



*Comité consultatif public mixte (CCPM)*

*Comité Consultivo Público Conjunto (CCPC)*

*Joint Public Advisory Committee (JPAC)*

**Consulta Pública en torno del  
“Borrador del proceso de revisión pública del CCPC  
sobre asuntos relacionados con la aplicación  
y ulterior desarrollo de los artículos 14 y 15 del  
Acuerdo de Cooperación Ambiental de América del Norte”**

**Resumen ejecutivo de los comentarios recibidos**

**Octubre de 2000**

**Consulta pública en torno del “Borrador del proceso de revisión pública del CCPC  
sobre asuntos relacionados con la aplicación y ulterior desarrollo  
de los artículos 14 y 15 del  
Acuerdo de Cooperación Ambiental de América del Norte”**

**Resumen ejecutivo de los comentarios recibidos**

**I. Introducción**

El Comité Consultivo Público Conjunto (CCPC) de la Comisión para la Cooperación Ambiental (CCA) recibió estas nuevas responsabilidades por medio de la Resolución de Consejo 00-09 adoptada durante la séptima sesión ordinaria en Dallas, Texas, en junio pasado.

En ese contexto, el CCPC organizó una consulta pública sobre dos temas relacionados con el mecanismo de las peticiones ciudadanas relativas a la aplicación efectiva de la legislación ambiental. Uno de los temas se refiere a un proceso propuesto para la revisión pública de asuntos relativos a la aplicación y ulterior desarrollo de los artículos 14 y 15 del Acuerdo de Cooperación Ambiental de América del Norte (ACAAN). El otro consiste en una revisión pública del historial de la presentación de peticiones, encaminada a identificar las lecciones que de él se derivan.

Este resumen ejecutivo reúne los comentarios ciudadanos en torno del “Borrador del proceso de revisión pública del CCPC sobre asuntos relativos a la aplicación y ulterior desarrollo de los artículos 14 y 15 del ACAAN” y se utilizará como documento de trabajo en la discusión plenaria sobre el tema durante la sesión ordinaria del CCPC del 13 al 14 de octubre de 2000 en Washington, DC.

Téngase en consideración que los comentarios sobre el historial de la presentación de peticiones con base en los artículos 14 y 15 se resumirán por separado. El informe final del CCPC al Consejo sobre ese asunto específico estará disponible en el otoño de 2001.

En tanto, se programó para principios de 2001 una segunda convocatoria al envío de comentarios sobre el historial de la presentación de peticiones con base en los mencionados artículos 14 y 15. La convocatoria se complementará con dos talleres públicos. El primero —“Lecciones aprendidas del historial de las peticiones ciudadanas”— está programado para el 7 de diciembre de 2000 en Montreal, Quebec, Canadá; el segundo se programó junto con la Sesión del Consejo en México en junio de 2001. Los comentarios públicos recibidos hasta la fecha están disponibles en el sitio de la CCA en Internet, <<http://www.cec.org>>, en la sección del CCPC. Ahí mismo se puede encontrar este resumen ejecutivo y los comentarios ciudadanos en torno del “Borrador del proceso de revisión pública del CCPC sobre asuntos relativos a la aplicación y ulterior desarrollo de los artículos 14 y 15 del ACAAN”.

Véase en el Apéndice A la Resolución de Consejo 00-09, y en el Apéndice B el “Borrador del proceso de revisión pública del CCPC sobre asuntos relativos a la aplicación y ulterior desarrollo de los artículos 14 y 15 del ACAAN”.

## **II. Convocatoria para la recepción de comentarios**

La Convocatoria para la Recepción de Comentarios en torno del “Borrador del proceso de revisión pública del CCPC sobre asuntos relativos a la aplicación y ulterior desarrollo de los artículos 14 y 15 del ACAAN” se publicó el 31 de julio de 2000. Con el apoyo del banco de datos de la CCA, los formatos fueron enviados a 5,800 personas de diversos ámbitos: organizaciones no gubernamentales, organismos gubernamentales, instituciones académicas, organizaciones empresariales y laborales, grupos indigenistas, medios de comunicación y personas en particular. Asimismo, la información se distribuyó en diversos medios electrónicos; entre otros, CECNet, el sitio de la Comisión de Cooperación Ecológica Fronteriza (Cocef), Infoterra, Environmental News Network y el sitio de Environmental Law Professors.

Además, la presidencia del CCPC alentó vía correo a quienes han presentado peticiones relacionadas con los artículos 14 y 15 para que enviaran sus comentarios, lo mismo hizo con las 90 organizaciones que en mayo hicieron llegar una carta al Consejo de la CCA con relación al proceso de presentación de peticiones y una carta a los Comités Consultivos Nacionales (CCN).

El día que esta información quedó a disposición pública, el sitio en Internet de la CCA registró 815 accesos, y el recordatorio público posterior, del 15 de septiembre, atrajo la visita de otros 915 interesados.

Recibidos los comentarios, el CCPC envió a cada remitente acuse de recibo.

Véase en el Apéndice C la Convocatoria para la Recepción de Comentarios en torno al “Borrador del proceso de revisión pública del CCPC sobre asuntos relativos a la aplicación y ulterior desarrollo de los artículos 14 y 15 del ACAAN”, publicada el 31 de julio de 2000.

## **III. Comentarios públicos**

La mayor parte de los comentarios se refirió al procedimiento con que el CCPC recibe y procesa asuntos que los ciudadanos ponen a su consideración.

Hubo también comentarios relacionados con el proceso propuesto para la revisión pública de asuntos relacionados con la aplicación y ulterior desarrollo de los artículos 14 y 15 del Acuerdo. El enfoque principal se orientó a la transparencia en la forma en que el CCPC recolecta, define y divulga la información.

Los comentarios públicos se resumen a continuación:

### **A. Comentarios generales sobre el proceso de revisión**

Algunos comentaristas expresaron su aceptación en general del proceso propuesto para la revisión pública. Las modificaciones propuestas son “sensibles”, “más que adecuadas”, “apropiadas y razonadas” y tienen “el potencial de traer la tan necesaria transparencia”, según varias opiniones.

También, algunos comentaristas solicitaron la aclaración del proceso de revisión en tres aspectos:

- a) Calendarios, ya que las acciones del CCPC deben tener plazos establecidos.
- b) Relevancia de asuntos, con relación a los criterios empleados por el CCPC para determinar si un asunto merece o no consideración.
- c) Consultas públicas, con respecto a las formas en que el CCPC las llevaría a cabo (talleres, consultas locales en cada país miembro, etcétera).

De hecho diversos comentaristas pidieron en términos generales que la consulta pública sea un proceso “activo” en el que el CCPC desempeñe un papel más ágil en la divulgación de su información, incluida la relacionada con su razón de ser, funciones y actividades. Un comentarista considera que la CCA ha hecho de Internet su medio de divulgación exclusivo, lo cual limita la disponibilidad pública de sus recursos, además de que la información actual no es muy accesible para el público en general debido a su terminología compleja y a su formato.

## **B. Comentarios relacionados con las responsabilidades del CCPC**

Algunos comentaristas solicitaron información adicional sobre la manera en que el CCPC tiene la intención de procesar y organizar los asuntos que reciba. Mientras algunos se ocuparon de qué es lo que constituye un “asunto” para el CCPC, otros recomendaron clasificaciones más eficaces de los asuntos.

Varios comentarios dejaron ver la necesidad de un mejor entendimiento respecto a la manera en que procede el CCPC para determinar si un asunto presentado por el público es o no relevante. Diversos comentaristas coincidieron en que la falta de criterios al respecto puede usarse para limitar la participación de los ciudadanos. También solicitaron al CCPC el establecimiento de plazos límite para el cumplimiento de sus acciones, incluida la confirmación de recepción de comentarios y de entrega de asuntos al Consejo. Varios comentaristas pidieron que se fundamenten por escrito las determinaciones, independientemente del resultado.

## **C. Comentarios relacionados con las responsabilidades del Consejo**

Algunos comentaristas expresaron su expectativa de que, al existir el requisito de que el Consejo explique por escrito sus decisiones, se prevenga el riesgo de que una de las Partes decida debilitar el proceso como reacción a peticiones ciudadanas en su contra, y citó la falla actual del proceso, que permite dicho conflicto de interés.

Otros más se refirieron al papel del CCPC frente al Consejo; por ejemplo, el requisito de que los asuntos los tenga que presentar el Consejo a fin de que el CCPC los escuche, los medios para recibir los comentarios (talleres, consultas...) y, en general, la necesidad de tener criterios claros sobre las funciones del CCPC y el Consejo en asuntos relacionados con la CCA.

#### **D. Comentarios sobre cómo recibe y transmite los asuntos el CCPC**

Los comentarios sobre la forma en que el CCPC recibe y transmite los asuntos del público fueron similares a los relacionados con sus responsabilidades. Algunos se refirieron al modo de obtenerlos: por ejemplo, los canales que se utilizarán para recibir las participaciones ciudadanas y la manera en que se determinarán dichos canales. Otros comentaristas se enfocaron en la necesidad de tener reglas fijas para determinar lo que el CCPC hará llegar al Consejo, esto es, si el CCPC enviará el texto original íntegro o un resumen de la petición pública.

Un comentario se refirió al hecho de que el CCPC se limita a recibir asuntos únicamente por referencia del Consejo, y recomendó que se faculte al CCPC para actuar por iniciativa propia en este sentido. Diversos comentarios solicitaron un marco fijo y liberal para determinar si los asuntos son o no relevantes.

Véase en el Apéndice D las Fuentes de Comentarios Públicos, y en el Apéndice E el Texto Íntegro de Comentarios Públicos.

