if the US EPA Administrator had confirmed her attendance for the June 18–19 regular session of the Council, to which the Environment Canada representative indicated that the United States had not yet confirmed. Finally she noted that the "chemistry" of this first meeting for the new US and Mexican Alternate Representatives had been very good.

A JPAC member strongly chastised the Alternate Representatives for their decisions on the pending factual records, stating that while the US NAC and GAC and JPAC all advised against imposing limitations, no explanations were provided nor acknowledgement that the advice had even been considered. He characterized this as an offense. He asked the Canadian government representative to convey a message from JPAC and the public that they are entitled to an explicit rationale for the decisions taken.

Finally another JPAC member reminded the Canadian government representative why this was so important. The strength of the CEC is the opportunity for direct public input and this is why the CEC had not experienced severe public criticism, as have other international organizations involved in trade. The CEC is supposed to be engaged in a transparent process. Of course we will not always agree, however, when decisions contrary to JPAC and public advice are made without explanation, our collective credibility is very seriously undermined.

**Public Comments on the Potential Advice to Council on the Opportunities of the North American Electricity Market**

The Chair explained that the relevant documents are posted on the CEC web site and encouraged the public to make comments during the review period. Comments today would further assist JPAC in developing its Advice to Council on this matter.

A member of the public noted the concern developing around the realization that Renewable Portfolio Standards (RPS) legislation is potentially vulnerable to trade challenges. He went on to note that in the area of encouraging renewables, the CEC could contribute by assisting in the discussion of harmonization. He suggested a possible solution by using NAAEC Article 10(6) where the Parties agree to cooperate to avoid trade disputes. One way would be to negotiate solutions via Article 104 of the North American Free Trade Agreement. He urged JPAC to discuss this possibility.

A JPAC member replied that the notion of using Article 104 to differentiate electricity from other sources is very interesting and he urged the speaker to put his thoughts on paper and forward them to the CEC.

Another member of the public discussed the opportunities for establishing sustainable power plants using offsets related to the realities of each country and each region within countries. Such an approach would encourage the development of zero liquid discharge facilities so necessary for water conservation, particularly in Mexico.

A representative of the Canadian NAC supported encouraging the development of renewables but cautioned that effort was also required to improve existing infrastructure. He also noted, regarding long distance transmission, that there is a 4.5 percent loss for every mile, necessitating increased generation. Lastly, one way of encouraging individuals to conserve would be for monthly statements to consumers to include information about emissions.

Another member of the public strongly urged the CEC to revitalize talks on transboundary environmental impact assessment as a way of addressing the many serious issues that emerge around electricity—water conservation, emissions, location of facilities, biodiversity, human health, etc. He was encouraged to send a written copy of his presentation to the JPAC Liaison Officer who would forward it to the Electricity Advisory Board.

**Action: Secretariat**

Finally, a member of the public drew attention to the high rate of childhood asthma in Mexico and how this is exacerbated by air emissions.

### **Discussion on a Potential Advice to Council on the Opportunities of the North American Electricity Market**

A discussion then took place on JPAC's next steps and it was decided to send a letter to Council identifying areas of focus JPAC considers important.

An advice to Council would be developed in March 2002 after JPAC had an opportunity to review the Article 13 report. The contents of the letter were discussed and finalized.

**Action: JPAC Chair**

### **Articles 14 and 15**

#### **Council's Vote on Five Resolutions**

JPAC made its concerns known earlier in the meeting. These are elaborated in Advice to Council 01-09, as approved (see Annex C).

**Action: Council**

**JPAC Lessons Learned Report**

It was agreed to wait until Council provides formal comments to the four outstanding issues before further discussion.

**Action: Council**

**Discussion for the JPAC Round Tables and Public Sessions**

Advice to Council 01-10 containing JPAC's recommendations was approved (see Annex D).

**Action: JPAC, Council**

**Project Evaluation**

After having reviewed a draft Advice to Council, it was agreed to further discuss the issue with the Secretariat and become more familiarized with recent developments. The JPAC Liaison Office reported that the Secretariat is in the process of establishing criteria and several projects were slated for evaluation. It was agreed to revisit this issue in the March 2002 session.

**Action: Secretariat, JPAC**

**The North American Fund for Environmental Cooperation**

After discussion on the need to adapt the funding guidelines to better suit the realities of a more limited program, it was agreed to send a request to the CEC Executive Director for the NAFEC Coordinator to prepare a draft. A working group was established to review this draft and develop a final version. The members are: Peter Berle, Laura Silvan de Durazo and Liette Vasseur.

