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

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

Dear Administrator Jackson:

On behalf of the Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) please accept our congratulations on your appointment as Administrator of the U.S. Environmental Protection Agency. Our committee looks forward to working with you on matters related to the programs, operations and future of the CEC, and the continuing opportunity to address North America's environmental challenges in partnership with Mexico and Canada.

The GAC met with our sister advisory committee, the National Advisory Committee (NAC), on April 27 – 28, 2009 in Alexandria, Virginia. It is my pleasure to submit to you the following report from our meeting. The report includes advice on two topics: a review of future options for the CEC Secretariat, and greening the economy through green buildings, transportation and renewable energy. The Council will soon deliberate on the CEC's third five-year strategic plan, therefore the 'future options' recommendations are particularly timely.

The meeting began with an update of U.S. priorities for the upcoming Council session in Denver and the status of the CEC Strategic Plan by Sylvia Correa, North America Senior Policy Advisor for EPA's Office of International Affairs (OIA). Bill Irving from the Office of Air and Radiation gave an excellent update of EPA's climate change activities, and Susan Wickwire, Chief of EPA's Energy Supply and Industry Branch briefed the committees on EPA's renewable energy initiatives. EPA's Energy Star Commercial Buildings Program was presented by Program Manager Michael Zatz, and John Guy, Acting Deputy Director of EPA's Transportation and Regional Programs Division gave an overview of EPA's green transportation initiatives.

We also heard reports from JPAC Chair Nelly Correa Sandoval and CEC Director of Programs Evan Lloyd. The CEC's trade and environment projects were summarized by Jose Carlos Fernandez, the CEC's program manager for Environment and Trade, and Russell Smith from the Office of the U.S. Trade Representative.

The processing of citizen submissions under NAAEC Articles 14 and 15 has been improved by the hiring of Dane Ratliff, who now directs these efforts for the CEC and who attended our meeting to provide an update of the status of submission reviews and factual records.

The GAC is grateful for the presence of these people at our meeting. The information and insight they bring to our deliberations is appreciated by the committee and we believe that the value


of the advice we offer is significantly enhanced by their participation. Members of the GAC commented at the conclusion of the meeting that this was one of the most productive and meaningful meetings we have held in several years. The Obama Administration has charted a new course in several environmental policy areas and this was evident by the content of some of our briefings. We look forward to supporting this new direction as it relates to tri-lateral North American opportunities with hopefully valuable advice.

We would also like to thank Scott Fulton, Former Deputy Assistant Administrator of OIA for his January 16, 2009 letter responding to our advice letter of December 15, 2008. His thoughtful and detailed response helps us to follow the progress of our recommendations and enhances our ability to provide useful advice in the future.

As always, we sincerely appreciate the participation from EPA's Office of International Affairs and the Office of Cooperative Environmental Management. In addition to Sylvia Correa, Laura Gomez of OIA attended and contributed, as did Rafael DeLeon, Mark Joyce and Oscar Carrillo from OCEM. And as always, we are grateful for the excellent administrative support we have received from staff at OCEM, particularly Nancy Bradley, Ann-Marie Gantner, and Jannell N. Young-Ancrum.

In conclusion, we appreciate EPA's continued support of our role in advising the United States Government on the enhancement of environmental conditions throughout North America, and look forward to supporting your efforts as the U.S. representative to the CEC.

Sincerely,



Jeffrey N. Wennberg, Chair  
Governmental Advisory Committee

cc: Scott Fulton, Former Deputy Assistant Administrator for EPA's Office of International Affairs  
Rafael DeLeon, Director, Office of Cooperative Environmental Management  
Oscar Carrillo, Designated Federal Officer  
Dolores Wesson, Chair, U.S. National Advisory Committee  
Alejandro Lorea H., Chair, Mexican National Advisory Committee  
Nelly Correa Sandoval, Chair, Joint Public Advisory Committee  
Adrián Vazquez, Executive Director, Commission for Environmental Cooperation  
Members of the U.S. Governmental Advisory Committee:  
Charles "Chip" Collette                      Carlos Rubinstein  
John Duffy                                        Robert Scott  
Lisa Gover                                        Carola G. Serrato  
Michael Linder                                Ellen A. Smyth  
Vincent R. Nathan                            Colin Soto  
Cindy Padilla

Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
Commission for Environmental Cooperation (CEC)

**Advice 2009-1:  
Review Future Options for the CEC Secretariat**

The members of the GAC deeply appreciate the fact that the CEC and the U.S. Government are using the opportunity of the 2010-2015 CEC Strategic Plan to revisit the objectives, policies and priorities that the Parties have undertaken during the first 14 years. We applaud the recognition by the CEC and the Parties that the form, function and role of the Secretariat may need to change in response to issues identified by past experience and the new challenges that lie ahead.