## **Apéndice A Resolución de Consejo 00-09**

Dallas, a 13 de junio de 2000

### **RESOLUCIÓN DE CONSEJO 00-09**

#### **ASUNTOS RELACIONADOS CON LOS ARTÍCULOS 14 Y 15 DEL ACUERDO DE COOPERACIÓN AMBIENTAL DE AMÉRICA DEL NORTE**

EL CONSEJO:

RECONOCIENDO que la fortaleza de la Comisión para la Cooperación Ambiental se sustenta en la participación activa y continua del Consejo;

AFIRMANDO el papel esencial del Comité Consultivo Público Conjunto (CCPC) en proporcionar al Consejo asesoría sobre cualquier asunto en el ámbito del Acuerdo de Cooperación Ambiental de América del Norte (“ACAAN” o “el Acuerdo”);

CONFIRMANDO la importancia de la función singular del Secretariado en relación con sus responsabilidades en conformidad con los artículos 14 y 15 del ACAAN;

RECONOCIENDO la necesidad de transparencia y participación pública antes de que sean tomadas decisiones relacionadas con la instrumentación del proceso sobre peticiones ciudadanas contemplado en los artículos 14 y 15 del ACAAN;

ENFATIZANDO que los países que forman parte de acuerdos internacionales son los únicos facultados para interpretar dichos instrumentos y que, en términos del artículo 10(1)(d) del ACAAN, el Consejo es quien tiene la facultad para abordar cuestiones y diferencias que puedan surgir entre las Partes en relación con la interpretación o aplicación del Acuerdo;

HACIENDO NOTAR que, en términos del artículo 20(1) del ACAAN, las Partes procurarán en todo momento lograr el consenso sobre la interpretación y aplicación del Acuerdo y harán su mejor esfuerzo para resolver mediante cooperación y consultas todo asunto que pudiera afectar su operación;

CONCIENTE de que las Partes han planteado asuntos en relación con la interpretación y aplicación de los artículos 14 y 15 del ACAAN, y

REAFIRMANDO que los artículos 14 y 15 del Acuerdo constituyen el marco del proceso de peticiones ciudadanas;

POR LA PRESENTE RESUELVE que:

1. En asuntos relacionados con la aplicación y desarrollo ulterior de los artículos 14 y 15 del Acuerdo, el Consejo podrá acudir al CCPC para que éste conduzca una revisión pública con el objeto de ofrecer asesoría al Consejo sobre la forma de abordar dichos asuntos;

2. Cualquiera de las Partes, el Secretariado, los ciudadanos a través del CCPC o el CCPC mismo, podrán también presentar asuntos al Consejo relativos a la instrumentación o ulterior desarrollo de los artículos 14 y 15 del Acuerdo; el Consejo referirá al CCPC los asuntos que considere abordar, a fin de que el CCPC pueda llevar a cabo una consulta pública con el objeto de ofrecer asesoría al Consejo sobre la forma de resolver dichos asuntos;
3. Toda asesoría que el CCPC proporcione al Consejo deberá estar apoyada en una argumentación razonada;
4. Las Partes, por medio del Consejo, deberán considerar la asesoría del CCPC al tomar decisiones relacionadas con los artículos 14 y 15 del Acuerdo y deberán hacer público el razonamiento que las condujo a dichas decisiones, lo cual llevará a la conclusión del proceso;
5. a) El CCPC llevará a cabo una revisión de los antecedentes de la aplicación práctica de las peticiones que se han hecho en términos de los artículos 14 y 15 del Acuerdo, incluidas todas las actividades realizadas para aplicar dichos artículos, y proporcionará un informe en el que identifique las experiencias adquiridas;  
b) A fin de orientar al CCPC en el desempeño de dicha revisión, el Consejo ofrecerá al CCPC un memorando de referencia u otra información en la que identifique los asuntos que las Partes han planteado en relación con peticiones específicas;
6. En tanto el Consejo adopta cualquier decisión final, el Secretariado continuará aplicando el procedimiento de manera expedita a toda petición sobre asuntos de aplicación de la ley, en términos del Acuerdo y de las actuales Directrices;
7. Cualquier decisión que el Consejo tome, luego de recibir la asesoría del CCPC, deberá estar acompañada de una explicación por escrito de las Partes, misma que se hará pública;
8. El Consejo revisará en dos años la forma en que esta resolución ha operado.

APROBADA POR EL CONSEJO:

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David Anderson  
Gobierno de Canadá

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Carol M. Browner  
Gobierno de los Estados Unidos de América

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Julia Carabias Lillo  
Gobierno de los Estados Unidos Mexicanos

## **Apéndice B Borrador de la Revisión Pública del CCPC**

### **Borrador del proceso de revisión pública del CCPC sobre asuntos relacionados con la aplicación y ulterior desarrollo de los artículos 14 y 15 del Acuerdo de Cooperación Ambiental de América del Norte**

#### **Antecedentes**

El 12 de junio de 2000, el Consejo de la Comisión para la Cooperación Ambiental (CCA) estableció un proceso de revisión pública para asuntos relacionados con la aplicación y ulterior desarrollo de los artículos 14 y 15 del Acuerdo de Cooperación Ambiental de América del Norte (ACAAN). La Resolución de Consejo 09-00 designa al Comité Consultivo Público Conjunto (CCPC) como la entidad responsable de efectuar la revisión pública y asesorar al Consejo sobre la forma en que tales asuntos pueden abordarse. A continuación se describe el proceso de revisión pública y se incluye una lista de los pasos que el CCPC seguirá para su realización.

Para apoyar al Consejo y al CCPC en el cumplimiento de sus responsabilidades, la Resolución de Consejo 00-09 también asigna al CCPC la tarea de revisar el historial de las peticiones ciudadanas presentadas conforme a los artículos 14 y 15, incluidas todas las medidas que se han emprendido para aplicar tales artículos, y elaborar un informe en el que se señalen las lecciones aprendidas.

#### **Proceso de revisión pública**

Véase el diagrama adjunto del proceso de revisión pública.

#### **Responsabilidades del CCPC**

Las responsabilidades que la Resolución de Consejo 00-09 asigna al CCPC en cuanto a los asuntos relacionados con la aplicación y ulterior desarrollo de los artículos 14 y 15 del ACAAN son:

1. Recibir los asuntos planteados por el público;
2. Transmitir estos asuntos al Consejo;
3. Transmitir al Consejo los asuntos planteados por el propio CCPC;
4. Efectuar la revisión pública de cualquier asunto que el Consejo se proponga abordar y haya sido referido al CCPC, y
5. Brindar asesoría al Consejo —incluida una argumentación razonada— sobre la forma en que tales asuntos podrían abordarse.

## **Responsabilidades del Consejo**

De acuerdo con la Resolución 00-09, las responsabilidades del Consejo en lo que se refiere a asuntos relacionados con la aplicación y ulterior desarrollo de los artículos 14 y 15 del ACAAN son:

1. Recibir los asuntos planteados por cualquiera de las Partes, el Secretariado y el CCPC;
2. Recibir los asuntos que el público le transmita a través del CCPC;
3. Referir al CCPC cualquier asunto que de estos temas pretenda abordar;
4. Considerar las recomendaciones del CCPC en la toma de decisiones relacionadas con los artículos 14 y 15 del Acuerdo;
5. Explicar por escrito y hacer del conocimiento público cualquier decisión tomada luego de recibir la asesoría del CCPC, y
6. Al cabo de dos años (junio de 2002), revisar la funcionalidad de la Resolución.

## **Pasos de la Revisión del CCPC**

A efecto de cumplir con las responsabilidades que la Resolución de Consejo 00-09 le asigna, el CCPC efectuará un proceso de revisión transparente, justo y expedito. Al respecto, el Comité tendrá una doble responsabilidad:

1. Recibir los asuntos que el público plantee y transmitirlos al Consejo.
2. Hacer recomendaciones al Consejo sobre todos los asuntos que éste le refiera, sin importar su origen (una de las Partes, el Secretariado, el público o el propio CCPC).

Específicamente, el CCPC plantea el siguiente plan para desempeñar su papel conforme a la Resolución de Consejo 00-09:

## **Forma en que el CCPC recibe y transmite los asuntos planteados por el público**

1. Cualquier miembro del público que desee plantear al Consejo algún asunto relativo a la aplicación y ulterior desarrollo de los artículos 14 y 15 del Acuerdo de Cooperación Ambiental de América del Norte, deberá presentarlo por escrito al CCPC a través de la oficialía de enlace con el CCPC, vía correo electrónico a <[mpepin@cemtl.org](mailto:mpepin@cemtl.org)>, por fax al (514) 350-4314 o por correo a la dirección que se indica al calce.

Todo planteamiento que presente cualquier miembro del público por escrito al CCPC deberá describir los asuntos relativos a la aplicación y ulterior desarrollo de los artículos 14 y 15. El planteamiento por escrito no deberá exceder de tres páginas y podrá presentarse al CCPC en cualquiera de los tres idiomas oficiales de la CCA.

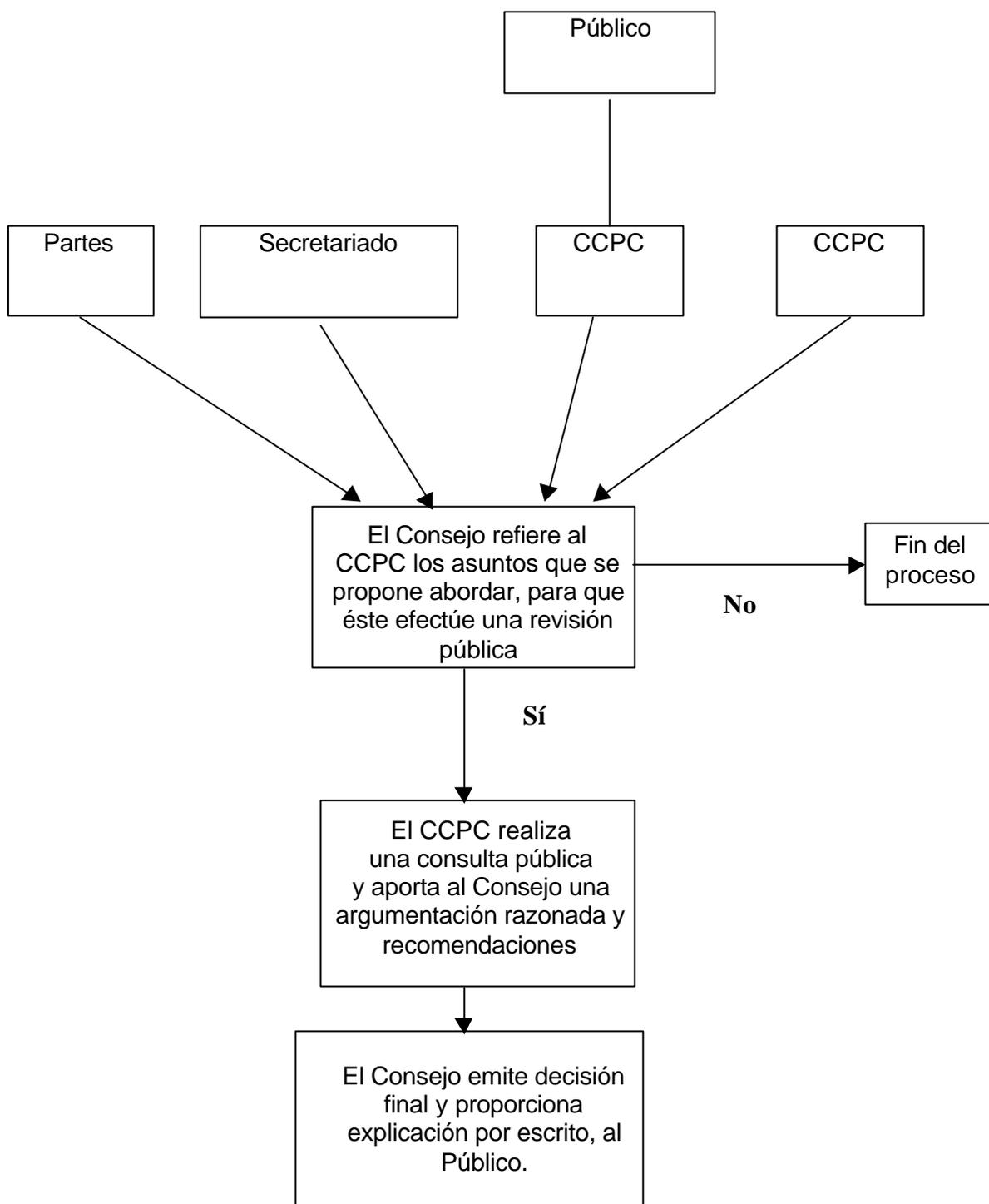
2. Si el CCPC determina que el planteamiento por escrito no alude a un asunto relevante para la aplicación y ulterior desarrollo de los artículos 14 y 15, el CCPC lo enviará al Consejo acompañado de una explicación por escrito del porque considera que el asunto no corresponde al ámbito de la Resolución 00-09. La explicación por escrito será enviada, dentro de un término de 7 (siete) días hábiles, a través del oficial de enlace del CCPC, a la persona u organización que planteó el asunto, publicándolo así mismo, en la página de la CCA en Internet: <<http://www.cec.org>>.
3. Si el CCPC determina que un planteamiento por escrito no alude a un asunto relativo a la aplicación y ulterior desarrollo de los artículos 14 y 15, el CCPC lo transmitirá por escrito al Consejo para su consideración a través del funcionario de enlace del CCPC. La determinación del CCPC se enviará a través del funcionario de enlace del CCPC a la persona u organización que planteó el asunto y también la difundirá en la página de la CCA en Internet: <<http://www.cec.org>> dentro de los siguientes siete (7) días hábiles.
4. Cuando el CCPC reciba la decisión del Consejo para abordar o no abordar el asunto planteado por cualquier miembro del público, ésta decisión será enviada por escrito a través del oficial de enlace del CCPC a la persona u organización que planteó el asunto y también la dará a conocer a través de la página de la CCA en Internet: <<http://www.cec.org>> en un plazo máximo de siete (7) días hábiles.

