

May 16, 2011

Committee Members	
Karen Chapman <i>Ohio</i>	The Honorable Lisa P. Jackson Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460
Timothy Bent <i>Tennessee</i>	
Diana Bustamante <i>New Mexico</i>	Dear Administrator Jackson,
Michael Dorsey <i>New Hampshire</i>	The National Advisory Committee (NAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) held its thirty fifth meeting on April 14 th and 15 th , 2011, in Washington DC.
Barry Featherman <i>Washington, DC</i>	As always, NAC members appreciate the competent assistance your staff provided to prepare for this meeting. We thank Cynthia Jones-Jackson, Oscar Carrillo, Stephanie McCoy, Lois Williams and Mark Joyce of the Office of Federal Advisory Committee Management and Outreach (OFACMO) for their work to organize the meeting and for their presence through-out. The NAC is also grateful to Jeff Wennberg, Chair of the Government Advisory Committee (GAC), for his guidance and leadership during the meeting.
Kevin Gallagher <i>Massachusetts</i>	
Brian Houseal <i>New York</i>	
Raymond Lozano <i>Michigan</i>	We are very pleased to have had the opportunity to interact with Michelle DePass, Assistant Administrator for the Office of International and Tribal Affairs, and wish to convey sincere gratitude for her presence and comments. Tribal representatives on the NAC and GAC, as well as me and Jeff Wennberg as Chairs, were also glad to join Assistant Administrator DePass during a pre-meeting breakfast to discuss the idea of a North American Indigenous Subcommittee. We gave a report on the meeting to the full NAC and GAC committees. During this discussion, committee members recommended that the idea be presented to both Canada and Mexico for their consideration. Tribal representatives on the NAC and GAC will be following up with your staff to discuss this idea further, as Ms. DePass requested.
David Markell <i>Florida</i>	
Cecilia Martinez <i>Delaware</i>	
Robert Pastor <i>Washington, DC</i>	
Ana Romero-Lizana <i>Missouri</i>	We understand from Assistant Administrator DePass that you are pleased with the Operational Plan as a reflection of Council priorities, and that the parties have engaged in extensive dialogue about how the current Operational Plan reflects priorities in the Strategic Plan. We also thank Ms. DePass for engaging in candid dialogue with us about our previous advice letter which, among other topics, dedicated much attention to commenting on the SEM process. Our current advice letter will reflect that Ms. DePass indicated your interest in receiving more such advice. We are also very interested in providing advice on other, current priorities such as the CEC Operational Plan, and have included such comments in this letter.
Gail Small <i>Montana</i>	
	In your response, we would be interested in hearing any follow up comments on specific actions relative to Transboundary Environmental Impact Assessment (TEIA) that you might have undertaken, as indicated in your letter of February 28 th , 2011, which stated that you would take a “fresh look” at TEIA and discuss a possible “new approach” with Canada and Mexico partners.

The NAC also wishes to sincerely thank Sylvia Correa, Senior Advisor for North American Affairs, for sharing the U.S. perspective on the Operational Plan, for being available throughout the day to answer questions, and for shedding light on our role as advisors relative to the Operational Plan. We are very grateful also to Dolores Wesson, Director of Programs at the CEC Secretariat, for her illuminating and very helpful presentation on the formation of the Operational Plan and background on some of the projects. Ms. Wesson's presentation also provided an extremely useful matrix that succinctly captured the timeframe for past and current projects.

The NAC members strive to provide timely and useful advice to you and hope that this advice helps you to further strengthen United States activities relative to the North American Agreement on Environmental Cooperation and the Commission for Environmental Cooperation and its mission and goals.

Thank you in advance for your consideration of our advice.

Very truly yours,



Karen M. Chapman
Chair, National Advisory Committee

cc: Michelle DePass, Assistant Administrator, Office of International & Tribal Affairs
Cynthia Jones-Jackson, Director, Office of Federal Advisory Committee Management and Public Outreach
Jeff Wennberg, Chair, U.S. Governmental Advisory Committee
Oscar Carrillo, Designated Federal Officer
Irasema Coronado, Chair, Joint Public Advisory Committee
Evan Lloyd, Executive Director, Commission on Environmental Cooperation
Dolores Wesson, Director of Programs, Commission on Environmental Cooperation
Members of the U.S. National Advisory Committee

National Advisory Committee
To the U.S. Representative to the
Commission for Environmental Cooperation

**Advice 2011-1 (May 16, 2011):
Response to EPA's request for advice regarding the
Draft Operational Plan and Projects**

The NAC appreciates the opportunity to review and comment on the draft Operational Plan. We understand that Council is now setting the agenda for CEC work via their representatives on the General Standing Committee. The NAC also considered that this Operational Plan and Projects reflect Council's involvement and that the Projects presented in the Operational Plan have been selected for consideration because they represent Council's priorities.

In light of these facts, NAC members decided that the bulk of our time might best be spent examining the draft Operational Plan and Projects as a reflection of the CEC's overall work and its relevance in the North American context and provide advice that might be helpful in the future.

