



U.S. Governmental Advisory Committee
*Independent Federal Advisors
on the North American
Agreement on Environmental Cooperation*

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The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

The Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) held its forty-seventh meeting in Washington, D.C. on November 16-17, 2016. This letter represents our full advice resulting from that meeting.

Office of International and Tribal Affairs Acting Assistant Administrator Jane Nishida briefed the committees on the content of the Ministerial Statement from the Council Session held at Mérida, Yucatán, Mexico, on 9 September 2016. Ms. Nishida also reviewed priorities for the forthcoming two-year Operating Plan, and, recognizing that a majority of the committee members were attending their first meeting, she reviewed the CEC governance structure and roles of the Council, Alt Reps, and Secretariat. And as always, Senior Advisor for North American Affairs Sylvia Correa also offered valuable insight throughout the meeting.

JoAnn Chase, Director, American Indian Environmental Office (AIEO), provided the committees with a briefing on the interagency MOU for coordination and protection of treaty rights. This agreement is a milestone and the GAC congratulates you and EPA for the leadership your agency provided in this effort. Ms. Chase also stated that the Eco Ambassadors program was running well and the Local Environmental Observers program is expanding. She then announced that she will soon be leaving her position with EPA. The GAC wishes to express our appreciation for Director Chase's dedication and limitless optimism for progress in the area of federal-tribal relations.

During our meeting Donna Vizian, EPA Acting Assistant Administrator for the Office of Administration and Resources Management, brought welcoming remarks and reviewed the responsibilities of FACA appointees, and thanked the members for their advice and the OARM staff for their support of our efforts.

The GAC received by teleconference a report from César Rafael Chávez, Executive Director of the CEC Secretariat. Director Chávez provided an update of programmatic progress under the Operation Plan and the current round of NAPECA grants.

The NAC and GAC had previously requested a briefing on the status of the Monarch Butterfly, which was provided by Donita Cotter of Interior's Fish and Wildlife Service. The GAC is grateful for Ms. Cotter's briefing and EPA's support of our request.

An update on the status of SEM submissions was offered by Robert Moyer, SEM Director at the CEC, with support from Lisa Goldman from the EPA Office of General Counsel.

JPAC Chair, Lindsay Brumwell, reported via telephone on the recent JPAC session in Ottawa, and alerted the committees to the forthcoming joint JPAC-TEK Roster advice. She also noted that their recent session was streamed via Facebook Live and they had 3,000 attendees through that service.

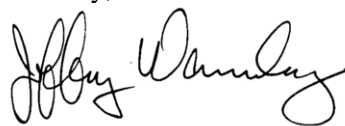
EPA arranged for briefings on marine litter and food waste to further our understanding of the charge questions for this meeting. Stephanie Adrian, representing the Office of Global Affairs and Policy at OITA gave an excellent briefing on marine litter, and Ted MacDonald from the same office provided comprehensive overview of the challenges of food waste management.

TEK Roster member Gail Small provided a briefing by telephone on the progress of the Roster as they settle into their advisory role and also summarized how TEK is gradually becoming part of the CEC's broader deliberations on the future of the North American environment.

As always, the GAC wishes to acknowledge the excellent support provided by the Federal Advisory Committee Management Division (FACMD) and thank Director Monisha Harris and NAC/GAC Designated Federal Officer Oscar Carrillo and all of the FACMD staff for their support, before, during and after the meeting.

With the forthcoming change of administration it is likely that this will be the last advice letter we will address to you as Administrator. On behalf of all members of the GAC who had the honor of serving during your tenure we would like to express our deepest appreciation for your principled leadership and unwavering commitment to the preservation and enhancement of our shared environment.