#### **Forma en que el CCPC revisará los asuntos que el Consejo le refiera**

1. A la recepción de un asunto remitido por el Consejo, el CCPC efectuará un proceso de revisión pública cuya forma se ajustará a lo que el Comité considere necesario para emitir su recomendación al Consejo. El formato elegido para la revisión pública se dará a conocer a través de la página de la CCA en Internet: <<http://www.cec.org>>.
2. Después de su revisión, el CCPC entregará al Consejo una recomendación por escrito, junto con una argumentación razonada. Dicha recomendación escrita será enviada a través del Funcionario de enlace del CCPC a la persona u organización que planteó el asunto, y también se publicará en la página de la CCA en Internet, en <<http://www.cec.org>> dentro de los siguientes siete (7) días hábiles.

## Aplicación y ulterior desarrollo de los artículos 14 y 15

### Diagrama del proceso de revisión pública



## Apéndice C Convocatoria para la Recepción de Comentarios

### Para difusión inmediata

#### **Convocatoria del CCPC para la recepción de comentarios públicos en torno al mecanismo de las peticiones ciudadanas de la CCA**

**Se busca obtener de la ciudadanía comentarios sobre el borrador del proceso de revisión pública y las lecciones aprendidas en relación con los artículos 14 y 15 del ACAAN**

**Montreal, 31 de julio de 2000.** El Comité Consultivo Público Conjunto (CCPC) de la Comisión para la Cooperación Ambiental (CCA) solicita la aportación de comentarios públicos en torno a dos asuntos relacionados con el mecanismo de las [peticiones ciudadanas](#) relativas a la aplicación efectiva de la legislación ambiental: uno es el propuesto proceso de revisión pública sobre los asuntos vinculados con la aplicación y ulterior desarrollo de dicho mecanismo, en tanto que el segundo se refiere a la revisión del historial de las peticiones ciudadanas con miras a identificar las lecciones aprendidas.

Ambas tareas se asignaron al CCPC mediante la [Resolución de Consejo 00-09](#), adoptada durante la séptima sesión ordinaria del Consejo, en Dallas, Texas, en junio.

El artículo 14 del [Acuerdo de Cooperación Ambiental de América del Norte](#) (ACAAN) autoriza a la CCA examinar una petición de cualquier persona u organización sin vinculación gubernamental que asevere que una de las Partes del ACAAN está incurriendo en omisiones en la aplicación efectiva de su legislación ambiental. Con ello se inicia un proceso que, previa aprobación del Consejo, puede concluir con una investigación en torno al asunto y a la publicación de los resultados en un expediente de hechos, según lo dispuesto por el artículo 15 del ACAAN.

#### **Comentarios sobre el proceso de revisión pública**

El documento titulado *Borrador del proceso de revisión pública del CCPC sobre asuntos relacionados con la aplicación y ulterior desarrollo de los artículos 14 y 15 del ACAAN* puede consultarse en la página de la CCA en Internet, en [http://www.cec.org/who\\_we\\_are/jpac/index.cfm?varlan=spanish](http://www.cec.org/who_we_are/jpac/index.cfm?varlan=spanish). En él se resumen el proceso y los pasos que el CCPC propone seguir en su revisión de los asuntos que el Consejo le refiera. Con el objetivo de garantizar un proceso transparente, imparcial y expedito, el CCPC convoca a la ciudadanía a aportar sus comentarios con respecto al documento.

El CCPC concluirá la elaboración de este documento con base en los comentarios públicos que reciba durante su próxima sesión ordinaria, a celebrarse del 13 al 14 de octubre en Washington, DC. Se invita a la ciudadanía a participar en dicha sesión e intercambiar con los miembros del Comité sus opiniones en torno al borrador del proceso de revisión pública. El [orden del día](#) de la sesión ordinaria del CCPC puede consultarse en la página de la CCA en Internet, en <http://www.cec.org>.

#### **Comentarios sobre el historial de las peticiones para identificar las lecciones aprendidas**

También se invita a la ciudadanía a aportar sus comentarios en torno al proceso de las peticiones ciudadanas en general, tal y como se ha puesto en práctica durante sus cinco años de vida, o bien en referencia a alguna petición específica que haya pasado por el proceso. A través de esta convocatoria para la recepción de comentarios, una segunda planeada para principios de 2001 y dos talleres públicos, el CCPC recabará los comentarios públicos y los analizará, a efecto de incorporarlos en el informe que elaborará para identificar las lecciones aprendidas a lo largo de la historia del proceso de las peticiones.

### Talleres públicos sobre el historial de las peticiones y las lecciones aprendidas

Conjuntamente con la sesión ordinaria del CCPC, el 7 de diciembre de 2000 se celebrará en Montreal, Quebec, un primer taller público sobre el historial de las peticiones ciudadanas y las lecciones aprendidas a lo largo del proceso. Se financiará la participación en este taller de cinco personas de cada país que representen, cada cual, a diversos grupos e intereses. Un grupo de trabajo del CCPC seleccionará en octubre a los participantes que recibirán apoyo financiero de entre quienes hayan aportado comentarios en respuesta a esta primera convocatoria. Los participantes seleccionados serán notificados a finales de octubre.

Se planea realizar un segundo taller público sobre el historial de las peticiones y las lecciones aprendidas conjuntamente con la sesión de Consejo en junio de 2001, en México.

### Fecha límite para la recepción de comentarios

Por favor asegúrese de enviar sus comentarios en torno al *Borrador del proceso de revisión pública del CCPC sobre asuntos relacionados con la aplicación y ulterior desarrollo de los artículos 14 y 15 del ACAAN*, y en referencia al historial de las peticiones ciudadanas y las lecciones aprendidas, **antes del 22 de septiembre de 2000**. Incluya su nombre, el de su organización o empresa, su dirección y números de teléfono y fax, así como su dirección de correo electrónico. Los comentarios pueden enviarse por correo electrónico a la atención de Manon Pepin, Oficial de Enlace con el Comité, a <[mpepin@ccemtl.org](mailto:mpepin@ccemtl.org)>, o bien por fax o correo postal a la sede de la CCA en Montreal o a la Ciudad de México:

Joint Public Advisory Committee Commission for Environmental Cooperation 393 St. Jacques West Suite 200 Montreal, Quebec H2Y 1N9 Fax: (514) 350-4314	Comité Consultivo Público Conjunto Comisión para la Cooperación Ambiental Progreso No. 3 Viveros de Coyoacán México, D.F., 04110 Fax: (525) 659-5023
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Canadá, Estados Unidos y México crearon la CCA para fomentar la cooperación entre los socios del Tratado de Libre Comercio de América del Norte en la aplicación del ACAAN, acuerdo paralelo al TLC. La CCA aborda los asuntos ambientales de los tres países desde una perspectiva regional, con especial atención a los derivados del libre comercio en la región.

El Consejo, cuerpo gobernante de la Comisión, está integrado por los secretarios de Estado federales de medio ambiente (o su equivalente) de los tres países y se reúne una vez por año. A la séptima sesión del Consejo asistieron el ministro de Medio Ambiente de Canadá, David Anderson; la titular de la Secretaría de Medio Ambiente, Recursos Naturales y Pesca de México, Julia Carabias Lillo, y la administradora de la Agencia de Protección Ambiental de Estados Unidos, Carol M. Browner.

Integrado por quince miembros, el CCPC es un organismo independiente y voluntario que asesora al Consejo de la CCA sobre cualquier asunto competencia del ACAAN.

Si desea mayor información u obtener otros documentos relativos al CCPC, sírvase consultar la página de la CCA en Internet: <<http://www.cec.org>>, o dirigirse a Jocelyn Morin, en el Secretariado de la CCA, al correo electrónico: <[jmorin@ccemtl.org](mailto:jmorin@ccemtl.org)>, al fax: (514) 350-4314, o al teléfono: (514) 350-4366.

## Apéndice D Fuentes de Comentarios Públicos

La siguiente tabla resume las fuentes de comentarios públicos recibidos, hasta el 22 de septiembre de 2000 (la fecha límite para presentar). El texto íntegro de los comentarios se encuentra en el Apéndice B.

	<b>Organizaciones No Gubernamentales</b>	<b>Organismos Gubernamentales</b>	<b>Organizaciones Empresariales</b>	<b>Total</b>
<b>Canadá</b>	3	1	2	<b>6</b>
<b>México</b>	2			<b>2</b>
<b>Estados Unidos de América</b>	2	1	1	<b>4</b>
<b>Total</b>	<b>7</b>	<b>2</b>	<b>3</b>	<b>12</b>

## Apéndice E Texto Íntegro de Comentarios Públicos

A continuación se transcribe el texto íntegro de comentarios públicos recibidos sobre el proceso propuesto de revisión de asuntos relacionados con la aplicación y ulterior desarrollo de los Artículos 14 y 15 del Acuerdo de Cooperación Ambiental de América del Norte.

El idioma original en el cual se presentó el comentario, y cualquier observación pertinente, se anota en la parte superior de cada documento.

