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

June 12, 2009

Dear Administrator Jackson,

The National Advisory Committee (NAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) would like to take this opportunity to congratulate you on your recent appointment as Administrator, and as the US Representative to the CEC's Council. We look forward to meeting you at the upcoming 2009 Council Session in Denver, and welcome the opportunity to discuss the issues covered in this letter in further detail.

The NAC held its thirty-second meeting on April 27-28 in Alexandria, Virginia. The focus of this meeting's presentations was on different aspects of greening the economy with the aim of informing our discussions on the CEC and its role in renewable energy, green building, and transportation. For the opening statements and guidance for this meeting we thank Oscar Carrillo and Rafael de León from the Office of Cooperative Environmental Management (OCEM); and Sylvia Correa and Laura Gomez with EPA's Office of International Affairs (OIA).

We thank Bill Irving from the Office of Air and Radiation (OAR) for an update on climate change issues at EPA; Jose Carlos Fernandez, from the CEC, and Russell Smith, from the US Trade Representative's Office, for an overview of the CEC's trade and environment projects; Susan Wickwire, OAR for an overview on renewable energy initiatives at EPA; Mike Zatz, from OAR for his presentation on the Energy STAR programs; John Guy, from OAR for his overview on EPA's transportation initiatives; Nelly Correa Sandoval, Chair of the Joint Public Advisory Committee (JPAC) for a detailed report on this committees activities; Dane Ratliff, with the CEC for his report of the citizen's submission process; and Evan Lloyd for his overview on the CEC. The charge questions developed by EPA for this meeting are listed in Appendix 1. As part of these questions, the

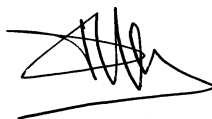
NAC discussed a report commissioned by the CEC on options and models for the reorganization of the CEC's Secretariat.

We thank EPA's entire OCEM Office for organizing and staffing this meeting, in particular, Oscar Carrillo, Mark Joyce, Rafael de León, Jannell Young-Ancrum, Ann-Marie Gantner, Stephanie McCoy, and Nancy Bradley.

We hope this advice will be of use to you and other US government officials particularly in this time of transition, and we look forward to continuing our work with EPA in support of the CEC and its mission.

Thank you for the opportunity to advise you on these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dolores Wesson', with a long horizontal line underneath.

Dolores Wesson  
Chair, National Advisory Committee

cc: Kathy Petruccelli, Acting Deputy Assistant Administrator, Office of International Affairs  
Rafael de León, Director, Office of Cooperative Environmental Management  
Jeff Wennberg, Chair, U.S. Governmental Advisory Committee  
Oscar Carrillo, Designated Federal Officer  
Nelly Correa, Chair, Joint Public Advisory Committee  
Adrián Vazquez, Executive Director, Commission in 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 2009-1 (June 12, 2009): Response to EPA's request on "Greening the Economy"**

One charge to the NAC was to provide recommendations or suggestions regarding an array of questions on how the CEC might be able to promote green buildings, reduce environmental impacts from transportation, and facilitate the development and use of renewable energy.

The NAC discussed these issues and heard presentations on relevant programs underway within EPA. The NAC believes that the CEC can be a catalyst for efforts to "Green the Economy" in concert with the objectives and plans proposed by the President. However, the Committee does not believe that the CEC should undertake a hodge-podge of projects or programs that might dilute its limited resources and opportunities. Rather, in line with previous and current recommendation that the CEC should focus its resources, the NAC believes that the CEC should select particular projects that are both within its expertise and consistent with the national goals of the three Parties.

The CEC appears to be more effective with projects where it is a catalyst to encourage work by other organizations with greater capacity to do research, development or implementation. It can also be effective when it helps to integrate or coordinate independent work of others in ways that facilitates the sharing of information across the three Parties.

***Recommendation: NAC recommends that the CEC choose a few programs or projects to support the "Greening the Economy" efforts of the US government and the Parties. Those projects could readily be developed as part of the framework to promote the expansion of green buildings in North America, or the development and adoption of more renewable energy across North America.***

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

**Advice 2009-2 (June 12, 2009): Response to EPA's request on restructuring the CEC**

**Analysis of the CEC Secretariat Options Report** - The NAC had a discussion on the consultant report "Review of CEC Secretariat Options" and the various options for reorganizing the Secretariat presented in this report. The NAC noted that this report was generated in the absence of a systematic assessment of the CEC's past accomplishments. The NAC believes that such an assessment is an important precondition for any discussion on reorganization and that it should be developed as soon as possible in order to frame and set a context for the Options Report we were asked to comment on. Furthermore, our discussions were constrained by key information unavailable to us at the time relating to the process by which the consultant conducted their analysis, and the sources consulted in generating its assessments of the various options.