**Action: JPAC Chair, Secretariat, JPAC working group**

**Administrative Issues**

The schedule of meetings for 2002 was reviewed.

7–8 March 2002 in Mexico City

Day 1: Joint meeting with the Expert Advisory Board on Children's Health and the Environment in North America

Day 2: JPAC regular session and joint informal meeting with the Alternate Representatives

17–19 June 2002 In Ottawa, Ontario (Dates to be confirmed by Council)

Day 1: JPAC round tables and joint meeting with the Alternate Representatives

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

Fall 2002 in the United States (dates and location to be confirmed)

Days 1–2: CEC summit on air quality

Day 2 (afternoon): JPAC regular session

December 2002 (Dates and Location to be confirmed)

Days 1–2: Second symposium on the environment and trade

Day 2 (afternoon): JPAC regular session

**Action: JPAC, Secretariat**

**Comments from Outgoing Member**

Ms Donna Tingley asked the Chair for the opportunity to say a few words. On a professional note, she remarked that, during the past three years, she had seen the work of JPAC become more challenging, reflecting the maturity of the organization and the substantive nature of topics under discussion. On a personal note, she expressed her very sincere appreciation for the experience of serving on JPAC and how working with colleagues from the United States and Mexico allowed her to learn more of other cultures, enriching her life. She thanked her fellow members, the Chairs over the past three years, the Secretariat and the JPAC staff, hoping that paths may cross again.

Various members expressed their appreciation for her major contributions to the work of the committee particularly in the area of Articles 14 and 15.

Jon Plaut, incoming Chair for 2002, took this opportunity to thank the outgoing Chair for her leadership over this very productive and eventful year.

**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 JPAC MEMBERS ON 18 JANUARY 2002



**Commission for Environmental Cooperation of North America**

**Joint Public Advisory Committee Regular Session 01-04  
Friday, 30 November 2001**

Hyatt Regency La Jolla at Aventine  
3777 La Jolla Village Drive  
San Diego, California  
Phone: (858) 552 1234 • Fax: (858) 552 6066

**Provisional Agenda**

**Chair: Liette Vasseur**

- 14:30 – 14:40 Welcome and overview by the JPAC chair  
a) Approval of the provisional agenda
- 14:40 – 15:00 Report from the CEC Secretariat and question period  
a) Activities report by the CEC Representative  
b) Status report on issues related to Article 14 and 15 Submissions
- 15:00 – 15:15 Report from the National and Governmental Advisory Committee representatives
- 15:15 – 15:45 Public comments on the potential advice to Council on the Opportunities of the North American Electricity Market
- 15:45 – 16:00 Break
- 16:00 – 16:45 Discussion on a potential advice to Council on the Opportunities of the North American Electricity Market\*
- 16:45 – 17:30 Articles 14 and 15\*  
a) Council votes on five factual record recommendations  
b) JPAC Advice to Council 01-07
- 17:30 – 18:00 Discussion for the JPAC Round Tables and Council Public Sessions\*  
a) Identify the issues for the JPAC Round Tables to be held in June 2002  
b) Improve the meeting formats
- 18:00 – 18:15 Administrative Issues\*  
a) JPAC working group: member appointments and rotation  
b) Next JPAC Regular Sessions
- 18:15 – 18:30 Observers' comments
- 18:30 End of the session

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\* Session open to the public as observers.



Session ordinaire n° 01-04 du Comité consultatif public mixte  
Joint Public Advisory Committee Regular Session 01-04  
Sesión ordinaria 01-04 del Comité Consultivo Público Conjunto

**30 novembre 2001 / 30 October 2001 / 30 de noviembre de 2001**

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**ADVICE TO COUNCIL: NO. 01-09**

**Re: Request to conduct a public review of two issues concerning the implementation and further elaboration of Articles 14 and 15 of the North American Agreement on Environmental Cooperation**

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

IN ACCORDANCE with its mandate to provide advice to Council under Article 16(4) of the North American Agreement on Environmental Cooperation (NAAEC);

RECALLING JPAC Advice to Council 01-07, the US National and Government Advisory Committees' Advice, and Secretariat determinations in favor of the preparation of broad factual records;

FURTHER RECALLING JPAC Advice to Council 01-07, and the US National and Government Advisory Committees' Advice concerning the independence of the Secretariat in the preparation of work plans;

HAVING reviewed Council Resolutions 01-08 (Oldman River II – SEM-97-006); 01-10 (Migratory Birds – SEM-99-002); 01-11 (BC Mining – SEM-98-004); 01-12 (BC Logging – SEM-00-004) and 01-09 (Aquanova SEM – 98-006), where the Secretariat was instructed for the first four submissions to prepare factual records dealing only with specific aspects of the cases, and for all, to provide the Parties with its overall work plan for gathering the relevant facts and the opportunity to comment on it;

RESPECTFULLY submits that the Alternate Representatives of the Council, in taking their unanimous decision on pending Articles 14 and 15 submissions, acted without sufficient background and consideration of the public interest;

THEREFORE, in the interests of transparency, independence of the Secretariat, respect for the strong public views on this topic, and the spirit of Council Resolution 00-09, requests that Council authorize a public review through the "JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15" process on two issues:

1. the matter of limiting the scope of factual records; and
2. the requirement for the Secretariat to provide the Parties with its work plan and the opportunity to comment on it.