A fin de facilitar su lectura, la siguiente tabla relaciona los comentarios públicos:

<b>Doc. No.</b>	<b>Organización</b>	<b>Representada por</b>	<b>A partir de la página</b>
(1)	Alberta Wilderness Association	Cliff Wallis	14
(2)	Canadian Council for International Business	Tinda Sebe y Scott Campbell	15
(3)	Center for International Environmental Law	Anne Perrault y Steve Porter	16
(4)	Centro Mexicano de Derecho Ambiental	Gustavo Alanis-Ortega y Ana Karina González	18
(5)	Friends of the Oldman River	Martha Kotsuch	20
(6)	National Advisory Committee (Canada)	William J. Andrews	25
(7)	National Wildlife Federation	Douglas Jake Caldwell y Andrea Abel	30
(8)	Sierra Legal Defence Fund	Randy L. Christensen	33
(9)	Terfa Inc.	Wilson Eedy	37
(10)	Texas Natural Resource Conservation Commission	Stephen M. Niemeyer Acosta	38
(11)	United States Council for International Business	Adam B. Greene	39
(12)	Environmental Health Coalition	Cesar Luna	42

[Documento No. (1). Idioma Original: Inglés]



## **Alberta Wilderness Association**

*"Defending wild Alberta through awareness and action"*

September 22, 2000

Joint Public Advisory Committee  
Commission for Environmental Cooperation  
393 St. Jacques West, Suite 200  
Montreal, Quebec H27 1N2  
Sent to: Manon Pepin: [mpepin@ccemt1.org](mailto:mpepin@ccemt1.org)

RE: Draft JPAC Public Review of Articles 14 and 15

Dear Members of JPAC:

Here are the Alberta Wilderness Association's thoughts on Article 14/15 Submissions:

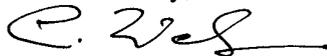
- A. **There must be accountability.** To this end, factual records must be made public and should clearly state conclusions and recommendations. All secretariat recommendations regarding the preparation of the factual record should also be made public as soon as the recommendation is made. There must be specific timelines that guarantee a response to submission within a reasonable time period.
- B. **There must be timeliness.** We do not feel there is any need for a 30 day waiting period for notification to submitters and the public after the CEC secretariat's recommendation on preparing the record has been provided to Council. There must be specific timelines that guarantee a response to submission within a reasonable time period.
- C. **Specific and Chronic Lack of Enforcement.** There must be avenues for ENGOs and the public to make submissions on specific failures to enforce as well as chronic/general failures to enforce. In fact, the latter probably deserve the most serious attention and scrutiny.

We are opposed to the idea that only Article 14 & 15 issues referred to JPAC by Council can be reviewed by JPAC.

In summary, we feel that Article 14 and 15 submissions can be powerful tools to achieve better enforcement of environmental laws. For ENGOs and the public, this is one of the most important components of the North American Agreement on Environmental Cooperation. It must not continue to be used by Council in a way that undermines public process and effective environmental law enforcement.

Thank you for listening to our concerns.

Yours sincerely,



Cliff Wallis  
President  
[deercroft@home.com](mailto:deercroft@home.com)



Canadian Council for  
International Business  
Conseil canadien pour le  
Commerce international

September 22, 2000

**Issues Concerning the Implementation and Further Elaboration of Articles 14 & 15**  
**The CEC Citizen Submissions Process**

The following constitute comments on the JPAC Public Review of issues regarding the implementation and further elaboration of Articles 14 and 15 of the NAEEC from the Canadian Chamber of Commerce and the Canadian Council for International Business.

**Guidelines for Citizen Submissions to the CEC**

Guidelines put in place to review citizen submissions made to the CEC have to be fair and balanced for all parties. Furthermore, it is expected the CEC will review citizen submissions in a credible and transparent manner, based on sound scientific evidence, and with due regard for the three elements of sustainable development, i.e. social, environmental and economic considerations. Confidence in the review process, in the CEC and in the ability of the three NAFTA governments to objectively review and respond to submissions, are of prime importance for fostering support and acceptance of this mechanism.

**The Implementation and Further Elaboration of Articles 14 and 15**

We consider that Articles 14 and 15 of the NAEEC are acceptable in their current form and allow for sufficient input from the public on North American environmental issues. At the same time, in order for these articles to work as effectively as possible, the NAFTA governments must be clear about how they will respond to legitimate claims and concerns. If the JPAC is to play a greater role in this process, it will be important for this body to remain balanced and credible, including having appropriate representation from business.

The function of the CEC citizen submissions process is to “promote the effective enforcement of environmental law” in the three NAFTA countries. At the same time, it is not the CEC’s role to set policies or mandate environmental practices – this is the proper domain of the NAFTA governments. In carrying out its responsibilities, the CEC must remain mindful of the sustainable development policies of the respective governments and not exceed their bounds. The Canadian government, for example, has clearly stated that: “We must ensure that trade policies support sustainable development and do not restrict legitimate actions to protect the environment and, at the same time, make certain that environmental policies do not unnecessarily limit economic opportunities” (DFAIT Trade and Environment Discussion Paper, May 1999). The citizen submissions process, and indeed any CEC initiative undertaken to advance the objectives of the NAEEC, must respect government policies that have been forged around consensus and established domestic law-making practices.

The CCIB and the Canadian Chamber remain ready to assist the CEC and the Canadian government in ensuring effective and balanced processes that will benefit Canada and the environment.

**Contact Information**

Tinda Sebe (CCIB) – [tsebe@ccib.org](mailto:tsebe@ccib.org), 613-238-4000

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[Documento No. (3). Idioma Original: Inglés]

**Center for International Environmental Law**

September 22, 2000

Manon Pepin  
JPAC Liaison Officer

**Re: Comments on Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15**

Thank you for the opportunity to comment on the JPAC process for reviewing issues related to the implementation and elaboration of Articles 14 and 15. We believe the new process for public review of issues has the potential to bring much needed transparency to the citizen submissions mechanism. Additionally, we believe JPAC, as an independent entity that has demonstrated significant leadership in providing advice to the Council, is well-suited to the task of facilitating the review. However, the extent to which the new process increases the fairness and smooth functioning of the citizen submissions mechanism will depend largely on how the Council responds to JPAC advice.

**We offer the following general observations and questions about the process:**

- It is unclear if JPAC intends to address each issue separately or group the issues chronologically or by subject matter. We suggest JPAC attempt to group the issues, if possible, to ensure an efficient process.
- Clearly, JPAC will need financial and staff resources to implement this process. It appears that for every issue raised by the public, JPAC might have up to four tasks: (1) review for relevancy; (2) draft a written explanation; (3) provide advice to Council; and (4) hold a public review. We encourage the Council to evaluate the workplan to determine where resources might be available. We suggest the Council begin with an evaluation of existing programs that have exceeded their original life expectancy.
- We are most hopeful that the requirement imposed on Council to explain its decisions will reduce the ability of a Party to weaken the process in response to submissions against it. We believe this conflict of interest created by Party actions has been a serious structural flaw in the existing process.

**How JPAC receives and transmits issues from the public:**

- We suggest JPAC identify the criteria it will use to determine whether an issue raised by a member of the public is relevant to the implementation and further elaboration of Articles 14 and 15. These criteria should be defined liberally to maximize the opportunity for public input; and, in cases of uncertainty, an issue raised by the public should be presumed to be relevant.

- We suggest JPAC identify the timeframe within which it must make this determination of relevancy and the timeframe within which the Council must decide to address or not address the relevant issue.
- JPAC proposes to draft a written explanation of why it considers an issue is not within the scope of Resolution 00-09. Will it provide a written explanation when it believes an issue is relevant? This might provide the Council with additional guidance on its decision to address or not address the issue.

**How JPAC reviews issues referred to it by the Council:**

- JPAC proposes to "hold a public review in such a form as it determines is necessary". We suggest JPAC describe the possible "forms" for public review and identify the criteria it will use to choose the form of review.
- Again, we suggest JPAC identify timeframes within which JPAC and Council tasks must occur.

Again, thank you for the opportunity to comment on the Public Review of Issues process. We look forward to working with JPAC and the Council to improve the citizen submission process.

Sincerely,

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[Documento No. (4). Idioma Original: Español]

**COMENTARIOS DEL CENTRO MEXICANO DE DERECHO AMBIENTAL, A.C.  
(CEMDA)**

**M.C. Gustavo Alanis-Ortega**

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**Responsabilidades del CCPC - Comentarios**

En relación a las responsabilidades del CCPC, consideramos que para poder recibir los asuntos planteados por el público deben de existir reglas claras que determinen la forma por medio de la cual se recibirán estos asuntos planteados por el público. Asimismo, será necesario precisar que se entiende por la palabra “asuntos”. Con respecto a la transmisión de estos asuntos al Consejo, será importante especificar como (la forma) se van a transmitir dichos asuntos al Consejo. Es decir, si se van ir al Consejo tal como se presentaron, si se va a hacer una síntesis/resumen de estos. En relación a la revisión pública, habrá que precisar que es eso de “revisión pública”, es decir, si va realizarse un foro, taller, seminario, consulta y cuales serán los criterios a seguir para su desarrollo. Se debería, así mismo, determinar el plazo del ejercicio de consulta.

Con respecto a la asesoría al Consejo por parte del CCPC, habrá un plazo para ello? Cuanto tiempo tiene el Consejo para abordar los asuntos? Finalmente quien abordará los asuntos?, el Consejo, el CCPC, un grupo técnico? Además, en ningún momento se le asigna un rol al Secretariado, jugará este algún rol?

**Responsabilidades del Consejo - Comentarios**

En relación a las responsabilidades del Consejo, consideramos que debe de especificarse claramente a que asuntos se refiere que tratará este Consejo, ya que en ocasiones se habla de “aplicación y desarrollo ulterior” y en otros casos se habla de “instrumentación o ulterior desarrollo de los artículos 14 y 15”. Por otro lado, se establece que el Consejo recibirá los asuntos que el público le transmita a través del CCPC, surgiendo aquí la pregunta de que pasará con los asuntos que lleguen directamente al Consejo sin pasar por el CCPC? Asimismo, habrá de contarse con los criterios necesarios, claros y transparentes que se seguirán para que el Consejo refiera al CCPC cualquier asunto que pretenda abordar.

Con respecto al punto 4 de las responsabilidades del Consejo, es importante saber si esto es con base a los casos ya presentados bajo los arts. 14 y 15 o en relación con las propuestas de modificación que en un futuro se planteen a los arts. 14 y 15. En relación al punto 5, es importante establece el tiempo que tiene el Consejo para explicar por escrito y hacer del conocimiento público alguna decisión. Finalmente, creemos que el plazo de dos años para revisar la funcionalidad de la Resolución, dadas las implicaciones de la misma para el proceso estipulado en los art. 14 y 15, es un lapso de tiempo muy corto, por lo que sugerimos que por lo menos sean 4 años.