To the extent that the NAC was able to embark on a discussion of the options presented in this document, it became clear that the consultant's report is seriously flawed. The CEC's mandatory activities, as laid out in Articles 11-15 of the NAAEC, constitute a considerable level of activity, much of which is subsumed within or expanded upon in Options 2 and 4. These options, though presented as separate, are really variations on a theme, as are the three variants in Option 4. In the opinion of the NAC, Options 1 and 3 should not be considered seriously. On the one hand, Option 1 ("Coordinating Secretariat") essentially converts the Secretariat into a convention/event planner. And the essence of Option 3 ("Think Tank") is already being carried out by a number of environmental NGOs. There was no support for Variants 1 and 2 under Option 4 ("Status Quo" and "Working Groups Enhanced"), for reasons laid out in the consultant report.

The NAC favors a "new" Secretariat that blends Option 2 ("Centre for Environmental Performance Monitoring") with Variant 3 of Option 4 ("Narrow Strategic Focus"), consisting of an expanded commitment to environmental monitoring and reporting, the generation of substantive and timely Article 13 reports, an enhanced Article 14 & 15 process, "harmonization" of working groups (including de-commissioning some), expanded work with the private sector, an effective communications strategy, an ongoing effort to monitor and evaluate the effectiveness of CEC programs, and more focus in its strategic planning. Some of these things the Secretariat is already doing well.

**Highlights of past NAC advice** - A quick review of relevant past advice provides a context to understand the role, function, and effectiveness of the CEC Secretariat in light of its various mandates described in the NAAEC. Throughout the NAC advice letters and as far back as October 2003, this committee expressed support for various Secretariat activities, mandatory and discretionary. Much of the NAC's advice relates to how the Secretariat could do an even better job given its limited resources. Below are listed six selected areas on which NAC's advice appears multiple times:

- Disclosure of environmental information; mapping [2004-5, 2006-7/8, 2008-5/6].
- Strategic planning; "focus" [2003-10, 2004-6/7/8, 2006-6, 2007-1/5/7]
- "Harmonization" and effectiveness of working groups [2003-11, 2005-7, 2006-3].
- Article 13 reports [2004-10, 2007-2, 2008-4].
- Communications and outreach [2005-3/8, 2006-2/6, 2007-4, 2008-1].

- Relations with the private sector [2005-1/5, 2006-1].

**Reflections related to the TRAC** - In October 2003, the NAC was asked to provide input to the ten-year review process. At that juncture, it advised that the Ten-Year Review Advisory Committee (TRAC) should (a) measure the effectiveness of the Secretariat relative to its mission as laid out in the NAAEC, (b) assess where the Secretariat may not have reached its potential, and (c) examine its role in light of the experiences of similar international organizations.

While the TRAC Report, issued in June 2004, does not address item (c) in this list, it does an extensive job of tackling items (a) and (b)<sup>1</sup>. The overall assessment can be summed up in the following quotation from TRAC Recommendation 1, which urges the Parties to strengthen and renew publicly their commitment to the CEC:

“[T]he Commission for Environmental Cooperation has achieved much in just 10 years. It has added substantially to our knowledge of the North American environment and the linkages between NAFTA and the environment; it has taken trilateral action on key environmental issues and strengthened the capacity of public institutions to manage environmental issues and to enforce laws and regulations; it has also promoted transparency and public participation.”

The TRAC also indicated that the CEC’s ability to make progress on issues “...has at times been hampered because of their political sensitivity to one or more of the Parties.”<sup>2</sup> In that regard, the TRAC recommended that the Secretariat’s effectiveness could be enhanced if the Council clearly established the Secretariat’s role as an analyst and catalyst in activities that address North American environmental issues, and supported it as a “safe harbor” for the Parties and stakeholders to discuss issues. Recommendation 5 builds on this by directing the Council to clarify the roles and responsibilities of the Council, the Secretariat, and JPAC, which is tantamount to saying that lack of clarity in the past has impeded the Secretariat from fulfilling its potential.<sup>3</sup>

In its advice letter dated May 7, 2004, the NAC submitted a number of comments on the draft TRAC Report. Advice 2004-1, which is also contained in this letter, is germane to the discussion of CEC roles and responsibilities:

“Mandatory vs. discretionary programs. The Parties and the Secretariat should recognize that several CEC functions are mandatory and are therefore not subject to substantive revision now, absent amendment to the NAAEC itself. Those mandatory functions include obligations to prepare an annual report under Article 12, to administer the citizen submissions procedure under Articles 14 and 15, and to facilitate the trade/environment intersection pursuant to Article 10(6).”

