

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

December 12, 2011

**Committee  
Members**

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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-sixth meeting on October 20-21, 2011, in Austin, Texas.

The NAC extends special thanks to Carlos Rubinstein of the Governmental Advisory Committee for helping to arrange the meeting in Austin, as well as NAC/GAC Designated Federal Officer Oscar Carrillo. As always, NAC members appreciate the assistance from the Federal Advisory Committee Management and Outreach Office (OFACMO) staff including Cynthia Jones-Jackson, Oscar Carrillo, 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 discuss current US priorities related to the CEC Operational Plan and NAPECA grants, and for being on hand to answer questions throughout the meeting.

We were very grateful to all the presenters for sharing excellent presentations illuminating subjects of interest along the US-Mexico border relating to infrastructure under NAFTA, water and wildlife impacts, and cross-border collaboration on shared resources. We heard informative and interesting presentations from Maria Elena Giner, Director of the Border Environmental Cooperation Commission, Cindy Loeffler of Texas Parks and Wildlife Department, Steve Niemeyer with the Office of Border Affairs at the Texas Commission for Environmental Quality, Carlos Rubinstein, TCEQ Commissioner, and Aimee Roberson of the US Fish and Wildlife Service.

We were also very grateful to Evan Lloyd, current Executive Director of the CEC, for providing us an update via phone on the CEC Operational Plan implementation, and to Jocelyn Adkins from EPA's Office of General Counsel for providing an update on the SEM review process. We thank Irasema Coronado, Chair of the Joint Public Advisory Committee, for attending our meeting and providing an update on JPAC. Finally, we are also very grateful to John Knox, who phoned in to our meeting to provide an overview of the Transboundary Environmental Impact Assessment (TEIA) agreement history and current status.

The Austin meeting provided us with an opportunity for discussion of key topics of great interest

to our committee, including the CEC Communications Strategy, SEM review and TEIA. In addition to these topics, the NAC discussed the Trade and Environment Review that is already underway, which we found interesting and worth further discussion.

Our discussion on these topics led us to agree on several items that we would like to request be included on our next committee meeting agenda in the Spring. First, we respectfully request a thorough update on the SEM review process with sufficient time for discussion and questions and answers with an EPA official involved in the review. In order for the discussion to be as constructive and helpful as possible, we request that a detailed update on the issues and options for improvement under consideration be provided to us prior to this meeting. Second, the NAC requests a presentation on the Trade and Environment Review from an EPA representative, or a presenter with objective and close knowledge of the review process as it currently stands. We thank you in advance for considering these requests.

In response to your letter of June 9, 2011, in which you reiterate your commitment to providing fora and other opportunities to highlight indigenous peoples issues, we thank you. We understand that establishing an indigenous subcommittee among the NAC/GAC and JPAC is not feasible at this time. We are, however, interested in your thoughts on how we can work with you to help elevate tribal issues on a substantive level within EPA and the Office of International and Tribal Affairs.

The NAC very sincerely hopes that the advice we provide you is useful, and we are grateful for the time and attention you take to review and think about this advice. We are also extremely grateful to Assistant Administrator Michelle DePass for taking the time to reach out to have informal conversations with the NAC/GAC chairs prior to our meeting and on an on-going basis. This type of engagement is particularly meaningful to me as Chair, as it helps to frame our advice and our committee discussions.

I am also very grateful to you for the time that you took to spend with some members of the NAC and GAC during the Council Session in Montreal. Your commitment to the committees and willingness to engage informally is valuable and ensures greater understanding on our part of your priorities and thoughts related to the role of the EPA in trade and environment issues. Related to that, we reiterate our desire to meet with you as a full committee in person when feasible, particularly when we meet in DC, as it is not possible given EPA's budget for more than one or two members to travel to the Council Sessions.

Thank you for continuing to support our committee and our role as advisors to you and the US government on North American environmental issues. Please call on me at any time if I can be helpful in explaining our advice further.