First, the NAC believes that the Operational Plan should present a context for the specific projects – possibly through an executive summary - that explains why the Council has selected the indicated projects and what the Council hopes to gain from each and overall. We anticipate that the North American public is one audience for the Operational Plan, and we believe it would be very helpful for the plan to provide a clear picture of: 1) the particular projects the CEC is pursuing; 2) why the CEC is pursuing the identified particular projects given the CEC's status/comparative advantage as a trilateral organization and other features; and 3) what the CEC hopes to accomplish through its work.

By providing such a context, the Operational Plan would illuminate the unique role that the CEC fulfills as a trilateral body operating on the North American scale and give readers a lens through which to view the work and projects of the CEC, and a clear justification for the chosen projects as the best possible use of the CEC's very limited resources.

The June 24, 2009 Denver Ministerial Statement committed to “revitalize and refocus” the CEC and asked for a proposal to examine the governance of the CEC in order to “enhance accountability, improve transparency, ensure alignment with the Council priorities, and set clear performance goals.” The subsequent September 17, 2009 “Draft Proposal to Examine the Governance of the CEC” then offered suggestions for “Streamlining the cooperative work program” that included “focusing efforts on fewer and interrelated projects with more significant results.” In our view, some of the projects presented in the 2011 Operational Plan could stand further scrutiny. If members of the NAC cannot discern a clear process for project selection, nor why certain projects are included and how they are inter-related, it is likely that the public cannot either. In this regard the NAC feels that the process could be made more transparent.

Second, the NAC discussed ideas regarding the North American Atlas and how it might be used to further illuminate the unique CEC role on the North American stage. The NAC appreciates the Atlas for its great utility as a platform for information. The NAC discussed that a useful feature might be a routinely updated map of “Institutional Ecology” – in other words, who is doing what and where, the importance of these activities to the North American public, and how the work helps illuminate progress, identify gaps, and point a path forward. Such a map or template could

provide additional defensible criteria for each Project presented in the Operational Plan, as it would incorporate a constantly updated methodology and structure for work in such a way that everyone – CEC, the Parties, the Advisory Committees and the public - could see and understand new work or continuing work proposed and accompanying rationale.

NAC members also suggested that a very unique role the CEC already does play in this context but could greatly expand upon would be to pull together and harmonize North American data on an annual basis – a “data refresh” - possibly presented on the platform of the North American Atlas. In fact, the CEC publication produced earlier this year: *North American Environmental Outlook to 2030* might provide a useful starting point for regularly updating these indicators and showing trends over time.

Energy resources were mentioned as an example of a particularly pressing and critical North American issue that might be presented on this platform. As an example, currently the North American Atlas references installed renewable energy capacity, but could expand to include potential energy source “hot spots” which, if overlaid with protected areas, wetlands, First Nations, and PRTR data, could illuminate the total landscape of variables surrounding that energy source.

Third, the NAC discussed the overall manner in which Projects are presented for consideration, as well as the manner in which products of the CEC are made available to the public. For example, projects such as the North American Atlas might be better highlighted through expanded use of social media and other avenues for engaging with a broader cross-section of the public. To that end, the NAC suggests that CEC projects should strive to include a social media component, or if not included, be required to at minimum explain why a social media component is not included in the project. This will help pull increased attention to the CEC website and subsequently its products.

Finally, although members did not spend significant time on individual Projects, as mentioned, two specific suggestions for Projects did emerge from our discussions. One was that every attempt be made to include Adaptation issues in Projects falling under the Climate Change/Low Carbon Economy category, rather than focus on mitigation. A second suggestion was to include marine sources of emissions in PRTR data. Marine vessel emissions are currently included and mapped on the North American Atlas, but there are other significant emissions relevant in the North American context such as off-shore petroleum reserves, exploration and extraction activities.

Recommendations:

- 1) ***Going forward, the United States should propose that a clear context for the Projects and work of the CEC be included as an Executive Summary in the Operational Plan.***
- 2) ***The United States should also propose that a clear process and structure be set forth for proposing Projects in the Operational Plan that reflect the unique trilateral role of the CEC in activities it carries out, following on significant efforts to capture that role and activities through past work and reports.***
- 3) ***The United States should propose that Climate Change Projects include adaptation issues, that PRTR Projects include marine petroleum resources and extractive activities, and that all Projects include a social media component or rationale for why social media is not included.***

National Advisory Committee
To the U.S. Representative to the
Commission for Environmental Cooperation

**Advice 2011-2 (May 16, 2011):
Comments on the Parties Review of
Submissions on Enforcement Matters (SEM)**

The NAC was very pleased to hear details from Assistant Administrator DePass regarding the SEM review process that is to be launched by the Parties over the coming year. We understood from her comments that the process will conclude with a report to Council in 2012. We welcome this apparent acknowledgement that longstanding concerns exist regarding the effectiveness and utility of the SEM process, and we commend your commitment to review the process in order to develop concrete actions for making it more effective.