“We believe that identifying goals is important primarily, if not solely, with respect to the *discretionary* programs, since the NAAEC gives the Parties virtually unlimited discretion to decide what issues to bring to the CEC. It is crucially important to bring only those issues to the CEC that it can most usefully address in light of those goals, given the limited resources available to the CEC.”

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<sup>1</sup> It is to be noted that the consultant report does compare the Secretariat to other intergovernmental environmental secretariats, something we had encouraged the TRAC to do.

<sup>2</sup> Under Recommendation 2, p. 49.

<sup>3</sup> There are several other reasons too, as listed in Chapter 2 (“Overall Assessment”), p. 5.

In its advice letter dated May 20, 2005, the NAC was unsupportive of EPA's lack of response to the TRAC Report. The recommendation contained in Advice 2005-2 reads:

"By the 2005 Council session, the U.S. government should publicly commit to adopting the TRAC recommendations and work with the other Parties and the Secretariat to implement those that have not yet been implemented. If the U.S. government decides to reject any of the recommendations (which the NAC does not support), it should explain its reasons publicly."

Further recommendations regarding the very important function of the Secretariat in fulfilling its mandate with respect to the citizen submission process (Art. 14 & 15) appear in Advice 2006-4 (May 5, 2006):

"The NAC recommends that the U.S. government support the development of factual records concerning U.S. enforcement matters, and approve the development of such factual records at the first Alternative Representatives meeting following the publication of the recommendation of the Secretariat. Furthermore, the NAC recommends that the U.S. government approve any factual records recommended by the Secretariat as presented, and not modified to reduce scope, as has been the case in recent history."

**Reflections on implementation of the NAC's past advice** - A reading of EPA's response letters since 2003 reveals that much of the NAC's advice has been "taken under advisement". Yet, it is unclear to what degree this advice has been implemented. For example, in 2007 the NAC developed a set of projects for CEC consideration following EPA's request (Advice 2007-1) that were drafted with the goal of being highly relevant to US audiences. This effort was born from an overall concern by the US government that the Secretariat had not been effective at communicating its contributions to various stakeholders in the U.S., a topic that the NAC has taken up on several occasions and that continues to be highly relevant.

We are hopeful that under the new US Administration, EPA will play a more proactive role in helping CEC reach its considerable potential and, working with the Parties, give the NAAEC the potency it deserves in order to address trilateral environmental issues successfully with a minimum of political interference.

***Recommendation: The NAC suggests that any analysis for restructuring the CEC be conducted with a clear vision of the future role that is agreed upon for the CEC by the Parties and based on a robust assessment of its past accomplishments, successes and failures. The NAC strongly recommends that an assessment of past activities be undertaken in order to frame the discussion of future reorganization. It is crucial to understand what the successes and failures of the CEC have been before we embark on any reorganization.***

***In the absence of such an evaluation of past work history, and in an effort to be as responsive as possible to EPA's request, the NAC in this letter does provide some preliminary yet cautious guidance on the options presented, and favors a blend of Option 2, and Variant 3 of Option 4, as was outlined above. However, as we have underscored above, the organizational restructuring of the CEC requires a more rigorous, detailed and systematic approach than the one set forth in this single report.***

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

**Advice 2009-3 (June 12, 2009): On Articles 14 & 15**

Members of the NAC were impressed with the presentation provided by Dane Ratliff regarding the Submissions on Enforcement Matters (SEM) unit of the CEC. The NAC feels the attention that has been given to this process in recent months, including the hiring of new attorneys to the staff, is a welcome and positive development. We are pleased that a strategy to clear the backload of submissions is underway.

The NAC has repeatedly urged the United States to participate more positively in the citizen submission process (Advice 2006-4 May 5 and Advice 2008-9 December 15), and we support efforts to improve its efficiency and transparency as a vital and core function of the CEC and one that increases its relevance and credibility, particularly to the public. We also find it appropriate to develop a formal process to gauge the impact of the CEC's work on each submission after each submission has officially closed and final action has been taken. The formal process should result in a concise analysis of the reasonable impact, or expected impact of the submission and subsequent finding, through such measures as interviews, fact-finding, and field visits.

The NAC recognizes that enacting such a process would entail expenditure of funds not previously dedicated to these activities. However, another frequent comment that NAC has made in the past (and that JPAC has also made) is that the CEC does not provide an adequate measurement, or is not given the authority to measure, the impact of its own activities, and thus it has been difficult for the public, external audiences and the Parties to assess the full extent of the CEC's effectiveness and relevance.