## **Pasos de la Revisión del CCPC - Comentarios**

Tendrá que estipularse claramente la forma en la que se van a recibir los comentarios (foros, consultas, talleres, vía electrónica) y el plazo que tendrá el público para hacerlos llegar al CCPC. Asimismo, y como ya se comentó anteriormente, se debe de conocer por parte del público que es lo que recibirá el Consejo, su asunto tal cual como lo ha planteado, o una síntesis del mismo. Con respecto al punto 2, creemos necesario establecer los criterios que se seguirán para hacer las recomendaciones al Consejo y los tiempos para hacer las mismas.

## **Forma en que el CCPC Recibe y Transmite los Asuntos - Comentarios**

Punto 1: Esta “consulta” es permanente ? O durará un plazo determinado?

Punto 2: Tendrán que establecerse los criterios, lineamientos o políticas que le permitan al CCPC determinar que un planteamiento por escrito no alude o alude a un asunto relevante..., ya que si no se tienen estos criterios, podrá caerse en la discrecionalidad. Este comentario aplica también para el punto 3.

Punto 3: Tendrá que establecerse el tiempo que tiene el CCPC para transmitir al Consejo un planteamiento, así como establecerse, como se comentó anteriormente, los criterios para determinar que un planteamiento si alude... . El transmitir el planteamiento por escrito al Consejo no especifica si será el planteamiento tal como se presentó al CCPC o será un resumen del mismo.

## **Forma en que el CCPC Revisará los Asuntos que el Consejo Le Refiera - Comentarios**

Point 1: En cuanto tiempo se efectuará el proceso de revisión pública ? Nuevamente, que se entiende por revisión Pública (foro, talleres, seminarios, correo electrónico) ? Por otro lado, al establecerse que la revisión pública se ajustará a lo que el CCPC considere necesario..., creemos que es muy discrecional, por lo que habría que ser más cuidadosos con el lenguaje y evitar situaciones como esta. Asimismo, somos de la opinión que el formato para la revisión pública debe de conocerse desde un principio y no utilizar sólo a la página de la CCA para darlo a conocer, ya que muy poca gente tendrá conocimiento del mismo, en virtud de la inaccesibilidad a lo electrónico.

Punto 2: Consideramos que tiene que establecerse un tiempo determinado para que el CCPC entregue al Consejo una recomendación por escrito, así como un tiempo/plazo para que se notifique a la persona que planteó el asunto y para la publicación del mismo en la página de la CCA. Por último, proponemos agregar aquí un punto 3 donde se especifique que es lo que hará el Consejo con esa recomendación.

[Documento No. (5). Idioma Original: Inglés]

**Martha Kostuch, Vice-President  
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August 27, 2000

Joint Public Advisory Committee  
Commission for Environmental Cooperation  
393 St. Jacques West, Suite 200  
Montreal, Quebec H2T 1N2  
[mpepin@ccemtl.org](mailto:mpepin@ccemtl.org)

**RE: Comments on the Draft JPAC Public Review of Issues Concerning the  
Implementation and Further Elaboration of Articles 14 and 15 and the Submissions  
History – Lessons Learned**

Dear JPAC:

With the copy of this submission that I am sending by regular mail, I am enclosing a copy of the presentation that I made to the CEC Council on June 12, 2000. I believe some important lessons can be learned from how our submission has been and is being dealt with. It is interesting that I still have had no response from the CEC Council to the presentation I made to them in June.

In early July, I made a submission to JPAC outlining the Article 14 & 15 issues that I would like them consider reviewing. Since I have not yet received acknowledgement of receipt of that submission, I will repeat the list of issues again here:

- Factual records should include conclusions.
- Factual records should include recommendations.
- There should be a requirement to make factual records public.
- The 30 day waiting period for the public (and especially submitters) to be notified after the Secretariat's recommendation regarding the preparation of a factual record has been provided to Council should be eliminated.
- The substance of the Secretariat's recommendation regarding the preparation of a factual record should not be kept secret until the Council makes its decision on whether a factual record should be prepared.

- If there are interpretive matters related to a specific submission, the submitter should have an opportunity to comment on the interpretive matters.
- Submissions should be allowed on a general failure to enforce the law.
- The Secretariat and the Council should have timelines for them to carry out their duties.

Specifically regarding the Draft JPAC Public Review Proposal, JPAC should commit to respond to the public who make submissions, raise issues, etc. within a reasonable period of time.

The draft proposal implies that JPAC can only review Article 14 & 15 issues referred to it by the Council. I do not agree. JPAC should be able to review Article 14 & 15 issues on its own initiative. JPAC should also be able to review issues brought to JPAC by the public if they feel a review is warranted.

The draft proposal indicates that JPAC can hold a public review in the form it determines necessary. What are the formats for public review that will be considered? I think the options for public review should be included in the document.

I would appreciate an acknowledgement of receipt of this submission. Please keep me on the distribution list for this important topic. I am interested in participating in future consultations regarding Articles 14 & 15.

Sincerely,

Martha Kostuch

**Presentation to the CEC Council**  
**June 12, 2000**  
**by Martha Kostuch, Vice-President, The Friends of the Oldman River**

**Brief history of FOR's submission**

First submission was made in October 1996. After referring that submission to the party for a response, the CEC Secretariat rejected that submission because the same matter was before the Courts. The Secretariat made it clear that it was their interpretation that only if the Party had the matter before the Courts was there an automatic rejection of a submission. Never-the-less, in our specific case, they felt that the matter before the Court and FOR's submission were so similar that they recommended that a factual record not be prepared while the matter was still before the courts.

In October 1997, after the case dealing with the same matter had been withdrawn from the courts, FOR made another submission. There were considerable delays in dealing with FOR's second submission.

The first reason the Secretariat gave for the delays was a lack of manpower and resources.

The next reason the Secretariat gave for the delay was questions of interpretation. The Secretariat hired outside legal council to give them legal opinions on the interpretation question. We were never informed what the interpretation issues were nor were we provided any opportunity to provide any input or give our opinion on the interpretation issues.

Finally, on July 19, 1999, the Secretariat recommended to Council that a factual record be prepared. Unfortunately, the Council at their annual meeting in Banff in June 1999 revised the rules and required the Secretariat to keep the fact that they had made their recommendation to Council a secret for 30 days. I guessed when the Secretariat made their recommendation because the Secretariat stopped talking to me.

Even in August when the Secretariat finally made the fact that they had sent their recommendation to Council, the substance of the recommendation itself was still kept secret except for the fact that they recommended that a factual record be prepared.

On May 16, 2000, the Alternates (I think they should be called ghosts) made a decision and after over two and a half years since FOR's 2<sup>nd</sup> submission was made, the decision to defer making a decision was that finally the full text of the Secretariat recommendation was released.

**Key Elements of FOR's Submission**

FOR's submission alleges that there is a general failure by the Government of Canada to apply with and enforce the *Fisheries Act* and the *Canadian Environmental Assessment Act* or CEAA.

FOR provided evidence of the general failure of the Government of Canada to enforce these Acts.

In 1990-1001, over 12,000 Fisheries Act Section 35(2) authorizations were issued. In 1995, in a clear attempt to avoid triggering CEAA which came into effect in January 1995, the Department of Fisheries and Oceans released a Directive allowing letters of Advice to be issued. In 1995-96, less than 350 Fisheries authorizations were issued.

In May 1997, in the Sunpine case which was later withdrawn from Court, the Honourable Justice Muldoon stated in reference to the use of Letters of Advice.

“This is a transparent bureaucratic attempt at sheer evasion of binding statutory imperatives. It is neither cute nor smart and this court is not duped by it.”

The judge went to indicate that DFO was circumventing the environmental laws which they decline to obey.

### **Review of the Secretariat’s Recommendation Report**

The Secretariat understood that the Sunpine case that is still before the Courts is dealing with different legal issues than the Sunpine case which was used as an example in FOR’s submission.

The Secretariat also understood that FOR’s submission dealt with the general failure of the Government of Canada to enforce the *Fisheries Act* and CEAA and not a specific case.

In its recommendation report, the Secretariat states, “In the Secretariat’s view the submission raises matters whose further study would advance the goals of the NAAEC, notably the effectiveness of a Party’s various enforcement practices under one of the most important environmental laws of that Party.”

### **The Alternates Decision**

The Alternates were wrong to make a decision to defer making a decision on the need to prepare a factual record.

In the Resolution passed by the Alternates on May 16, 2000, the Alternates use the excuse that the Sunpine case is still before the Courts.

FOR’s submission alleges a general failure to enforce the *Fisheries Act* and CEAA, not a failure in relation to any specific case. Secondly, the Sunpine case currently before the Courts deals with different legal issues than FOR’s submission. After a lengthy review, the Secretariat understood these two points. Unfortunately, the Alternates did not.

Either that or the Alternates are saying that citizens can not make submissions alleging a general failure of a Party to enforce their laws. If so, I believe that is contrary to the purpose of NAAEC.

### **Request of Council**

I ask the Council to immediately refer FOR's submission to the Secretariat for the preparation of a factual record.

### **Comments on Council's Review/Interpretation of the Submission Process**

The Governments have a conflict of interest. The Governments should separate their responsibilities as members of the CEC Council from their interests as Parties subject to review. The Council should go out of its way to be seen as not interfering or tampering with the submission process.

The Council is undermining the integrity of the public submission process.

The Council is tying the hands of the Secretariat and limiting the Secretariat's ability to carry out its responsibilities under Articles 14 and 15.

**NAC**  
**CCN**

*Canada - National Advisory Committee*

*Comité consultatif national - Canada*

North American Agreement on Environmental Cooperation ~ Accord nord-américain de coopération dans le domaine de  
l'environnement

[www.naaec.gc.ca/english/nac/](http://www.naaec.gc.ca/english/nac/) [www.naaec.gc.ca/french/ccn/](http://www.naaec.gc.ca/french/ccn/)

September 15, 2000

**Mr. William Andrews**  
**Chairperson**

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**Jean-François Dionne**

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Hon. David Anderson  
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Hon. Oscar Lathlin  
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R3C 0V8

Dear Ministers:

Re: Proposed CEC Program Plan, JPAC Draft Article 14-15 Process, and NAC Appointments

---

On behalf of the Canada National Advisory Committee (Canada NAC), I am pleased to provide the following advice based on the Canada NAC's meetings by conference call on March 16, April 26, May 18, and May 24, 2000, an in-person meeting in Toronto on May 9, 2000, a June 11-13 in-person meeting in Dallas, Texas, in conjunction with the CEC annual meeting, and a conference call on September 11, 2000. NAC members also participated as observers in the March 23-24 meeting of the Joint Public Advisory Committee in Guadalajara, Mexico, the Symposium on Children's Health and the Environment sponsored by the Commission for Environmental Cooperation on May 10, 2000, in Toronto, and, as mentioned above, the CEC annual meeting in Dallas in June.

This letter of advice focuses on three topics:

2. The 2001-2003 Proposed Program Plan and Budget for the North American Commission for Environmental Cooperation, August 2000;
3. The Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15;
4. The process for appointments to the Canada NAC.