The GAC recommended embracing this perspective in our 2008-8 advice;

*“ . . . it is the GAC’s view that a strategic plan should focus on the long-term direction and role of the CEC. Its foundation needs to be visionary and mission-focused. . . The Council, Alt Reps and related agency staff of all three nations should be defining this vision, which ideally would begin with the assumption that no current CEC program or activity must still be in place in 2015. It is this ‘blank slate’ perspective that allows the organization to, if necessary, reinvent itself to seize the opportunities and meet the challenges of the future.”*

The majority of the April meeting’s discussion in both the joint and GAC-only sessions focused on developing guidance on this question. We appreciate the invitation to offer our advice on the choices at the heart of this core strategic question, and hope that the U.S. Government finds the following discussion and recommendations of value.

Before discussing the options contained in the “Review of CEC Secretariat Options” report, the GAC reviewed the NAAEC, and in particular Article 10, Council Functions. Articles 11 and 12 and Sections 1, 3, 4, 5, 6, 7, 8 and 9 of Article 10 define the functions that the Council *shall* perform. Articles 13, 14 and 15 and Section 2 of Article 10 define the functions the Council *may* perform. These are:

Article 13 – Secretariat Reports

Articles 14/15 – Citizens’ Submissions and Factual Records on Enforcement Matters

Article 10, Section:

- a. comparability of techniques and methodologies for data gathering and analysis, data management and electronic data communications on matters covered by this agreement;*
- b. pollution prevention techniques and strategies*
- c. approaches and common indicators for reporting on the state of the environment;*
- d. the use of electronic instruments for the pursuit of domestic and internationally agreed environmental objectives;*
- e. scientific research and technology development in respect of environmental matters;*

- f. *promotion of public awareness regarding the environments;*
- g. *transboundary and border environmental issues such as long-range transport of air and marine pollutants;*
- h. *exotic species that may be harmful;*
- i. *the conservation and protection of wild flora and fauna and their habitat, and specially protected natural areas;*
- j. *the protection of endangered and threatened species;*
- k. *environmental emergency preparedness and response activities;*
- l. *environmental matters as they relate to economic development;*
- m. *environmental implications of goods throughout their life cycles;*
- n. *human resource training and development in the environmental field;*
- o. *the exchange of environmental scientists and officials;*
- p. *approaches to environmental compliance and enforcement;*
- q. *ecologically sensitive national accounts;*
- r. *eco-labeling; and*
- s. *other matters as it may decide.*

The GAC also reviewed the size and scope of recent annual operational plans and the discretionary projects contained within them.

Consistent with views expressed in the joint session and comments offered by presenters in this and prior meetings, the GAC concludes that the CEC has done excellent work with limited resources in a number of the areas identified under Articles 13, 14, 15 and Article 10 § 2. However, in some cases the environmental benefits or benefits to the Parties of some of these efforts have been difficult to determine. Furthermore, many of the efforts represent important areas of study in their own right, but are not part of an overarching, tightly focused CEC mission. Given the CEC's limited resources, it is unreasonable to expect the CEC to undertake meaningful projects in all of the areas listed under Article 10 § 2, in addition to the required functions. Therefore, some definitional filter must be used to guide the selection of projects that will be continued within or added to the Operational Plans in the years ahead. The following subsections contain GAC's recommendations for how this could be accomplished.

### **Limit the Number of Projects**

The GAC recommends that the CEC limit the number of Article 10 projects that can be undertaken at any time. The number chosen as the limit would be informed by the need to focus resources and limit transaction costs. The GAC is sensitive to the issue of project size, given that transaction costs (in money and time) are roughly equivalent for both small and large projects. We recognize, however, that some small projects may offer substantial benefits and fully justify their transactional investment. Limiting the total number of projects would encourage larger efforts, but not prohibit small ones. Assuming that the CEC is operating at the limited number of projects, any new proposal would have to be seen as a higher priority than the project or program it displaces. Furthermore, the project number limit should help encourage the choice of limited-duration efforts that are planned to be concluded and closed at the time of their adoption.

The GAC also recommends that as new projects are undertaken or continuing projects renewed, the project scope needs to include follow-up reports to document the impacts or benefits resulting from the project at key milestones or after the project is completed.