The NAC has a long history of providing advice in which it has identified concerns with the SEM process and offered recommendations for improving it. It is interesting to observe that these comments, past and present, reflect a certain amount of consistency. The NAC has enumerated real problems (and offered solutions to them) many times, and including in our advice letter dated December 21, 2010. These comments have been well-crafted, thoughtful and thoroughly researched.

In the interest of moving forward, we strongly recommend that the current SEM review process being conducted by the Parties legal advisors incorporate a thorough examination of past NAC advice letters for the many substantive and thorough comments therein covering a broad range of issues related to SEM. Specifically, advice letters dated June 12, 2009 (2009-2 and 2009-3) and October 26, 2009 (2009-6) offer advice related to SEM and reference previous advice letters regarding SEM. The current NAC membership also stands ready to help in any way possible during the review process.

The NAC is hopeful that this commitment by the Parties to review the SEM will result in improvements such that SEM becomes a meaningful process that is useful to concerned citizens. We also urge that the review be conducted as openly and transparently as possible.

As in our advice letter dated December 21, 2010, we offer again here a brief summary of specific actions that the Council and/or EPA can and should take that will help to address concerns.

A. Improve timeliness. Virtually every student of the SEM process has concluded that the process takes too long. We offer three specific recommendations for Council action to improve timeliness that are among the many the NAC and others have offered before:

- 1) Adopt a **two-year timeline** for completion of each submission. As you note in your February 28, 2011 letter to the NAC, the Council agreed in 2006 (more than five years ago) to a two-year timeframe for handling individual submissions. However, the timeline for completing submissions has become even more drawn out since Council embraced the two-year goal. The NAC believes that it is critical that the Council reaffirm its commitment to this two-year goal for handling a submission in its entirety, and that it commit to performing its responsibilities so that the CEC can meet this overall timeline.

- 2) Commit to have the Council vote **within 90 days** on each recommendation of the Secretariat to prepare a factual record. For some submissions, the Council has taken more than two years to complete this single step in the process. It is important that the Council lead by example and substantially expedite its decisions at this stage of the process.
- 3) Commit to have the Council vote **within 60 days** whether to release a final factual record as provided in NAAEC § 15(7). Despite this 60-day timeframe in the NAAEC itself, it has taken the Council an average of about five months to make this decision for the past several factual records.

The NAC recommends that EPA work with the other governments to encourage the Secretariat to make best efforts to expedite its work as part of the SEM process as well. NAC urges EPA proactively to take a leadership role within the Council in seeking to address the significant delays in current implementation of the SEM process.

B. Address concerns about fairness and neutrality of the SEM process. Various commentators, including submitters, have expressed concerns that the Council's performance in implementing the SEM process has "eroded public confidence" in the process. For example, the Council has received considerable criticism for narrowing the scope of factual records so that the factual record the Council authorizes bears little resemblance to the submission itself or to the Secretariat recommendation. Submitters for SEM-06-005 withdrew their submission earlier this year, in January 2011, because they believed that the Council had changed the scope of the submission so that a factual record would no longer address the concerns of the Submitters. To be useful, relevant, transparent and accountable to citizens, the SEM process must be conducted in a fair and neutral way. Council has the ability to take several steps within the scope of the NAAEC that would restructure Council involvement and enhance public confidence and support for the process. Past NAC advice letters and other reports have identified several of these actions and the NAC would be pleased to work with EPA during the review in order to elaborate and explore options.

C. Improve Party accountability for the issues identified by the SEM process. The NAC believes that including a "follow-up" feature to the SEM process would improve its effectiveness and also make the process and the Parties' actions in connection with it more transparent and accountable. Because promoting government effectiveness, transparency, and accountability are central objectives of the NAAEC, the NAC believes that such follow-up would be extremely beneficial in advancing the goals of the Agreement. Such a step would also significantly bolster the credibility of the SEM process in the eyes of the public.

There are many options for incorporating a follow-up feature that would assess results from the SEM process, and these options are also detailed in past advice letters. In addition to a CEC-wide commitment to follow-up, the NAC believes that a U.S. commitment to pursue such follow-up for submissions involving the U.S. would be the type of concrete gesture that would help to persuade U.S. citizens that the United States government is committed to the effective implementation of the SEM process. The NAC is willing to conduct such follow-up itself of factual records involving the United States if that would a useful role for the NAC to play.

Recommendations:

- 1) EPA legal advisors participating in the SEM review process should review past NAC advice letters as well as JPAC advice letters and other reports for substantive comments on specific actions that the Council can collectively take, and the United States can individually take, to improve SEM.*
- 2) The United States, to the extent possible, should ensure that the SEM review process is open and transparent, and where appropriate incorporate public involvement in the process.*
- 3) The United States should call on NAC members with particular interest in SEM to assist in the SEM review process where appropriate.*
- 4) The United States should urge timely conclusion of the SEM review as is planned, and adhere to the deadline of Council Session 2012.*