#### **2001-2003 Proposed Program Plan**

**Background.** The Canada NAC has received the August 2000 draft of the 2001-2003 Proposed Program Plan and Budget, however not all the members of NAC have yet had an opportunity to review it thoroughly. We understand that Canada is currently developing its initial response to the 2001-2003 Proposed Program Plan and Budget, so we will make the following comments based on our initial review. Later, the NAC may be in a position to provide additional comments.

**Recommendation.** The Canada NAC recommends that Canada incorporate the following comments in its response to the August 2000 Proposed Program and Budget for the CEC:

1. The Proposed Program and Budget is well written and clearly laid out. One particular strength is the attention given to the linkages between the various CEC programs and projects.
2. The CEC should be congratulated for presenting a high calibre work plan. The plan includes a balanced combination of established programs producing significant results, new projects that show great promise, and almost-completed projects that are being phased out.
3. The CEC Symposium on the environmental effects of NAFTA, scheduled for October 2000 in Washington, D.C., is a major achievement, culminating almost five years of intensive effort. We are pleased to see that the CEC is proposing a follow-up symposium in 2002. Evaluating the environmental effects of NAFTA is an ongoing assignment, one that is central to the North American Agreement for Environmental Cooperation.
4. The proposed project "Comparative Report on Environmental Standards," within the Law and Policy program area, is a welcome addition. As you know, in the past few years the Canada National Advisory Committee has recommended that Canada support such a project. One of the most common fears about NAFTA is that it will lead to a competitive lowering of environmental standards (the 'race to the bottom'). The NAAEC clearly mandates the CEC (and the Parties) to identify environmental standards in the three countries with a view toward upward harmonization and improvement of standards.

5. The Emerging Environmental Trends in North America project deserves particular support. To paraphrase the project Rationale (p.8), it is better to 'anticipate and prevent' than to 'react and cure.' The work done to date provides a strong basis for practical outcomes from this project.
6. The proposed Mapping Marine and Estuarine Ecosystems of North America project is an important extension of the excellent work already done by the CEC on terrestrial mapping in North America. By focussing on compatibility and coordination of existing and developing ecosystem classification systems and mapping, the CEC is maximizing its 'value added' contribution to the achievement of a truly North American perspective on the North American environment.
7. The Sound Management of Chemicals remains the CEC's 'flagship' program area. The successful implementation of the North American Regional Action Plan (NARAP) on DDT (acknowledging that the job is not finished) is a significant achievement. Implementation of the NARAP on mercury is now a high-profile challenge. Notably, success with the mercury NARAP will require substantial action within Canada and the United States, in contrast with the DDT NARAP, where most of the difficult improvements occurred within Mexico. With three new NARAPs proposed for development in 2001 (lindane; dioxins, furans and hexachlorobenzene; and environmental monitoring and assessment), committed participation from the three Parties and the relevant private sectors will be essential.

#### **JPAC Article 14-15 Public Review Process**

At the annual meeting in Dallas in June 2000, the Council decided to develop a process for reviewing possible changes to the Article 14-15 public submission process (Council Resolution 00-09), with JPAC providing the vehicle for public input. As you know, the NAC members present at the Dallas meeting strongly commended this approach. In furtherance of this decision, JPAC has recently released a proposal titled "Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15." Again, not all the members of the Canada NAC have had the opportunity to review this proposal in detail. As a general comment, however, it appears that the draft is consistent with the intention of Council Resolution 00-09.

In addition to the proposed public review process, we understand that a report on the history of the application of Articles 14 and 15 is being prepared (as required by Council Resolution 00-09). The content of this report will in many ways set the stage for the ensuing discussion of Article 14-15 issues. Our comment is that it is important that this report include a fair and accurate description of the perspectives of the organizations that have made Article 14 submissions, as well as the perspectives of the three Parties.

#### **NAC Appointments**

**Background.** The official terms of the current members of the Canada NAC expired in August 1999. Since that time we have been serving on a *pro tem* basis. In the NAC's October 7, 1999, letter of advice we encouraged the Governmental Committee to make appointments to the NAC as soon as possible in order to maintain the NAC's momentum and to provide direction for the future. In that letter, the NAC also proposed the following qualifications that we believe are important to maintaining a strong Canada NAC:

1. that the individual contributes to balance on the NAC in terms of geography, gender, social background, and sector;

2. that the individual has experience and interest in public policy matters going beyond the concerns of his or her own sector;
3. that the individual be willing and able to participate constructively regarding matters of trade and the environment; and
4. that the individual be in a position to devote consistent personal time and attention toward participating in the NAC.

In the NAC's January 26, 2000, letter of advice we noted that appointments had not yet been made and again we encouraged the Governmental Committee to act as soon as possible. At that time we understood that the federal ministers' office was reviewing possible appointments to the Canada NAC and to other CEC-related positions (e.g., Canadian appointments to JPAC and to the Selection Committee for the North American Fund for Environmental Cooperation). In the Spring of 2000, the NAC urged the federal government to make the appointments in time for the new committee members to attend the June annual meeting. At the June 2000 meeting in Dallas, members of the Canada NAC met with the federal minister and reiterated the importance of these appointments. It is now more than one year since the appointments of the NAC members officially expired and the new appointments have not been made.

The NAC is concerned that the failure of the Governmental Committee to appoint new members to the Canada NAC (and to the other CEC committees) reflects badly on Canada's commitment to the CEC. The lack of a properly appointed Canada National Advisory Committee at the annual meeting in Dallas was widely known among the participants from all three countries. In our view, this was a source of significant embarrassment to Canada and undermines the credibility of Canada's positions and proposals regarding the CEC.

At the meeting of NAC members with the federal minister in Dallas, the minister acknowledged the importance of the NAC appointments. We are aware that some progress was made toward making the appointments over the following months. However, almost three months later no appointments have been made. In our respectful opinion, it has to be concluded that the Governmental Committee's process for making committee appointments is dysfunctional. There appears to be a lack of sufficient political will and administrative efficiency.

In its most recent conference call meeting, the NAC discussed options that might improve the appointments process. One possibility that warrants consideration is for the NAC or the Governmental Committee to invite the public to make nominations for the committee positions. The final decision would be made by the Governmental Committee, of course. This system would promote public interest in the NAC and the other CEC committees. It would also provide a public accountability function in that the schedule for nominations and appointments would be well known to those interested in the CEC. In addition, a nomination process would ensure that the individuals being considered for appointment have committed that they are willing to devote the necessary time and attention to the committee obligations. I should repeat that this is merely a suggestion for consideration. The NAC is convinced, however, that something must be done to establish a functional process for making appointments to the NAC and the other CEC committees.

### **Conclusion**

On behalf of the Canada NAC I would like to thank you for your attention to the above comments. The Canada NAC looks forward to your response to this letter of advice in due course.

Speaking for myself, I would like to take this opportunity to inform you that I intend to resign from the Canada NAC when this letter of advice is completed. I have enjoyed my years on the Canada NAC very much, and I thank you for providing me with that opportunity. At this point, however, I am finding it impossible to carry out my role as Chair of the NAC in planning upcoming NAC activities in the absence of certainty as to when the new members of the NAC will be appointed. When the incoming NAC is appointed, I would be happy to provide it with whatever assistance I can, in order to facilitate a smooth transition.

Best wishes to you in your ongoing efforts to protect the environment.

Yours truly,  
William J. Andrews

Chair, Canada National Advisory Committee  
cc. distribution list attached

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**U.S. Environmental Protection Agency**

Mark Joyce

[Documento No. (7). Idioma Original: Inglés]

**NATIONAL WILDLIFE FEDERATION**

September 22, 2000

The Hon. Sra. Regina Barba, Chair  
c/o Manon Pepin, Liaison Officer  
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By Telefax, Electronic Mail, and First Class Mail

**RE: Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Article 14 and 15 (J/DISC/Rev.4)**

Dear Ambassador Barba:

The National Wildlife Federation (NWF) is pleased to provide the following comments in response to the Joint Public Advisory Committee's (JPAC) request for comments on the *Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Article 14 and 15 (J/DISC/Rev.4)* (hereinafter *Draft JPAC Public Review*). We appreciate this important opportunity to present our views on the implementation of the Commission for Environmental Cooperation (CEC) Council's commitment to enhance public review of the citizen submission process.

The National Wildlife Federation is the United States' largest not-for-profit conservation education and advocacy organization with over four million members and supporters. We welcome CEC Council Resolution 00-09 "Matters Related to Articles 14 and 15 of the Agreement (June 13, 2000) and we look forward to the immediate implementation of Resolution 00-09. As part of our commitment to constructive participation in this important initiative, the National Wildlife Federation offers the following comments on the major steps of the process as presented in the current *Draft JPAC Public Review*:

**I. How JPAC Receives and Transmits Issues from the Public**

- The *Draft JPAC Public Review* assign's JPAC the responsibility to determine whether an issue raised by a member of the public is relevant to the implementation and further elaboration of Articles 14 and 15. JPAC should elaborate in greater detail and through a

process allowing for public input, the broad manner and approach, including the establishment of appropriate timelines for action, it will employ to guide JPAC in these important determinations.

- JPAC should clarify whether it will provide a written explanation to Council when it determines that a written public submission does not raise an issue relevant to the implementation and further elaboration of Articles 14 and 15 *and* when JPAC determines that a written public submission *does* raise an issue relevant to the implementation and further elaboration of Articles 14 and 15. The current Draft JPAC Public Review is unclear as to whether a relevant public concern will be sent forward to Council as written, or accompanied by JPAC advice;
- JPAC should clarify when it receives Council’s decision to address or not to address the issue raised by the member of the public, the *Council’s written decision* (and not simply JPAC’s version of the decision) will be transmitted through the JPAC Liaison Officer. The Council must explain in writing any decisions taken following advice received from JPAC and make those explanations public. Council Resolution 00-09, para. 7, appears to support the public dissemination of a Council’s written decision as it states: “Any decision taken by the Council following advice received by the JPAC shall be explained in writing by the Parties and such explanations shall be made public.”;

## **II. How JPAC Reviews Issues Referred to it by the Council**

- in order to succeed and earn the confidence of all stakeholders, the process established by Council Resolution 00-09 must move forward with a presumption in favor of the Council referring most, if not all, issues concerning the implementation and further elaboration of Articles 14 and 15 to the JPAC. A presumption in favor of referring all issues addressing Articles 14 and 15 to the JPAC is consistent with the recognition in Council Resolution 00-09 of “the need for transparency and public participation before decisions are made concerning implementation of the public submission process under Articles 14 and 15 of the NAAEC ” and it is consistent with the articulation of the Council’s responsibilities in the current *Draft JPAC Public Review*;
- JPAC should clarify and elaborate in greater detail and through a process allowing for public input, the broad manner and approach, including the establishment of appropriate timelines for action, it will employ to “hold a public review in such a form as it determines is necessary”. Further elaboration of JPAC’s options for “form” of public review is necessary and issues for consideration include: opportunities for the public to provide oral and written comments; JPAC holding a public discussion of each issue, and; the possibility of drawing on experts or consultants or even government representatives to offer different perspectives and analysis of an issue;

### **III. Other Issues**

#### **Timelines:**

The *Draft JPAC Public Review* document does not designate specific timelines in which action must be taken. While we recognize the difficulties inherent in assigning specific time-sensitive deadlines for completing various portions of the process without the benefit of knowing the issues that will be raised, we believe that a better attempt at establishing timelines to ensure responsiveness and improved accountability is needed.

