

May 17, 2012

**Committee
Members**

Karen Chapman
Ohio

Timothy Bent
Tennessee

Diana Bustamante
New Mexico

Michael Dorsey
New Hampshire

Barry Featherman
Washington, DC

Kevin Gallagher
Massachusetts

Brian Houseal
New York

Raymond Lozano
Michigan

David Markell
Florida

Cecilia Martinez
Delaware

Robert Pastor
Washington, DC

Ana Romero-
Lizana
Missouri

Gail Small
Montana

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson,

The National Advisory Committee (NAC) to the U.S. Representative to the North American Commission for Environmental Cooperation held its thirty-seventh meeting on April 26-27, 2012, in Washington, DC.

The NAC extends special thanks to Assistant Administrator for the Office of International and Tribal Affairs (OITA), Michelle DePass, for the time she spent with our committees discussing the upcoming Council Session in New Orleans as well as issues and topics raised in our advice letters. We also thank Jane Nishida, Director of the Office of Regional and Bilateral Affairs, for her valuable participation in our meeting. The NAC also would like to especially thank NAC/GAC Designated Federal Officer Oscar Carrillo and all the EPA staff in the Office of Federal Advisory Committee Management and Outreach (OFACMO), including Cynthia Jones-Jackson, Stephanie McCoy, Lois Williams and Mark Joyce. We also thank Sylvia Correa, Senior Advisor for North American Programs in the Office of International and Tribal Affairs (OITA) for attending the meeting to provide updates on NAPECA grants and for being on hand to answer questions during part of our two-day meeting.

On behalf of NAC tribal representatives, as well as the entire committee, I would like to thank JoAnn Chase, Director of the American Indian Environmental Office, for attending a breakfast in the Woodrow Wilson Center held especially for tribal representatives on the NAC/GAC to discuss issues of particular concern to our tribal members. At the breakfast, the group agreed to schedule a briefing at the next meeting of the NAC/GAC (if possible) of activities related to the Declaration on the Rights of Indigenous Peoples, an important initiative being carried out under the purview of the United Nations Permanent Forum on Indigenous Issues.

Of particular interest to the NAC during our meeting was the Submissions on Enforcement Matters (SEM) Task Force Review and the current draft guidelines stemming from that review. We are very grateful to Ms. Jocelyn Adkins, legal counsel (EPA - OITA) and U.S. Chair and delegate to the SEM Task Force, who was extremely accommodating with her time and spent much of the afternoon with us to discuss the draft guidelines, returning the following morning to answer further questions regarding the meaning and intent of the guidelines.

In light of the fact that the one charge question that the EPA provided to the NAC and GAC requested advice on the SEM Task Force Review draft guidelines, and due to our common keen interest in the SEM process, our committees made a decision to prepare a joint set of recommendations, which comes as an attachment to our advice letter. These joint recommendations were discussed and vetted and have the support of both committees. The other advice contained in this letter, therefore, touches on different topics.

We also wish to thank Evan Lloyd, current Executive Director of the CEC, for providing us an update via phone on the Article 13 report currently in progress that will discuss spent lead-acid batteries (SLABs), a topic of great interest to our committee as we believe it encompasses a North American trilateral concern. We also thank Dolores Wesson, CEC Director of Programs, for providing an update on the CEC Operational Plan projects. We were pleased to see that the pamphlet Ms. Wesson brought presents the current slate of projects within the Operational Plan in a much more attractive format, making it much easier to digest, which will aide in the public's understanding of CEC's work.

We also thank Martín Gutiérrez Lacayo, Chair of the Joint Public Advisory Committee (JPAC), for attending our meeting and sharing the results of JPAC's public comment sessions on the SEM Task Force Review and commenting on JPAC interaction with the Task Force, as well as providing us with the JPAC's theme for the Council Session which will be "Resilient Communities."

As always, I hope that our advice is useful to you in your capacity as a Party to the North American Agreement on Environmental Cooperation.

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 & Outreach
Jeff Wennberg, Chair, U.S. Governmental Advisory Committee
Oscar Carrillo, Designated Federal Officer
Martín Gutiérrez Lacayo, Chair, Joint Public Advisory Committee
Evan Lloyd, Executive Director, Commission on Environmental Cooperation
Maria 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 2012-1 (May 16, 2012):
Selection of and Criteria for
Operational Plan and NAPECA Grant Projects**

In our discussions related to the Operational Plan projects and the NAPECA grants, updates on both of which we received during our meeting, NAC members expressed the opinion that some of the projects appear to be somewhat diffused in impact, and disconnected from a larger trilateral agenda that we feel should be part of the CEC's purpose. We recognize the local impact that a relatively small-scale sanitation project in a Mexican school can have on one community, but question the expenditure of funds on such projects when there are very likely other granting organizations and community-level foundations that exist for just such a purpose. In addition, there does not appear to be a clear rationale for how one such project is justifiable over another, how project results will be disseminated for broader impact and outcomes, and how the projects themselves will be sustainable over the long term.

Given that the CEC's budget has steadily diminished in real terms from its inception, the NAC's opinion is that aligning the Operational Plan projects and the NAPECA grants with the larger trilateral agenda is imperative. The NAC notes that the three priority areas (Greening the Supply Chain, Climate Change/Low Carbon Economy, Healthy Communities and Ecosystems), while certainly representing a broad policy arena, can encompass almost any project that might be submitted. Therefore, we believe clearer criteria should be established for soliciting and vetting both the Operational Plan program and NAPECA grant projects that are more outcome oriented than project-driven and which: 1) guide the governments in soliciting projects that are meaningful on the trilateral stage; 2) provide clear justification for undertaking these projects; 3) define and aim for larger policy outcomes - which might mean fewer work projects, and 4) link to other program work.