Sincerely,



Jeffrey Wennberg, Chair
Governmental Advisory Committee

cc: Jane Nishida, Assistant Administrator for the Office of International and Tribal Affairs
Monisha Harris, Director, Federal Advisory Committee Management Division
Oscar Carrillo, Designated Federal Officer
Sylvia Correa, Senior Advisor for North American Affairs
Lindsay Brumwell, Chair, Joint Public Advisory Committee
César Rafael Chávez, Executive Director, CEC
Members of the U.S. National and Governmental Advisory Committees

Governmental Advisory Committee (GAC)
to the U.S. Representative to the
Commission for Environmental Cooperation (CEC)

Advice 2016-3 (December 9, 2016):

Charge Questions: Marine Litter and Food Waste, Including Youth Engagement

The Charge Questions seek advice “... *on potential directions on marine litter and food waste as future areas of work in the CEC’s Operational Plan, and . . . provide advice on implementing a path forward on tangible initiatives for youth engagement, including indigenous youth, on the areas of marine litter and food waste.*”

After considerable discussion on the issue of marine litter and a brief discussion about food waste the committee concluded that our advice on each issue would contain many similar recommendations. As a result we have organized this letter differently from our traditional question-answer format. The advice that follows is first presented as a menu of suggestions within major CEC activity areas followed by a differentiation between marine litter and food waste where appropriate.

The committee believes progress in both areas will require public education and industry leadership. Specific recommendations in both areas follow, but prior to undertaking any new programs the committee recommends that the CEC evaluate the efforts of others.

A. Research and Analysis

1. *Research Other Programs:* The CEC could chronicle current national, sub-national, non-profit and private sector efforts to address the challenges of marine litter and food waste and share that information through a catalog or similar report. The committee is aware of a large number of governments and organizations engaged in various activities within both proposed program areas.ⁱ Many colleges and universities have advanced sustainability programs and some, like Western Michigan University and Green Mountain College, have had remarkable success at waste reduction in general and food waste in particular. Before embarking on potentially duplicative initiatives, the CEC should first identify current and past efforts by others, evaluate the effectiveness of those programs and conduct a gap analysis to flag any promising areas that have not been undertaken. The CEC could also propose expansion of successful local programs to new geographic areas and serve as the continental repository of this information for groups interested in undertaking local initiatives.
2. *Harmonize Methods and Measurements:* As has been the case in former and ongoing CEC projects such as the Pollutant Release and Transfer Register (PRTR), Black Carbon, and Climate Change, there will likely be a need to standardize the measurements and monitoring methods among the three countries to allow a continent-wide assessment of the problem and a reliable basis for measuring progress. As was the case in these other

areas, the CEC is perfectly suited to evaluate the differences and propose ways to harmonize measurements and methods.

3. *Evaluate Societal Costs*: If the project described above indicates that authoritative analyses of the societal costs of marine litter and food waste have not been conducted, the CEC would be an excellent sponsor of this research. National and sub-national policy makers need to evaluate the cost of initiatives to address these issues against the hidden societal costs we currently assume and those we will assume in the future, absent those initiatives.
4. *NAPECA Opportunity*: One committee member observed that residents of poor communities in arid climates are more inclined to rely upon disposables due to the scarcity of water. The NAPECA grant program could be used to solicit proposals to pilot projects designed to reduce the use of disposables or improve the management of the resulting waste in these communities.
5. *Evaluate Food Waste Logistics, Regulations*: Committee members observed that solving the food waste problem is in large part a challenge of logistics. Seeking and documenting best practices should be part of the CEC's research agenda, but the committee also believes local, state or federal regulatory constraints may dictate food distribution logistics in such a way as to hamper or obstruct the use of food that is currently wasted. Similarly, food safety regulations and liability concerns sometimes needlessly deny perfectly safe food to the hungry. One committee member mentioned a senior meals program in her community that had to cease sending excess meals home with elders due to regulation and liability concerns. The committee recommends that in addition to investigating and evaluating the logistical obstacles to better food management, the CEC should do the same in the regulatory and liability realms. For instance, the CEC could identify opportunities for the implementation of the "Bill Emerson Good Samaritan Food Donation Act". This regulation was created to encourage food donation to nonprofit organizations by minimizing liability.