#### **Resources:**

Adequate and sufficient funding for the JPAC to carry out the public review process must be provided to ensure a transparent process with wide participation from civil society. The CEC's Proposed Program Plan and Budget should provide for other funds to be made available to the JPAC if issues arise requiring additional resources such as legal advisors, consultants, or extended public meetings.

\* \* \*

Thank you for the opportunity to submit these comments and we look forward to working with you as the implementation of Council Resolution 00-09 progresses in a timely and effective manner.

Respectfully submitted by,

Douglas Jake Caldwell  
Program Coordinator  
Trade and the Environment

Andrea Abel  
Program Associate  
Trade and the Environment

## **Sierra Legal Defence Fund**

September 22, 2000

**Via Facsimile (514) 350-4314**

Manon Pepin  
JPAC Liaison Officer  
Joint Public Advisory Committee  
Commission for Environmental Cooperation  
393 St. Jacques West  
Suite 200  
Montreal, Quebec H2Y 1N9

### **RE: “Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15**

On behalf of Sierra Legal Defence Fund, I am pleased to present the following comments, which concern the draft public review procedure developed by the JPAC. SLDF is also providing comments, in a separate document, regarding “lessons learned” from previous citizen submissions. A document describing SLDF and a description of its previous involvement in CEC activities is attached to these comments.

SLDF would like to thank the JPAC for its work in the development of Resolution 00-09 and its work thus far in developing the public review process. The JPAC has always been a strong advocate for a public voice in the citizen submission process.

The JPAC has done a commendable job of creating a transparent mechanism for addressing issues arising under Articles 14 and 15 which fully employs the mandate granted to the JPAC under Resolution 00-09. The public review process, as described in the draft document, is a significant step forward in resolving the issues that arise concerning the citizen submission process. SLDF is particularly pleased to see that the public review process makes specific, detailed provision for members of the public to raise issues with the JPAC.

Regarding the draft review process, SLDF has some limited suggestions regarding issues where clarification or further guidance through guidelines would be beneficial. SLDF has further comments regarding the ability of Resolution 00-09, and the process it mandates, to fully address the public concern that led to its development. SLDF provides these comments to the JPAC in its role as the CEC’s public representative, with the hope that the JPAC will communicate these issues to the Council for consideration prior to the finalization of the public review process.

#### **A. THE DRAFT PUBLIC REVIEW PROCESS**

The draft public review process developed by the JPAC is a significant step forward. SLDF only comments relate to clarification of some aspects of the public review process would be beneficial, including:

- Further elaboration of how the JPAC will determine the form and content of any public review when the Council has referred issues to the JPAC.

- Development of criteria to guide the JPAC’s consideration of whether issues referred by the public concern the implementation and further elaboration of Articles 14 and 15. Specifically, it would be beneficial for the JPAC to communicate its understanding of phrase “implementation and further elaboration” to the public. And,
- The JPAC should develop a time frame for making its determination whether an issue referred by the public concerns the implementation and further elaboration of Articles 14 and 15.

## **B. COMMENTS REGARDING RESOLUTION 00-09**

Resolution 00-09, and the public review process it establishes, were created to address public concerns that the Parties to the NAAEC were working clandestinely to weaken Articles 14 and 15 and attempting to influence the Secretariat’s handling of particular citizen submissions. Given the purpose and intent of the NAAEC and, in particular, the citizen submission mechanism, it is essential that the citizens of Canada, Mexico and the United States have confidence in the operation of Articles 14 and 15.

The management of the citizen submission process by the parties has importance beyond the context of the NAAEC. The citizen submission process is unique in the realm of international trade agreements as it provides the only mechanism allowing citizens to address the environmental effects of trade. As the Parties are well aware, public concern about the effects of free trade is high. A failure to defend the integrity and transparency of the citizen submission mechanism will simply strengthen anti-trade arguments.

It is everyone’s interest that the Parties ensure that the citizen submission process is accessible, credible and vibrant. Two aspects of Resolution 00-09 raise particular concern. First, the Council has provided little indication of how the decision to refer issues to Council will be made. Second, the wording of Resolution 00-09 makes unclear the scope of the issues that may be dealt with in the public review process.

In Resolution 00-09 states that “Council may refer issues concerning the implementation and further elaboration of Articles 14 and 15 of the Agreement to the JPAC...” No further guidance or indication is given regarding how the Council will exercise its discretion to refer issues to the JPAC. It appears that implementation and application of Articles 14 and 15 could be significantly altered without any public input so long as the Parties (or at least two Parties) agree to the alteration. This, understandably, may undercut public confidence in the citizen submission process. SLDF makes the following recommendations regarding Council referral:

- That guidelines be developed to direct when Council will refer issues to JPAC, which should include, at a minimum, the following protections:
  - that any new interpretation, policy or proposed agreement between the Parties which would change or alter previously established practices in the citizen submission process be referred to the JPAC; and

- that any proposed directions from Council to the Secretariat regarding the Secretariat's preparation of a factual record, other than initial instruction to prepare a factual record (set out in Article 15(2)), be referred to the JPAC.

The wording of Resolution 00-09 also raises uncertainty regarding the potential scope of issues that may be addressed under the JPAC's public review process. Article 20 of the NAAEC and the Preamble of Resolution 00-09 refer to "co-operation and consultations" regarding the "interpretation and application" of the NAAEC. However, section 1 of the resolution and the JPAC's draft public review process refer to the "implementation and further elaboration of Articles 14 and 15". The wording "implementation and further elaboration" is clearly broad enough to encompass any potential issues concerning Articles 14 and 15 that might arise. However, if the use of the words "implementation and further elaboration" was intended in anyway to limit the scope of issues potentially referred to the JPAC by the Council or the public, that position should be made clear.

While it is legally correct to state that the Parties, as sovereign entities who are party to an international agreement, can interpret and amend the NAAEC as they see fit, this approach is inconsistent with the history, spirit and intent of the NAAEC. The most successful citizen submission will, at most, result in information being presented to the public. Under the NAAEC, no other consequences flow from the citizen submission process. This stands in stark comparison to Chapter 11 of the NAFTA, which has awarded "investors" millions of dollars in compensation due to the effects of environmental laws and results in the effective striking down of those laws.

The citizen submission process is only effective to the extent that its is a strong process, independent of the Council. The life that the Council gives to the citizen submission process will be a clear indication of the Parties willingness to address the issues of trade and the environment.

Respectfully submitted,

Randy L. Christensen

## **THE SIERRA LEGAL DEFENCE FUND AND ITS INVOLVEMENT WITH THE CEC**

The Sierra Legal Defence Fund (SLDF), founded in 1990, is a non-profit environmental law organization that provides free legal services to the environmental community in Canada. SLDF has three primary goals:

- 1) To 'level the playing field' for environmental groups that simply cannot afford to go to court against large institutions when important wilderness values are at stake;
- 2) To bring carefully selected cases with the ultimate goal of establishing an aggregate of strong legal precedents that recognize the vital importance of environmental values;
- 3) To provide professional advice on the development of environmental legislation.

SLDF is funded by public donations and foundations grants. We currently have over 17,000 individual supporters across Canada.

SLDF has provided support and assistance to several organization and individuals interested in filing citizen submissions with the Commission for Environmental Cooperation (CEC). Randy Christensen, the Sierra Legal Defence Fund's representative to the June 2000 Council session, is counsel of record for three Citizen Submissions:

1. Submission 97-001, filed on behalf of the BC Aboriginal Fisheries Commission, the British Columbia Wildlife Federation, the Trail Wildlife Association, the Steelhead Society of British Columbia, Trout Unlimited (Spokane Falls section), Sierra Club (US), the Pacific Coast Federation of Fishermen's Association, and the Institute for Fisheries Resources. Submission 97-001 is the first submission from Canada or the United States to proceed to the Factual Record development stage. The Factual Record for BC Hydro was released in June, 2000.
2. Submission 98-004, filed on behalf of the Sierra Club of British Columbia, the Environmental Mining Council of British Columbia and the Taku Wilderness Association.
3. Submission 00-004, filed on behalf of the David Suzuki Foundation, Greenpeace Canada, the Sierra Club of British Columbia, the Northwest Ecosystem Alliance and the National Resources Defence Council.

Mr. Christensen has also attended previous CEC functions, including the January 1999 JPAC meetings regarding proposed changes to the Guidelines for Citizen Submissions, the June 1999 Council session in Banff, Alberta, where Mr. Christensen gave a short presentation to Council members, and the June 2000 Council meeting in Dallas.

[Documento No. (9). Idioma Original: Inglés]

In general I think public consultation needs to be an active process, not a passive one (which yours is). These need has been understood through some 20 years or more of my experience in many countries, using the CECInfo access to the UN Infoterra got the information to me. Your proposed process does not include such wide means of distribution or access. Also the approach to consultations seems to be rather formal and might even appear to need a lawyer involved. This should not be.

I commented on the final item of the last text page of you draft. My comment was that it is necessary to have an "active" or even "proactive" information program to be effective public consultation. A very good handbook on community consultation is available from the EUROPEAN FOUNDATION for the Improvement of Living and Working Conditions as a free Adobe acrobat document. If you are interested I will send it. I know that Environment Canada has published a number of guidelines in public involvement which should be available, and I have also published a paper on this many years ago. A group of your status should refer to these. All emphasize the need to bring the public into the process, not just put information on your web site and hope people find it. There are millions of web sites out there now. When was the last time you checked my site at [www.geoniger.com](http://www.geoniger.com). I do not expect you to have heard of this. The only way that I heard of your web site was that someone posted it to the United Nations Infoterra newsnet site which I monitor. Are the public who do not have internet of any value to you? How many of the Mexican public are on the net? You need to develop some more proactive means of getting the issues you want commented on out to the public.

My other annotation that I sent related to page two of your document "How JPAC receives and transmits issues from the public. First, as discussed above, this assumes that the public know who CEC and JPAC are, know of the issues, and know the mechanisms to send comments. As a long-term environmentalist who is involved in such things globally, including having written some of the environmental processes for Canada and Mexico under the agreement, I am surprised how little I know of what you are up to. If this was a public consultation program I was conducting under CEAA, it would not be accepted. But then, my major concern under this item is the very formal and almost legalistic manner in which it is laid out. I may be wrong, but I get the impression that I would need to conduct a scientific research program, hire a lawyer and prepare a thesis before I submit my formally written comments. Or else they will be discarded as unimportant or invalid. Again, how many of the public does this rule out or scare off.