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  
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

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

**Advice 2011-3 (December 9, 2011):  
Response to EPA's request for advice regarding the  
CEC Draft Communications Strategy**

The NAC appreciates the opportunity to review and provide comments on the CEC Communications Strategy. As our past advice will reflect, the NAC has long advocated that the CEC develop stronger and more compelling messaging on its role and successes in the North American environmental arena, so we are pleased that a Communications Strategy is being developed. You asked the NAC/GAC to provide feedback on four areas:

- a. General comments on framework, measurable outcomes and strategies
- b. Identify strengths and weaknesses in the strategy
- c. Ways to improve the outreach and messaging
- d. Other

Our advice is structured around these four areas.

a. General comments on framework, measurable outcomes and strategies.

First, the NAC commends the CEC for developing a strategy. This is an important first step toward greater awareness of the work of the CEC.

The NAC noted that the CEC's essential challenge in developing a strategy for messaging is that projects in the Operational Plan are somewhat cryptic even when viewed through the lens of those familiar with the CEC's work, and do not lend themselves to a clear and "punchy" interpretation. The Secretariat's additional challenge and role in this regard is to tell a compelling story about its core functions meaningful to North America on a broad scale while also relating what it does that is helpful and useful to local communities.

We also noted that to our knowledge the CEC does not currently have a Communications Director who would be accountable for implementing this strategy. The strategy lists a Media and Outreach officer who will be the point person for messaging to the media, but it is unclear whether or not this person will be responsible for implementing the overall strategy. This should be defined in the document, and if possible a Communications Director engaged, even on a short-term, contractual basis, to launch the strategy.

In general, NAC members noted that the strategy could be more focused, discuss priorities and audiences more specifically, and include more measurable outcomes. To this end, several members felt it would be essential for the CEC to conduct a "benchmarking" survey to gauge current knowledge and awareness of CEC work among key target audiences. The Communication Strategy Addendum C: Measurement and Evaluation, lists such polling and surveys under "high cost, longest timeframe." The NAC is of the opinion that such polling, while possibly more costly, would provide the greatest payoff in terms of ability to measure where CEC is now with regard to public awareness among key audiences and where it wants to be in the future, post-implementation of strategy and relative to where it started out.

We discussed the fact that there are many different concepts around which to "message" vis a vis the CEC's role and work, and given the breadth of its work the CEC would benefit from prioritizing more what should be highlighted and promoted. For example, telling a story about what CEC does for local communities may focus on a particular NAPECA project or Operational Plan project that impacts a particular community - a small town on the US-Mexico border, or a tribal community in Canada. The message for these audiences will differ from the message for a broader North American audience. In fact, focusing on a particular project or group of projects to promote to a broader audience might lead to the belief that the CEC's work is a collection of projects scattered across North America, rather than an institution established to monitor and report on the North American environment, among other important core functions.

Thus it will be important for the CEC, given a limited budget, to focus even more on what it wants to convey and to whom, and develop a simple, coherent message around that. The first rule of communications is "keep it simple." A simple and clear message will engage more stakeholders than a long list of projects, functions and descriptions. Even the three priority area titles of Healthy Communities and Ecosystems, Climate Change/Low-carbon Economy, and Greening the North American Economy present a communication challenge.

b. Identify strengths and weaknesses in the strategy, and;

c. Ways to improve the outreach and messaging.

First, the strategy does at the outset define the CEC's target audiences, and these key audiences do appear to be the most relevant stakeholders for the CEC, but could be defined even further. Is the CEC interested in engaging ALL nongovernmental environmental organizations, for example, or just some of them? Which ones would most likely benefit from knowing about the CEC's work? Which academic institutions are most likely to utilize CEC reports? Which tribes are most directly impacted by North American trade and environment issues? Defining these audiences further will require greater effort, but could be accomplished with a few more descriptors, such as "First Nations, Tribes and indigenous communities along the northern and southern borders." Or: "nongovernmental environmental organizations engaged in policy work on trade and the environment." Providing such definitions at the outset increases efficiency of implementation.

