

**NATIONAL ADVISORY COMMITTEE
TO THE U.S. REPRESENTATIVE TO THE
COMMISSION FOR ENVIRONMENTAL COOPERATION**

June 11, 2002

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

Dear Governor Whitman:

The National Advisory Committee (NAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) held its eighteenth meeting on May 1 and 2, 2002 in Washington D.C.

The Committee considered a number of issues in connection with the upcoming Council of Ministers session to be held in Ottawa on June 17-19. This letter contains the Committee's reflections as to a number of structural and institutional issues. The Committee's formal advice on eight substantive topics is appended.

The CEC Secretariat

Janine Ferretti's term as Executive Director of the CEC Secretariat will end this June, and the United States is responsible for nominating her replacement. We cannot overstate the importance of this appointment. Particularly in a relatively small organization such as the CEC Secretariat, a strong and effective Executive Director is essential to ensuring that the CEC successfully addresses issues of importance to the three NAAEC parties. The nominee must enjoy the respect and confidence of the three parties, the Secretariat staff, and the larger community of stakeholders. The nominee must possess both a reputation for independence and a compelling vision of the CEC's unique and valuable role in promoting sustainable development in the trinational context.

We support EPA's stated intention to search widely in order to identify the strongest possible candidates. Given the importance of this position, we emphasize our hope that the search proceed in as expeditious manner as possible. The NAC reiterates its willingness to assist in any way as the search process moves forward.

We expect that, until the new Executive Director assumes office, an Interim Director will be immediately appointed who will enjoy full authority and the confidence of the parties and the larger stakeholder community. We were pleased to learn from Assistant Administrator for International Affairs Judith Ayres, who very kindly briefed us on this issue at our recent meeting, that "strong leadership" would be appointed during this interim period. We are nonetheless concerned that to date no one has been appointed in this capacity as Interim Executive Director. Moreover, given the political pressures of the job, no interim director, no matter how well qualified or skilled, can run the CEC effectively over any extended period of time. Thus, we hope that the candidates can be interviewed quickly and a decision on a permanent executive director can be made in the next several weeks.

The NAC expresses its deep appreciation of Ms. Ferretti's energetic and dedicated leadership. We also wish to thank Director of Programs Greg Block for his excellent work for the CEC and in particular for his long-standing commitment to, and support for, the work of the NAC. Copies of our letters of appreciation addressed to each of them directly are attached.

The National Advisory Committee

We have repeatedly expressed our concern over the vacancies on the Committee. A recent resignation has exacerbated this problem. We are currently operating with nine members, a full 25% below our full complement of twelve Committee members. We fear that the lack of a full complement of members limits public input to EPA and that this delay in staffing the Committee may lead to a public perception of EPA disinterest in public participation mechanisms. Moreover, the lack of a full complement of members deprives the Committee of expert knowledge that would inform our deliberations and improve the quality of the advice we submit to the Administrator.

We hope that the EPA's search for new committee members will focus on qualified senior level decision-makers from diverse sectors. These individuals should have demonstrated expertise regarding the CEC, or other background and experience relevant to the issues addressed in the various CEC programs, as well as experience working in consensus-building processes.

We understand that EPA has decided to submit potential nominations to the CEC Interagency Working Group. While we understand the reasons for this decision, we are concerned that this may further delay the appointment process. We reiterate our previous advice emphasizing the importance of having a full slate of Committee members. We strongly urge the Administrator to appoint new Committee members in as expeditious a manner as possible, with the goal of completing the nomination and appointment process within three months.

The difficulties caused by the long-standing vacancies on the Committee is compounded by the lack of a permanent Chair. The NAC has operated without a permanent chair since May 2001. While several Committee members have graciously consented to serve as Acting Chairs on an ad hoc basis, the Committee has not benefitted from the leadership and continuity that only a permanent Chair can bring. We strongly urge the Administrator to name a new NAC Chair as expeditiously as possible.

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We would like to thank the many government officials who spoke to us at our meeting about CEC matters within their purview. We particularly appreciate their thoughtful and candid responses to our questions. As we have noted in the past, this type of dialogue with the Executive Branch agencies engaged in the wide range of CEC matters is particularly helpful to us, as our advice is directed to the U.S. Government as a whole, and not just EPA.