I hope that this provides a more formal version of my reply. It was a lot more work than just attaching the annotations to your acrobat file and returning them.

Thank you for reading my ramblings and I do hope they are constructive.

Yours truly,

Wilson Eedy, Ph.D.  
Environmental Manager, Terfa Inc.  
Operations Director, Geomatics Nigeria Limited  
Editorial Board, The Canadian Field-Naturalist  
Advisory Board, African Journal of Environmental Assessment and Management  
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[Documento No. (10). Idioma Original: Inglés]

**Texas Natural Resource Conservation Commission**  
***Protecting Texas by Reducing and Preventing Pollution***

Robert J. Huston, *Chairman*  
R.B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*

September 22, 2000

Ms. Regina Barba, Chair  
Joint Public Advisory Committee  
Commission for Environmental Cooperation  
393 St. Jacques Ouest  
Suite 200  
Montréal, Québec H2Y 1N9

Dear Ms. Barba:

Thank you for inviting me to submit comments on the mechanism for citizen submissions on enforcement matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation. Let me first say that the draft procedure for public review on input re Art. 14 & 15 seems sensible, more than adequate, and appears to be a workable process that will lead to unanimous adoption of the final recommendations forwarded by the Joint Public Advisory Committee to the Commission for Environmental Cooperation.

In regards to comments relating to the citizens submissions process, I want to emphasize complication of the process. Under the original Articles 14 and 15 guidelines there were 11 steps. Last year the guidelines were revised and additional actions added to the process, making it more cumbersome. If a goal of the process is to make it easy for submissions to be considered by the Council, then no more changes to the current process are warranted. However, if the desire is for people to produce fewer submissions, then a lengthier, more complicated process will only serve to reduce the effectiveness of this tool for the residents of North America.

Thank you very much for your consideration. If there should be any further need to communicate with me, I can be reached at 512-239-3600 or by e-mail at [sniemeye@tnrcc.state.tx.us](mailto:sniemeye@tnrcc.state.tx.us).

Sincerely,

Stephen M. Niemeyer Acosta  
Policy Analyst, Division of Border Affairs

cc: Diana Borja, Director, Division of Border Affairs  
Dan Eden, Executive Assistant to Commissioner Marquez

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[Documento No. (11). Idioma Original: Inglés]



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ATA Carnet System

September 22, 2000

Joint Public Advisory Committee  
Commission for Environmental Cooperation  
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The United States Council for International Business (USCIB) welcomes the opportunity to comment on the *Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15*.

First, the USCIB considers Council Resolution 00-09 on Matters Related to Articles 15 and 15 of the Agreement an appropriate and reasoned response to the needs to the Parties to address outstanding issues regarding the management of the citizen submission process. As stated in our earlier comments on this subject, the USCIB supports the expanded role of the JPAC in the submission process while maintaining the Council's decision-making authority.

Second, the USCIB believes that the *Draft JPAC Public Review* document accurately reflects the scope and objectives set forth in the Council Resolution 00-09, and supports the JPAC in moving ahead with its review along the lines suggested in the document.

Last, concerning lessons learned from the history of the submissions process, as the USCIB has not been directly involved in any submissions to the CEC under Articles 14 and 15, we offer no specific comments on the process. However, a copy of our earlier comments regarding the submission process is attached for your reference.

Feel free to contact me with any questions or comments that you may have.

Yours sincerely,

Adam B. Greene  
Director of Environmental Affairs



## United States Council for International Business

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ATA Carnet System

December 8, 1998

Joint Public Advisory Committee  
Commission for Environmental Cooperation  
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The United States Council for International Business (USCIB) is pleased to submit the following comments on the September 4, 1998 revision of the *Guidelines for Submissions on Enforcement Matters under Article 14 and 15 of the North American Agreement on Environmental Cooperation* (NAAEC), which have been disseminated by the Joint Public Advisory Committee (JPAC) for public comment.

### Maintain Objective Process for Submissions on Enforcement Matters:

On balance, the USCIB believes that the process for submissions on enforcement matters developed by the CEC Secretariat in 1995 has worked effectively, and that it has adhered to the scope and intent of Articles 14 and 15 of the NAAEC. Indeed, the existing Guidelines have fostered an objective, transparent, and timely assessment of the submissions received by the Secretariat, effectively managing a broad range of issues across three federal jurisdictions. Thus, the USCIB recommends that any revisions of the Guidelines do not alter its existing framework of being a "fair, impartial, and transparent" process.

### General Comments:

In its August 3, 1995 comments on the CEC *Draft Procedures for Submissions on Enforcement Matters* (attached), the USCIB made four general comments that remain applicable to the Guidelines and the current revision:

- **Objectives of Article 14 and 15:** The primary objectives of these articles is to bring out the facts of a relevant issue and contribute to its resolution through cooperative dialogue, thereby assisting the regulatory agency in improving its effectiveness. To date, the submission process has conformed with this objective.
- **Transparency:** The entire process should remain as transparent as possible without breaching confidentiality requirements.

- **Due Process:** The process should remain one based on the concept of due process, as well as support and uphold due process in the Parties' three national jurisdictions. Commendably, the Secretariat has, through the existing Guidelines, remained focused on the primacy of national laws under the NAAEC.
- **Role of the JPAC:** While the JPAC's role in the review and revision of the Guidelines is essential, the Committee should also be used as a source of expertise and judgment on the factual issues of the submissions, as it is distinct from the Parties, the Secretariat, and the submitters.

#### Specific Comments:

Insofar as the revised Guidelines for public comment appear to maintain the objective, transparent, and timely procedures of the existing Guidelines, the USCIB would again recommend that as little as possible be modified, focusing on procedural issues that warrant improvement. However, a number of issues may be usefully raised in this review of the Guidelines. The numbering below follows the Revised Text:

- **Section 4.5:** The Guidelines should also allow for notification of any third parties referenced in the submission.
- **Section 7.2:** The Guidelines should directly reference Article 45.1 of the NAAEC regarding the definition of "effectively enforce its environmental law".

#### Conclusions:

As stated above, the goals of the submission process are to effectively and efficiently resolve disputes between a private group and an environmental regulatory agency, to increase cooperation among the Parties to the Agreement on such issues, and to ultimately improve the effectiveness of environmental protection. The existing Guidelines and the submission process has served those objectives well to date, and the revision process should in no way alter its general framework.

The USCIB would welcome the opportunity to continue to participate in the Guidelines revision process, particularly at the JPAC roundtable on the Guidelines to be held next January in Montreal.

Sincerely,

Adam B. Greene  
Director of Environmental Affairs

October 6, 2000

Joint Public Advisory Committee  
Commission for Environmental Cooperation  
393 St. Jacques West, Suite 200  
Montreal, Quebec H2Y 1N9

**Re: Comments on Issues Relating to CEC's Citizen Submissions Mechanism**

Dear Members:

Environmental Health Coalition (EHC) is thankful for the opportunity to comment on the *Draft Document of the Process for Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15* of the NAAEC as well as on *Submissions History Leading to Lessons Learned*. As petitioners of a pending submission under these articles we have gained first-hand experience of this process which in turn can serve to examine the effectiveness and efficiency of Articles 14 and 15 submission process.

The following comments relate only to the *Draft Document of the Process for Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15*. EHC will reserve its comments on the specific issues related to our pending submission as it has moved through the process for future comment sessions next year.

**General Comments on the Draft Document**

- **The Review Process Must Ensure Equal Access.** Under the proposed process, the public, including petitioners in a submission, must first address a particular issue of concern to the JPAC which will in turn carefully review it and analyze it prior to any decision to present it before the Council. A Party however, can go directly to the Council on any issue of concern without JPAC's initial review and analysis. **Under this format, the public, primarily a petitioner bringing an issue for review concerning its submission, will be placed in an unfair disadvantage. The Petitioner(s) will be subject to a first layer of review process compared to a Party which can go directly to the Council despite the fact that it may also part of the same submission.** In essence, such a process poses an undue burden on the public whenever there is a dispute as to the interpretation or implementation of Articles 14 and 15 because it is the only sector of stakeholders who must go through the JPAC prior to the Council for review. In order to ensure a more equitable process, a Party must bring any issue of concern to the JPAC if that Party is part of a submission and the issue relates that submission. The JPAC must in turn apply the same procedures to determine whether the issue of concern merits further review by the Council.
- **The Process Must Ensure Transparency and Fairness to All Involved.** Related to the first comment, the review process must strive to achieve utmost transparency. If a member of the public or a petitioner to a submission brings an issue to the JPAC for review related to a particular submission, the parties involved in the specific submission must be informed and be given an opportunity to comment or respond to the issue being placed for review. Similarly, **if a Party to a submission raises an issue for review related to the submission, the JPAC must notify the petitioners, must send a copy of the statement by the Party to petitioners and must give them an opportunity to respond to the statement prior to any decision by the JPAC or Council.** Because it is expected that the majority of issues raised for review will be concerning the treatment of pending submissions, it is imperative that all the parties involved be given an opportunity to participate in the review process.

- **The JPAC Must Conduct Public Review Before It Makes Its Recommendation to the Commission.** The public should be given the opportunity to present before the JPAC its position as to why should the Council review and resolve the issue being presented. The JPAC will only benefit from such public discussion in order to make a more intelligent and objective recommendation to the Council.
- **The Review Process Must Occur Within a Timely Manner and Must Not Cause Undue Delays in the Overall Article 14/15 Submission Process.** It is imperative that the review process for issues concerning the implementation of Articles 14 and 15 do not serve to further delay the overall submission process. **To safeguard such potential delays, the review of issues should have specific time limitations for review and analysis.** As discussed below in the Specific Comments section, it is unclear from the draft as to the amount of time allowable for review and response of issues presented to the JPAC and Council for review.

### Specific Comments on the Draft Document

- **Raising an Issue with the Council.** The draft document provides that a member wishing to raise an issue must do so in writing not exceeding 3 pages. EHC believes this is an acceptable initial step in identifying and addressing the issue of concern. However, the JPAC must take a flexible approach to allow the submitter to further elaborate and articulate with specificity the nature of the concern at issue when it is of such a complex nature that it may not be able to be fully presented within the 3 page requirement. Additionally, the submitter must be given a priority when
- **Time the JPAC Has to Review and Respond to Inquiry.** It is unclear from the draft document the amount of time the JPAC will have to review an issue brought by the public. The review process must have strict time lines in order to assure effectiveness and efficiency. Although the draft specifies the time it shall take to publish a particular decision, it does not provide the time the JPAC may take in reviewing a particular issue. **It is of utmost importance to maintain a process with strict mechanisms that will ensure prompt response and transparency. Absent those mechanisms, this review process will prove ineffective, and instead will be disruptive to the overall submission process.** Generally, 30 to 45 calendar days should be considered to be reasonable time to review and respond to an issue presented by the public.

Respectfully submitted,

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