Second, in our opinion the strategy does a good job of setting goals and providing concrete time frames for accomplishing them- although the rationale for the time frames is not well-defined. It also clearly identifies spokespersons, defines the areas the communication strategy will pertain to (website, reports, etc), and identifies a need to establish "about CEC" boilerplate and core messages. The Communications Tactics section lists one-page fact sheets and brochures for printed materials to convey projects. The NAC endorses the idea of brief, descriptive printed materials for sharing the Operational Plan work. Again the NAC questions whether the Operational Plan itself should be the primary vehicle for sharing the work of the CEC unless it were condensed into a much pithier format. We noted that several one-page fact sheets describing projects were distributed at the 2011 Council Session in Montreal, and these might serve as an appropriate starting point for printed materials.

Following the theme of keeping it simple, the Project Messages and Addendum D are too long and lack clarity. As an example, Project 2 could more clearly convey that ecosystem resilience will be achieved by sharing sustainable ranching practices among agencies and private landowners. Details are for those who

want to dig deeper. Developing language like this is often best accomplished by a communications professional rather than those who are deeply engaged in the projects.

A final word on this topic: our last advice letter of May 12, 2011 included a recommendation (paraphrased here) that the Operational Plan spell out the process for project selection and include that process in an Executive Summary of the Operational Plan. Your response letter to us dated June 9, 2011 indicated that you agreed and were in the process of presenting such an Executive Summary to Canada and Mexico for their review. We noted that subsequently, the final 2011-2012 Operational Plan does include an Executive Summary as well as a diagram of the process for project development and selection, which is clear and straightforward.

What continues to be much less clear is how the solicitation of projects for inclusion in the Operational Plan occurs in the first place, what type of vetting these projects undergo, and by what specific criteria are they deemed sufficient to include in the Operational Plan. In the absence of a public process such as an RFP, which includes specific criteria and goals that justify project selection, the process for selection of projects for inclusion in the Operational Plan continues to be somewhat undefined and seems to involve extensive negotiation by the three governments through their representatives. If this is the case, there should still be a meaningful way to convey how projects are selected, even if the process is largely an internal one. The description could be included in the communications materials that the CEC develops.

Third, it would be useful for the Strategy to reflect more clearly the entire spectrum of work in which the CEC is engaged, possibly through a brief explanation in the introduction that the CEC has three primary functions and that the CEC is committed to communicating effectively about each: 1) the cooperative work program, 2) the development of Article 13 reports, and 3) the Submissions on Enforcement Matters process. The Strategy mentions a specific communication goal on page 5 for increasing awareness of CEC's "cooperative work," but does not specify if this means work conducted under Articles 13 and 14/15 or more broadly; the discussion should be clarified to make it clear that the CEC has this goal for each of the CEC's primary functions. Also, page 11 of the Strategy references continued communications related to the Secretariat's Article 13 Freight Transportation Report, but does not specify communication related to additional Article 13 reports going forward, which might lead the reader to wonder if the CEC and the parties plan to continue pursuing Article 13 reports.

Fourth, the Measurement and Evaluation Section on page 16 does not identify specifically which Key Performance Indicators or Measure the CEC plans to utilize. This should be clearly defined. For example, will the CEC monitor web downloads, conduct a citation analysis, surveys, focus groups etc. or will it rely on more passive measures such as web hits and number of news releases. What combination of performance measures will be utilized? NAC strongly endorses the use of more active measurement criteria in favor of passive methods, as these provide for more accurate ways to gauge effectiveness of the communications strategy.

Fifth, several members felt it was important for the strategy to more clearly define its methods of reaching audiences without internet service and who may be most directly impacted by the work of the CEC or trade and environment in general.