Cordially,

David A. Wirth

Acting Chair
National Advisory Committee

Attachments

cc: Judith Ayres, Assistant Administrator for International Activities
Denise Ferguson-Southard, Chair, U.S. Governmental Advisory Committee
Jonathan Plaut, Chair, Joint Public Advisory Committee
Jean Perras, Chair, Canadian National Advisory Committee
Mateo Castillo Ceja, Chair, Mexican National Advisory Committee
U.S. National Advisory Committee

**NATIONAL ADVISORY COMMITTEE
TO THE U.S. REPRESENTATIVE TO THE
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June 11, 2002

Greg Block
Director of Programs
North American Commission for Environmental Cooperation
393, rue St-Jacques Ouest, Bureau 200
Montreal, Québec H2Y 1N9
CANADA

Dear Greg:

The NAC wishes to convey our sincerest thanks to you for your outstanding work as Program Director of the CEC. Your intelligence, integrity and enthusiasm for your work come across at all times. We are truly grateful for the opportunity to work with you over the past several years.

Most of all, we want to thank you not only for listening to our concerns, but also for engaging in meaningful dialogue with us and sharing your insights. We know that attending our meetings takes a great deal of time and energy, as well as taking you away from your family. The work of the NAC has benefited greatly from your dedication and self-sacrifice.

As the NAC enters a critical time in its history, its future success depends as much as anything on outstanding people such as yourself. We know that your job has been extremely stressful and time consuming over the last several years and we want you to know how much your efforts have been appreciated.

We wish you well in your future endeavors and hope that our paths cross again soon.

Cordially,

David A. Wirth

Acting Chair
National Advisory Committee

**NATIONAL ADVISORY COMMITTEE
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June 11, 2002

Janine Ferretti
Executive Director
North American Commission for Environmental Cooperation
393, rue St-Jacques Ouest, Bureau 200
Montreal, Québec H2Y 1N9
CANADA

Dear Janine:

At a recent meeting of the NAC, the Committee quickly reached unanimous agreement to write a letter commending you for your outstanding work as Executive Director of the CEC. The Committee has been particularly impressed with your leadership during difficult times that required both astute political judgement and a commitment to environmental protection.

This Committee is well aware that many of the CEC's initiatives have been controversial and while the Committee has not always agreed with the CEC's actions, we have always appreciated your willingness to listen to diverse views. You have handled all issues with grace and dignity. Most importantly, you have maintained the CEC's independence, and by doing so, enhanced its credibility.

You should also be applauded for assembling and coordinating an outstanding, dedicated staff. The quality of their work reflects your leadership, and their comments to us reflect their personal respect for you.

It is truly rare that an advisory group such as the NAC unanimously agrees that an executive director of an agency has done such an outstanding job. We believe this approval speaks for itself. We are very grateful to you for your dedication, hard work and outstanding performance. We all wish you the best of luck in your future endeavors and hope that our paths cross again in the near future.

Cordially,

David A. Wirth
Acting Chair

National Advisory Committee

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**NAC Advice No. 2002-1: Article 13 Report on
The North American Electricity Market**

The NAC has reviewed the CEC's article 13 report "Electricity and the Environment: Environmental Challenges and Opportunities of the Evolving North American Electricity Market." The NAC urges the immediate release of this report in order to maximize its usefulness to policy-makers in the three NAFTA countries. The report is particularly timely and important in the U.S. context given the current debate in the Congress on the nation's energy future. It is particularly noteworthy that the report is supported by the advisory board made up of industry executives, former government officials, and environmental advocates from all three countries.

All interested parties and governments have had ample opportunity to comment on the report since the draft was released in November. There is no reason for further delay of the release of the report. The NAC sees no reason for further delay of the release of the report, and consequently urges its immediate release in final form as presented to the Parties.

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NAC Advice No. 2002-2: Sound Management of Chemicals (SMOC)

The meetings of the SMOC have historically been closed to the NGO community with the exception of portions of meetings specifically designated for public participation. The SMOC considers issues of great interest to public health and protection of the environment, and therefore to the NGO community. The full presence of members of that community would provide resources, expertise and credibility to the SMOC's deliberations. Therefore, the CEC should open the SMOC meetings to attendance by NGOs. The SMOC should consider inviting representatives of the public to serve on the Working Group.