B. Industry Leadership

1. *Industry Recognition*: Industry leadership could be incentivized through an award or a form of certification that recipients could display as evidence of their leadership. The U.S. Department of Energy's Sustainability Awards and EPA's Green Challenge Awards for federal facilities are two examples of recognition awards. The Green Buildings Council LEED certification and EPA's Energy Star certification are good examples of voluntary standards-based certifications that effectively incentivize and recognize excellence in environmental building design and manufactured product energy efficiency. If the research indicates that there are no comparable programs recognizing industry leadership in marine trash and food waste reduction, the committee recommends that the CEC either undertake the effort or, working with like-minded partner organizations, encourage or facilitate their creation.

2. *Create a Network of Industry Partners:* In the 2011-2012 Operational Plan the CEC undertook a project to facilitate greening the automotive industry's supply chain across North America by creating "a network of industry partners to share best practices from work already done in the United States and share information highlighting how companies in the automotive supply chain are improving the environment and creating economic opportunity throughout the manufacturing process in each of the three countries."ⁱⁱ If the research project identifies industry success stories deserving of promotion and replication a similar project to create a network of plastics, packaging, waste management and other industry partners could be created to address the marine litter problem. Likewise, leading food producers, distributors and retailers could be brought together to do the same to promote food waste reduction.

C. Public Education and Awareness

1. *Coordinate Education Campaigns:* The research will identify organizations engaged in public education and awareness campaigns in both issue areas. The CEC cannot undertake continental campaigns of this nature on its own but could play a role by partnering with those who are by bringing together sponsor organizations from all three nations and facilitating coordinated campaigns.
2. *Solicit Corporate Support:* Likewise, the CEC (or the environmental ministers themselves) could approach major corporations having a commitment to sustainability and encourage them to adopt one or both of these issues as a focus of their philanthropic efforts. In addition to potentially supporting traditional media messages, some corporate sponsors may have expertise and influence in social media which will be critical to reach, educate, and motivate youth. The CEC could facilitate matching the particular interest of the sponsor corporation and the education-awareness programs of agencies or nonprofits.
3. *Focus LEO on Marine Litter:* The Local Environmental Observers program would be a good vehicle to investigate and document the fate and result of marine litter in representative or environmentally sensitive locations. In addition to providing valuable information to help inform policy development, the initiative will raise awareness of the problem and promote youth engagement.
4. *Identify and Promote Youth Centered Projects:* In the course of the CEC's research into the projects and programs that are currently underway special attention should be paid to youth-centered projects. Examples are projects sponsored by schools, colleges and universities, the Boy Scouts, Girl Scouts and Extension Service programs such as 4-H, focusing on rural areas and food producers. The CEC could single out and celebrate for special recognition successful projects in both issue areas and seek to encourage these and other organizations to engage youth in similar activities.

D. Youth Engagement

1. *Youth Working Group:* In addition to the recommendations regarding youth engagement offered above, the committee believes EPA can expand youth engagement with the NAC

and GAC beyond the inclusion of a youth member on the NAC. EPA already has issue-focused partnerships with universities and colleges. The GAC recommends EPA use these relationships to form a youth working group to which questions like the current charge questions could be referred for feedback prior to meetings. Additionally, the EPA could develop relationships with tribal colleges, universities, and native studies programs to ensure involvement of indigenous youth in this working group. The youth working group could deliberate remotely and participate in NAC and GAC meetings by videoconference, minimizing budgetary concerns.

Recommendations:

The GAC recommends that the CEC:

A. Conduct research and analysis

- 1. of programs by others designed to address the marine litter and food waste problems;***
- 2. to harmonize measurements and methods across all three nations;***
- 3. to evaluate societal costs associated with both issues;***
- 4. through application of NAPECA grant incentives to reduce address disposable use in poor arid communities;***
- 5. to evaluate food waste logistics and regulations.***

B. Encourage industry leadership

- 1. through recognition/certification programs;***
- 2. by creating a network of industry partners.***

C. Promote public education and awareness

- 1. by seeking to coordinate existing education and awareness campaigns;***
- 2. by soliciting corporate support for campaigns;***
- 3. by focusing the LEO program on local monitoring;***
- 4. by identifying and celebrating youth centered programs.***

D. Youth Engagement

- 1. Create a Youth Working Group.***

Governmental Advisory Committee (GAC)
to the U.S. Representative to the
Commission for Environmental Cooperation (CEC)

**Additional Advice 2016-4 (December 9, 2016):
Dakota Access Pipeline Issue**

A number of GAC members brought up the issue of the Dakota Access Pipeline (DAPL). Because much has transpired since the November 2016 GAC meeting these comments reflect an understanding of conditions up to and including the denial of the Energy Transport Partners easement by the U.S. Army Corps of Engineers on December 4, 2016.