Finally, NAC members themselves offered ways that we could assist with CEC messaging, including list serves that we operate or receive, handouts to groups we interact with, announcements to the press about meetings, and other ways. Our own meetings might be more broadly publicized and outreach conducted

to local media in the form of press releases to encourage public involvement in our meetings and distribution of information about the CEC and the advisory committees' role relative to the CEC. This is not something we as committee members feel we can do externally to the EPA or CEC, but would be happy to assist in carrying out if judged appropriate to do so.

***Recommendations:***

- 1. The CEC, at the outset, should conduct an extensive survey to determine current key audience awareness and knowledge of CEC products;***
- 2. Hire a Communications Director to engage, even on a short-term, contractual basis, to launch the strategy.***
- 3. The Communications Strategy could more clearly define target audiences and develop much simpler messages for printed materials;***
- 4. The process for selection of projects within the Operational Plan should be more transparent, or at least be conveyed in a meaningful way and included in the Communications Strategy;***
- 5. The strategy should identify each of the CEC's three key responsibilities – the cooperative work program, its Article 13 role, and the SEM process – and reflect the CEC's commitment to effectively communicating about each;***
- 6. The Strategy should identify which performance measures it plans to utilize;***
- 7. The Strategy should include people without internet access among its audience group and identify the most appropriate strategy for reaching them (i.e. written materials, radio, etc);***
- 8. The NAC itself could be included as a conveyor of messaging about CEC work.***

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

**Advice 2011-4 (December 9, 2011):  
Comments on the Submissions on Enforcement Matters  
Evaluation Process**

The NAC was very pleased to hear a presentation at our Austin meeting from Jocelyn Adkins of EPA's Office of General Counsel regarding the current status of the SEM review. The NAC strongly endorses the Council's decision to evaluate the SEM process. In a series of Advice letters over the past several years, the NAC has expressed its view that there are very significant problems with the implementation of the SEM process and recommended actions that would address these problems. Other organizations, including the JPAC, have identified similar concerns and urged similar fixes.

We learned from Ms. Adkins that the SEM Review task force is examining past input from NAC/GAC and JPAC, holding consultations with the Secretariat SEM Unit, researching party issues of concern, and conducting an outside review through the Environmental Law Institute, or ELI. We also learned that some specific goals had been identified, such as allowing electronic submissions, clarifying trilaterally-agreed on legal interpretations of the terminology, and giving special consideration to certain time frames to ensure adequate Secretariat and/or party action.

Ms. Adkins also indicated that the task force, which is comprised of government officials from each of the three countries, as well as contractors with ELI, met the previous May in Washington, DC and is holding frequent conference calls and other additional meetings throughout the process, and plans to complete its work in time for the next Council session in July 2012.

Ms. Adkins indicated that the Austin meeting was an opportunity for the NAC/GAC to further provide input on SEM. The NAC has previously provided a substantial number of advice letters to the United States in which the NAC has identified several significant deficiencies in the implementation of the SEM process and provided detailed recommendations for actions to address these deficiencies. For example, with respect to the issues Ms. Adkins identified that are under review, the NAC has already provided advice letters about delays in the SEM process and the possibility of establishing time frames to accelerate treatment of submissions. Similarly, the NAC has previously provided advice letters about specific strategies that would greatly improve implementation of the SEM process in ways that are consistent with the NAAEC. The NAC welcomes additional opportunities to provide input, but without specifics on what is currently being discussed and reviewed by the task force, the SEM is not sure what additional input it could provide beyond the advice it has already provided in the past. In addition, the NAC would be pleased to provide advice about the outside review the ELI is conducting, but the NAC does not feel it can comment constructively without knowing the process ELI is using in conducting its review or the issues and options for reform that it is considering. In the meantime, our members stand ready to communicate with EPA, ELI, and members of the task force regarding our views on the SEM process.