NAC Advice 2002-8, on public participation, also contains a passage addressing procedural aspects of the SMOC's work.

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NAC Advice No. 2002-3: Pollutant Release and Transfer Registers (PRTRs)

Pollutant release and transfer registers are an extremely useful tool for government and non-government stakeholders. Of particular importance to the usefulness of a PRTR is the availability of data on a facility-specific and chemical-specific basis. In order to have comparable PRTRs in all three countries, the Administrator should encourage Mexico to include facility-specific and chemical-specific data in the mandatory RETC program under development in Mexico. The Administrator should also support the U.S. efforts and those of the CEC to support the development and implementation of the Mexican PRTR.

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NAC Advice No. 2002-4: World Summit on Sustainable Development (WSSD)

The NAC understands that the CEC will be reporting to, and may be considering a presentation at, the World Summit on Sustainable Development (WSSD) to be held in Johannesburg August 26-September 4, 2002. The NAC believes that the CEC is a useful model for regional environmental cooperation and consequently would endorse such a proposal on the terms elaborated below.

The CEC, established under the NAAEC, is a unique institution intended to achieve continental environmental cooperation. It has made some successful strides in examining the trade and environment nexus. However, further accomplishments in this area largely depend on the vision and commitment of the Parties. The strengths of the CEC lie in the ground-breaking characteristics of the NAAEC, including:

- Partnership: The CEC is a positive example of the benefits of partnership, between government at all levels and between government and other stakeholders.
- Governance: A primary objective of the CEC is to promote and ensure effective implementation of national environmental laws and regulations.
- North-South Cooperation: The CEC links developed and developing countries – based on equal oversight and funding – to advance a shared agenda.
- Public Participation: The CEC has extensive mechanisms for public participation in both its governance structure (e.g. the JPAC) and ongoing activities.
- Dual Role of the Secretariat: The Secretariat provides technical, administrative, and operational support for the Parties, but also performs a number of special functions based on its independent assessment.
- Citizen Submission Process: The Article 14/15 process, which creates an opportunity for citizens to initiate complaints directed at governmental non-enforcement, is a centerpiece of the NAAEC. The Article 14/15 process unfortunately has had mixed results. When that process has been allowed to work independently, as specified by the NAAEC, it functions as intended. However, when political objectives have been infused into the process, the process has floundered.

Many CEC programs have been very successful and have been integrated into a North American context. This is particularly true for those programs that increase data gathering and access to information. These include Sound Management of Chemicals, the North American Biodiversity Information Network, and Taking Stock. CEC activities to improve environmental cooperation and enforcement of environmental laws highlight the potential of this approach for the New Partnership for African Development.

The success of the CEC and its ability to serve as a model for linking trade and environment are predicated on the political will of the Parties to uphold the NAAEC, a strong and independent Secretariat, and a commitment to a multi-stakeholder process.

The NAC supports the proposal to develop a CEC submission to the World Summit on Sustainable Development (WSSD), and to hold a side event at Prep-Com 4, if possible. While the CEC continues to work toward the long-term objectives stated in the NAAEC, the Commission's unique characteristics serve as a good example of inter-governmental cooperation and partnership to promote environmental protection. The NAC believes that the submission to the WSSD should highlight the above-mentioned aspects of the CEC that have particular relevance to the WSSD.

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NAC Advice No. 2002-5: Five-Year Review of the NAAEC

The CEC is, in many respects, in a period of transition. As the institution and its programs mature, the work plan is shifting from initiating programs to ongoing monitoring and implementation. With the CEC budget fully allocated, new activities will require offsetting cuts in existing programs. By the same token, the need for CEC support for some projects may decrease as the projects come to a close or become self-sustaining apart from the CEC. In addition, the Secretariat leadership is in a period of transition, and the Parties themselves have undergone changes in Administrations.

Given these dynamics, the NAC believes that the CEC would benefit from a strategic review of its objectives and activities. The NAC proposes that the United States recommend that Council authorize under Article 10.1(b) a review of the Agreement's operation and effectiveness similar to the four-year review conducted by the Independent Review Committee in 1998. The NAC suggests that such a review be conducted in 2003, which would be 5 years from the conclusion of the previous review. Key to the success of the first review was open access to the North American environment ministers, the Secretariat, and a range of stakeholders. This access was crucial to conducting the review and bringing together the elements of NAAEC with the ministers' vision for the CEC. This same level of access would be required to develop a second review under Article 10.1(b).