FURTHERMORE, JPAC requests that Council decide whether or not it will refer this issue to JPAC for public review no later than 14 January 2002, so that JPAC has adequate time to prepare for the June 2002 scheduled Council review of the operation of Council Resolution 00-09.

APPROVED ON 30 NOVEMBER 2001



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**ADVICE TO COUNCIL: NO. 01-10**

**Re: Public Portion of the Council Session**

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

IN ACCORDANCE with its mandate to provide advice to Council under Article 16(4) of the North American Agreement on Environmental Cooperation (NAAEC);

HAVING provided prior Advice to Council 96-03 and 99-12 on how to improve the public portion of the Council Session held annually in June;

RECOGNIZING the continued improvements made at the 2001 Council Session;

SUPPORTIVE of Council's desire for continuous improvement;

THEREFORE, makes the following recommendations to Council on how to improve the public portion of these important sessions. [Note: This advice is limited to the public portion of the Council Session. JPAC will continue to meet Council formally in-camera to pursue discussions and public input over the Council Session.]

**General Organizational Rules**

- Establish a direct link between the JPAC regular sessions and the public portion of the Council Sessions;
- Identify a specific theme in advance of the annual session to focus the discussions;
- Hold the public portion of the Council Session before Council's in-camera meeting in order that the public may have an opportunity to exchange views and suggestions with the Council members before final decisions are taken;
- Include adequate time for the public to meet among themselves to encourage networking;
- Continue to ensure some time during the program where the public will have the opportunity to make comments to the Council on any issue related to the scope of the NAAEC;
- As was the case for the public portion of the Council Session in 2001, allow adequate time in the session with Council for presentations from the public and responses from Council members; and
- Confirm the dates and location of the next Council Session at the end of the current Session and begin to promote it to improve public awareness and participation for the next year.

## **Specific Theme for 2002**

- As stated in JPAC Advice to Council 01-08 on the Sound Management of Chemicals (SMOC), JPAC intends to take up the questions of education and capacity building opportunities for the SMOC working group and the public.

The 2002 program should be organized as follows:

### **Day One**

- Welcome and report from the JPAC Chair, the Alternate Representatives, the CEC Executive Director, and the National and Government Advisory Committee representatives, including a period for questions (1 hour);
- Plenary session on SMOC, including brief presentations by the SMOC working group representatives and questions from the public (1 hour);
- Parallel JPAC round tables, one on education and the other on capacity building related to SMOC. The facilitator for each round table, a JPAC member, will have the mandate to summarize the discussion from each round table at the public portion of the Council Session (3–4 hours); and
- Networking session where the public will have opportunities to meet to prepare common presentations (participants will prepare questions or comments and have them organized prior to public portion of the Council Session). By the end of this session, the participants will have to select three rapporteurs (one from each country) to present the major elements that should be brought up at the public portion of the Council Session. JPAC could assist or observe (2 hours).

### **Day Two**

- Official Opening of the Council Session (1 hour);
- Public portion of the Council Session (3 hours):
  - a) JPAC round table presentations on education and capacity building opportunities for the SMOC working group and the public (30 minutes: 15 minutes for each presentation made by the two facilitators followed by 15 minutes for comments by the Council);
  - b) Presentation of results from the Networking Session (45 minutes: 10 minutes for each presentation made by the rapporteurs—one from each country—followed by 15 minutes for comments by the Council);
  - c) Presentations from the public (individuals who would like to make an oral presentation during the section of the public portion of the Council session must indicate it on the pre-registration form). Around 26 presentations will be grouped in blocks according to the four CEC program areas and the NAAEC Specific Obligations (one hour and a half: three minutes per presentation, followed after each block by six minutes of comments by the Council). If the time permits, the Council should open the floor to the non-preregistered members of public.
- JPAC regular session on potential advice to Council (session open to the public as observers).

### **Day three**

- JPAC regular session on administrative issues (session open to the public as observers)

APPROVED ON 30 NOVEMBER 2001