As a general matter, the NAC believes that it is essential that the task force, and ELI on its behalf, conduct its review as transparently as possible, that it conduct the review in a way that



maximizes the opportunity for meaningful input about problems with the process and ways to address them, and that it respond to this input in a way that demonstrates that the task force (and ultimately the Council) has considered comments seriously. For example, the NAC encourages EPA to identify the members of the task force that is undertaking the review, to share information about the work the task force is doing, its schedule, and how interested members of the public may obtain information and offer comments, to make public the charge to ELI and the timetable for ELI to complete its work, and to explain how members of the public may share their views with ELI.

The NAC commends the JPAC for holding a public meeting in El Paso on November 7 and 8 in part to obtain input from the public on SEM. The NAC encourages the task force and Council to consider carefully the information the JPAC has obtained and any recommendations for improving the SEM process that are based on public comments or the JPAC's own experience. We do not know how that input will be included in the overall review and urge that it be considered and where possible incorporated into the report.

For the next committee meeting agenda in the Spring, we request a thorough update on the SEM review process with sufficient time for discussion and questions and answers with an EPA official involved in the review. We also request information about the ongoing review of the SEM process – including information about the process being used to conduct the review, the issues being discussed, and the options being considered to address these issues - before the meeting in order for the meeting itself to be as useful a forum for discussion as possible.

***Recommendations:***

- 1. So that the NAC may provide meaningful input to the EPA and the SEM review task force, and to ensure greater transparency throughout the process, the NAC requests that: a) relevant materials about the changes being considered to the SEM process be provided to NAC members in advance of the next NAC meeting; b) sufficient time be devoted to the SEM review at our next meeting to allow significant opportunity for exchange between the NAC and GAC members and the task force representative; and c) the task force and Council structure their consideration of revisions to the SEM process in a way that allows the Council ample time to consider the NAC's Advice to the United States;***
- 2. The NAC recommends that the task force publicize details about the review it is conducting, including information about the issues and options for reform being considered, the timing of the review, and the opportunity for the public to make comments;***
- 3. The NAC recommends that input obtained from the JPAC public session in El Paso on November 7 and 8 be incorporated into the task force's report.***

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

**Advice 2011-5 (December 9, 2011):  
Advice on Transboundary Environmental Impact Assessment**

The NAC and GAC heard an excellent summary of the history of the Transboundary Environmental Impact Assessment (TEIA) and current status. The TEIA is described in NAAEC Article 10:7 as a process for consulting on potential transboundary project impacts and allowing for potentially affected parties to have a voice in contemplated transboundary projects. Article 10:7 committed the parties to reaching an agreement on a TEIA by 1997, but of course that deadline was not met. The governments - primarily the US and Mexico - disagreed on jurisdictional grounds and have not made progress since 1999.

A cursory review of historic CEC news releases and technical documents related to TEIA clearly demonstrate a sound basis on which to proceed with an agreement. The NAFTA-created Border Environment Cooperation Commission (BECC) has already put into practice EIA assessments as part of its successful investment programs, and there are many other Canada/US and US/Mexico bi-lateral EIA agreements, as well as international agreements from which to draw best management practices. There appears to be, however, a distinct lack of political will among the three parties to enter into formal negotiations again on the TEIA even while this is a stated obligation of all three governments.

The NAC reaffirms our interest in continuing to explore the possibilities vis a vis TEIA, and we strongly recommend that the U.S. engage both Mexico and Canada in an informal search for a framework of an agreement. The CEC should be encouraged to assist in this effort.

Another suggestion, not mutually exclusive of the one above, was made to conduct a review of existing EIA processes in each country, as well as border projects either completed or underway, to gauge which projects would fall under the purview of existing EIA procedures within each country and which ones might not and therefore otherwise be covered by a hypothetical TEIA. The CEC could potentially develop a compromise that draws upon approaches in each country. This could be a useful project for the Secretariat and would capture the vast majority of projects.

***Recommendations:***

- 1. Undertake a review of existing border projects and any transboundary EIA processes in each country with an eye toward developing a compromise approach drawing upon each EIA process;***
- 2. Re-engage with Mexico and Canada to compare positions and current possibilities to reach agreement on the TEIA .***