With regard to the NAPECA grants, the NAC has, in past advice letters, called for reinstating a community grants program, and we were very pleased that the Council chose to do so. We also recognize that the community grants can help establish greater awareness and knowledge of CEC projects and work. Nevertheless, we believe there are many ways to position NAPECA grants so that they reinforce and bolster a broader policy agenda, and that these ways can be presented through project criteria when soliciting proposals.

Related to this, the NAC discussed the relationship between the Parties and the CEC and how that relationship has changed and evolved over time. In 2004, Council created the TRAC (*Ten-Year Review Advisory Committee*) which examined the first 10 years of the NAAEC and recommended actions to further strengthen the NAAEC's implementation through the Parties and the CEC. The report that TRAC generated affirmed the value of the NAAEC and the CEC, but also identified several issues needing to be addressed in order for the CEC to achieve its "full

potential." One of these called for greater engagement on the part of the environment ministers in the form of a "renewed commitment to the CEC as the premier body for trilateral environmental cooperation." The report envisioned the Parties setting a broad agenda for the CEC in guiding its work, which they have done by setting out extremely broad priority areas. In our view, however, the Parties - through the General Standing Committee (GSC) - have become very involved in the day-to-day management and functioning of the CEC, one symptom of which manifests in the GSC's choosing projects to include in the Operational Plan through a process that is not clear to us. Some of the projects do not seem to link to a broader environmental policy agenda or to other program work. To us, this represents an erosion of the type of broad commitment to trilateral engagement on environmental issues we think the NAAEC embodied. We understand that economies change, governments change and therefore priorities change, but in recalling the initial spirit of the NAFTA negotiations, the essential nature of the CEC as striving to be the "premier body for trilateral environmental cooperation" (TRAC) should not change.

The NAC notes that the GSC has great latitude in how it carries out its liaison duties and is largely autonomous in doing so. Its meetings are not open to the public nor are reported on publicly, and the NAAEC offers no guidelines for how the GSC is to operate. In the absence of clear guidelines established by the Council as to what represents an issue or program or topic of trilateral concern, it is up to the GSC to provide that direction to the Secretariat. This can and has led to a certain lack of transparency in how the Operational Plan is established and what type of decision-making process was undertaken. Since the Operational Plan of the Secretariat is the guiding program for its work, the NAC believes that Council itself, including the Alternate Representatives, can and should establish clearer guidelines for how the GSC operates. These guidelines should include criteria for how the Operational Plan programs are chosen, and criteria that ensures the programs and projects encompass work of trilateral - or at least pressing bilateral issues with trilateral impact.

To be sure, the CEC is engaged in a large amount of very meaningful work on pressing issues like e-waste, grasslands conservation and supply chain initiatives. Much of that work appears to be around compiling, sharing and exchanging information that will guide practitioners, and is carried out in working group sessions and extensive dialogue among the governmental representatives and others on the working groups. While these activities certainly fall within the framework of the NAAEC, the results stemming from the activities are not always very clear. In our view, the CEC's Operational Plan would benefit from fewer "projects" and greater guidance on large, trilateral "outcomes" that represent the best possible use of the CEC's very limited funds.

The NAC further notes that the Secretariat's Article 13 reports all provide recommendations for follow up actions, and certainly JPAC fora and public meetings provide a wealth of information and recommendations from the public on timely topics embedded in the priority areas. To the extent that Article 13 reports might generate ideas on trilateral action, these reports would seem to represent another launching point for Party engagement in furthering solutions to identified environmental problems. The Secretariat currently proposes Article 13 reports that fall within the

purview of the Parties' agenda, and the Parties approve the reports, constituting another point of clear vetting and engagement to justify the actions that follow.

For example, we noted with interest Mr. Lloyd's presentation on the pending CEC Article 13 report on spent lead-acid batteries (SLABs). We fully expect the report will provide very useful background for meaningful discussions that can lead to implementing solutions, and that it will illuminate what is likely a complex and nuanced issue. Any follow up actions the Parties might wish to pursue related to SLABs would have a clear justification via the Article 13 report. In addition, there may be opportunities for aligning subsequent NAPECA project selection criteria with specific recommendations in the report.

Finally, while we understand that the Parties may want to review the upcoming CEC report on SLABs before taking action, we would like to encourage the EPA to engage at an early stage with their counterparts in Mexico and Canada to consider innovative proposals to address the outstanding issues that relate to differential capacities to enforce standards on re-cycling of spent lead-acid batteries. It would be valuable, for example, if Canada and the United States were to provide some personnel and technical assistance to Mexico in addressing this issue. The original purpose of the side agreement was for all three governments to work together to raise standards on the environment and improve the capacity to enforce such standards. The SLAB issue provides an excellent opportunity to implement that goal.

Recommendation:

- *The NAC urges EPA to establish clear criteria for program selection to aid the General Standing Committee as it deliberates on the Operational Plan program and NAPECA grants;*
- *The NAC recommends that these criteria reflect the CEC's core value as the premier body established to address the most pressing trilateral environmental issues;*
- *The NAC recommends that the criteria be transparent and public;*
- *The NAC recommends that the criteria could include seeking meaningful ways for Party engagement around follow up actions or recommendations in Article 13 reports;*
- *The NAC recommends that these criteria define and aim for larger policy outcomes, which may mean fewer work projects.*