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**NAC Advice No. 2002-6: Market-Based Mechanisms
For Financing Sustainable Development**

Having heard a presentation on the CEC's program on market-based mechanisms, as a general matter the NAC agrees that there is a role for the CEC in this area, primarily as a convener of a wide range of other groups and interests, and an enabler of appropriate partnerships. The objective of the CEC's work should be to address systemic market failures, especially information failures, lack of transparency and high transaction costs that have hindered the development of adequate markets for green goods and services in the three countries.

While focusing on these information failures, the CEC should not itself be trying to create markets for shade agricultural goods, sustainably-produced agricultural products, or other types of "green" goods. The CEC needs to reassess and clarify the goals, measurements and endpoints of success for its work in this area. The benefits should include drawing larger inferences about the barriers to financing, investment and trade, including the role of private and public institutions involved in export financing and export guarantees, and about how learning can be fed back into the appropriate policy processes. Further, while we endorse the move from a focus on shade coffee to a broader, ecosystemic approach to shade agriculture, we believe the project's links to other goals of the CEC, especially biodiversity conservation, must be made more explicit.

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NAC Advice No. 2002-7: Trade-Environment Issues and Article 10(6)

The NAC has consistently highlighted the work on trade and environment nexus as central to the mission of the CEC, and crucial to the public perception of the success or failure of the NAAEC.

The Article 10(6) process in the past has been underutilized as a vehicle for addressing the trade-and-environment connection, and we urge its greater utilization fully to realize the CEC's potential. Ongoing controversy over such issues as NAFTA Chapter 11 investor disputes can only erode support for the NAFTA and draw attention to the failure to effectively use Article 10(6) as a vehicle to reconcile the interests of trade liberalization with environmental protection.

Meeting of Trade Ministers and Environment Ministers

The NAC reiterates its support for convening a joint meeting between the CEC Council and the NAFTA Free Trade Commission, as contemplated by Council's 2001 communiqué. We strongly urge that the publicly announced commitment to hold a ministerial-level meeting of trade and environment officials in 2003 be fulfilled as expeditiously as possible. Such a meeting will demonstrate Council's support for high-level coordination of trade and environment and trade and investment issues within the NAFTA context. We strongly support the ongoing 10(6) process of meetings at the alt-reps level, especially when they follow the "Montreal Model" of being organized with the participation of civil society trade and environment experts, but it is important to emphasize that these meetings have not produced the concrete results that such an action-forcing ministerial meeting can and should.

The NAC has outlined in considerable detail an agenda for such a ministerial meeting in previous advice. That advice recommended action on the following Article 10(6) agenda:

1. **NAFTA Chapter 11**

(a) consider interpretive language that would clarify the ability of parties to regulate and enforce substantive standards consistent with national law; and

(b) consider interpretive language that deals with transparency issues in the dispute settlement process, including public access to documents, public access to oral presentations to arbitral tribunals, and the acceptance of amicus briefs.

2. NAFTA Effects

(a) concrete policy action on the basis of 7 years of ongoing trade and environment analytical work at the CEC to better harmonize the two agendas and to mitigate the negative environmental impacts and increase the positive environmental benefits of increased trade; and

(b) the organization and funding of analytical work on the environmental effects of investment in the NAFTA countries.

We understand that the Canadian NAC has also submitted advice supporting a meeting of the Parties' Trade and Environment Ministers and cite that advice as further support for this process.

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NAC Advice No. 2002-8: Public Participation

The CEC has a strong commitment in principle to public participation, but the CEC should move to a more robust process of public participation in all CEC programs. The NAC strongly urges the CEC where appropriate to appoint members of the public to serve on CEC committees and work groups.

Where CEC committees and work groups have public participation processes, a mechanism should be instituted to provide feedback and follow-up to members of the public that provide input. The mechanism should also contain a process to provide ongoing continuing feedback to parties engaged in the process.

The meetings of the SMOC have historically been closed to the public with the exception of certain portions of meetings. The CEC should open the SMOC meetings to attendance by the public and their meetings should have specific times set aside for public input. The JPAC session on the SMOC during the upcoming Council session provides an excellent opportunity for the Parties to address this issue with members of the public.