***Recommendation: The NAC strongly encourages the US to propose that the CEC establish a process to analyze the impact of its activities regarding citizen submissions in a timely fashion after the process is concluded.***

## APPENDIX 1

### CHARGE QUESTIONS FOR APRIL 27-28, 2009 NAC/GAC MEETING

#### 1. *REVIEW FUTURE OPTIONS FOR THE CEC SECRETARIAT*

The U.S. Government is currently discussing the development of a new CEC Strategic Plan for 2010-2015. This presents an opportunity to revisit the objectives, policies and priorities that the Parties have undertaken during the first 14 years. It also provides an opportunity to formulate a way forward for the CEC that may differ from the way it has done business in the past. To facilitate the planning process it was suggested that the Council develop *options* to inform the discussion and help the US reach consensus on what it will propose to the NAAEC partners. Therefore, the Council commissioned a study to review options for the CEC. The document is called, "Review of CEC Secretariat Options," and it is included in your packets. It is a thoughtful piece with information that can be of assistance to the U.S as it prepares for the new Strategic Plan. As the U.S. moves forward, your input is very important, and we would appreciate your review of the document and your comments and opinions on the options proposed. The Four Secretariat Options for discussion are:

1. Coordinating Secretariat
2. Centre for Environmental Monitoring
3. Think-Tank
4. Center for Environmental Cooperation

In particular it would be useful to hear from NAC and GAC members about:

- a. Feedback on each of the four options;
- b. Advice on which option(s) resonates with your understanding of the CEC?
- c. Any additional options other than what is being proposed or discussed?

#### 2. *GREENING THE ECONOMY: GREEN BUILDINGS, TRANSPORTATION & RENEWABLE ENERGY*

The U.S. Government is currently also developing proposals and themes for the CEC Council Session. The concept of greening the economy is being considered as one possible discussion point for the Council Session. The U.S. President has proposed a plan to transform our economy by investing in alternative and renewable energy, ending our dependency on oil, and creating new green jobs. The goal is to build a green economy where 10 percent of our electricity comes from renewable sources by 2012. In the past the CEC has produced a variety of products addressing the "green economy" theme.

##### *GREEN BUILDINGS*

The Green Buildings Article 13 report could be a starting point of discussion. In 2008, the NAC/GAC were presented with five key opportunities for North American Cooperation on green buildings:

1. Promote technology and knowledge transfer
2. Analyze building material trade flows among the countries
3. Explore opportunities for reuse and recycling of construction debris among the countries
4. Harmonize Canadian, Mexican, and US building data via existing lifecycle environmental impact inventory databases
5. Support bioregional mapping to help regionalize rating systems and provide guidance on locally-appropriate designs

It would be useful to receive feedback from the NAC and GAC regarding the following questions:

- a. Do you think that one or more of the 5 key opportunities listed above should be priority areas for CEC work?

- b. Are there other opportunities in the Green Buildings area that should be priority areas for CEC work?
- c. For any areas that are identified as priorities, how should CEC work be focused so that it best exploits the CEC's unique role on trade and environment issues in North America, and takes best advantage of the CEC's particular capabilities?

### **TRANSPORTATION**

- a. Are there projects in the transportation sector that could be undertaken by the CEC as part of a focus on creating a green economy?
- b. How should CEC work be focused so that it best exploits the CEC's unique role on trade and environment issues in North America, and takes best advantage of the CEC's particular capabilities?
- c. In light of various EPA initiatives i.e., Diesel Retrofit Act (DERA) funds and new oceangoing vessels regulations; are there unique actions that could be considered in a North American basis i.e., installing new electrical hook-ups at truck stops to reduce idling & air pollution?

### **RENEWABLE ENERGY**

The U.S. Government is engaged in a plan to transform our economy by investing in alternative and renewable energy, in order to reduce our dependency on foreign oil, and creating new green jobs. One target is to build a green economy where 10 percent of our electricity comes from renewable sources by 2012.

In the past few years the CEC worked to support this "green economy" focus by developing various products and tools on green electricity certification systems in North America. Click on link to see databases: <http://www.cec.org/databases/certifications/Cecdata/index.cfm?websiteID=3>

It would be useful to hear from NAC and GAC members about:

- a. What would be a useful direction for the CEC in renewable energy development?
- b. What are the latest renewable energy technologies or environmentally sustainable production processes that could transform North America into a clean energy and green economy.
- c. The President's Recovery Act extends the production tax credit (PTC) to 2012 for wind and 2013 for other renewable sources of energy; are there things that the CEC should address to prepare for the additional production that is expected to result from these incentives?
- d. Identify any road blocks to getting renewables into the marketplace.

### **OTHER**

- a. Are there new ways in which the three governments can cooperate to promote the transition to a new green economy?