The issues underlying DAPL relate directly to many of the objectives and obligations of the NAAEC, especially Article 1(a-d, f-j), Articles 2, 3, and 5. DAPL represents a transboundary energy conveyance project integrally related to the CEC's third priority under the 2015-2020 Strategic Plan, that is, to promote sustainable communities and ecosystems. This project touches tribal treaty rights and consultation guidelines as well as transboundary energy development, global climate change, water quality and supply, cultural resource management, wildlife habitat, and human rights. The project would convey petroleum products from the Bakken Shale formation, which spans the U.S. – Canada border, through four U.S. states, and ultimately to markets worldwide, including via the Gulf of Mexico. The GAC is cognizant that the U.S. Department of State has primacy in this matter, but given the specific issues at hand, the GAC feels it appropriate for the Council to comment.

Given that Energy Transfer Partners have stated they intend to proceed with their work, the GAC recommends that the United States Government seek a Council resolution expressing support for the completion of a comprehensive environmental analysis of the potential consequences of the project. This analysis would ideally include an evaluation of potential threats to sustainable communities and ecosystems in the member nations. Further, the U.S. Department of State may find value in consulting with the TEK Roster of Experts if the CEC is supportive of the Roster assuming that role.¹

Recommendation:

The GAC recommends that the United States Government seek a Council resolution expressing support for the completion of a comprehensive environmental analysis of the potential consequences of the Dakota Access Pipeline.

¹ The GAC is not unanimous in offering this advice. Several members view the DAPL issue as a domestic issue because the pipeline is fully within the borders of the United States. They maintain that it is not appropriate to involve the tri-lateral CEC in a controversy among several federal agencies, U.S. states and a tribal nation.

ⁱ Examples include:

oceanspaces.org/marine-debris-free-california (marine protected area monitoring, newsletter, water quality),

<https://marinedebris.noaa.gov/> (grants, poster contest, blog, research, clearinghouse newsletter, guides, reports),

http://www.mywaterquality.ca.gov/monitoring_council/ocean_workgroup/ (State of California),

<https://www.westgov.org/> (Western Governors' Association marine T&E species),

<http://www.livingoceans.org/about> (Living Oceans Society - Canada),

<http://www.cep.unep.org/publications-and-resources/marine-and-coastal-issues-links/solid-waste-and-marine-litter> (The Caribbean Environment Program under UNEP),

<https://www.nrdc.org/issues/food-waste> (NRDC Food Waste),

<http://www.endfoodwastenow.org/> (End Food Waste Now),

<http://www.usda.gov/oce/foodwaste/index.htm> (USDA Food Waste),

<http://tfpc.to/food-waste-landing/food-waste-theissue> (Toronto Food Policy Council),

<http://www.secondharvest.ca/hunger-facts> (Second Harvest Canada),

<http://growfood.com/> (Food for Everyone – Mexican supermarket project),

<https://wmich.edu/sustainability/projects/post-consumer-food-waste-management> (Western Michigan University),

<https://studentlife.umich.edu/article/michigan-dining%E2%80%99s-holistic-approach-food-waste> (University of Michigan),

<http://www.michigan.gov/deg/0,4561,7-135-70153-372206--,00.html> (Michigan DEQ),

<http://www.usda.gov/oce/foodwaste/xmlSearch/linkFiles/zero.htm> (Central Michigan University),

<http://www.usda.gov/oce/foodwaste/participants.htm> (USDA)

ⁱⁱ <http://www.cec.org/our-work/projects/improving-economic-and-environmental-performance-north-american-automotive-industry-supply-chain>