### **Limit the Nature of Projects**

The GAC reviewed the list of potential CEC functions under Article 10§2, and recommends that those items that the parties are doing unilaterally should not be undertaken by the CEC. From the list above, these items are b, d, e, f, h, j, k, l, n, and p. This leaves the following as eligible activities based upon this recommended criteria:

- a. comparability of techniques and methodologies for data gathering and analysis, data management and electronic data communications on matters covered by this agreement;*
- c. approaches and common indicators for reporting on the state of the environment;*
- g. transboundary and border environmental issues such as long-range transport of air and marine pollutants;*
- i. the conservation and protection of wild flora and fauna and their habitat, and specially protected natural areas;*
- m. environmental implications of goods throughout their life cycles;*
- o. the exchange of environmental scientists and officials;*
- q. ecologically sensitive national accounts;*
- r. eco-labeling; and*
- s. other matters as it may decide.*

### **Narrow and Define the CEC's General Mission**

In the joint session, the term “Policy Coherence and Cooperation” was offered as the potential guiding principle for the five year strategic plan period. This is understood to mean focusing the CEC’s efforts at tri-lateral harmonization of policy (where possible) and promoting greater cooperation among the Parties. The three proposed policy priorities were air, energy and climate change; greening the economy; and healthy communities (environmental justice).

The GAC supports this focus and encourages the U.S. to offer this principle and these policy priorities as the basis for developing a tri-lateral agenda for the next five years. The GAC also recommends the addition of water resources as a fourth policy priority. Within the context of “Policy Coherence and Cooperation” and our recommendation to limit the nature of projects to those efforts not being undertaken by the parties unilaterally, the CEC would not undertake an ‘on the ground’ water resource improvement project. The CEC’s efforts in the area of water resources could, however, include two potential activities:

- the CEC could undertake efforts to report on continental water resource issues under Article 10(2)(c), and
- the CEC could seek to coordinate bilateral relationships and facilitate dialogue among the parties and sub-national jurisdictions.

Finally, the GAC wishes to emphasize that given the origins and purpose of the NAAEC, the CEC should maintain a focus on examining and reporting the impact of trade on the North American environment, either within these policy priorities or outside them.

### **Comments on the “Review of CEC Secretariat Options” Report**

In addition to the charge questions, a request was made for comments on the future role of the Secretariat as identified in the “Review of CEC Secretariat Options” report prepared by Stratos. The four Secretariat options are:

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

The GAC examined the various functions ascribed to these four general approaches as described in the report. Those options that the GAC opposes are presented first, followed by those that are supported.

#### ***Think Tank***

There was essentially no support among GAC members for this concept. The GAC sees this function as one that is being performed by others. We question the political viability of the approach given the CEC’s tri-national governance and the unavoidable policy tension among the parties. If the think tank limited its deliberations and communications to information gathering, analysis and sharing, and avoided policy advice or advocacy, this concern could be mitigated. However, such limitations might also compromise the value and purpose of the think tank model. The GAC also expects that the transaction costs associated with such a model would be exceptionally high, and expect that the combination of transaction costs and policy tensions among the parties would inevitably result in unacceptably low productivity.

#### ***Center for Environmental Cooperation – Variant 1***

The first variant of this concept is the preservation of the status quo. The GAC agrees with the widely held belief that change is needed and the opportunity presented by the development of the Strategic Plan to thoughtfully plan those reforms should not be missed. We see the limited and shrinking financial resources (in real dollars) and lack of a unifying mission that is scaled appropriately to the available resources as unsustainable. Further, the eclectic array of CEC programs and activities undermines the ability of the CEC to undertake focused projects offering significant and unique continental benefits to the environment, human health and the Parties themselves. For these reasons the GAC does not recommend the preservation of the status quo.

#### ***Coordinating Secretariat***

The functions of the coordinating Secretariat are vital to the operation of the CEC and cannot be performed by any other entity. The heart of the option is to limit the Secretariat to coordinating and administrative functions that are minimally required to fulfill the mandate of the NAAEC. The GAC does not support this option. The GAC believes the Secretariat has demonstrated the capacity to manage high-value discretionary programs and seeks not to eliminate these efforts but to enhance their effectiveness by narrowing the CEC’s programmatic focus.

### ***Center for Environmental Cooperation – Variant 2***

The second variant calls for enhancing the roles of the working groups and decentralizing program management functions. GAC members are somewhat divided on this approach. We see the enormous value of the standing working groups in the areas of Threatened and Endangered Species, Biodiversity and Sound Management of Chemicals. These groups are staffed and managed by the Parties and bring significant expertise and resources to the tasks from outside the CEC budget. They also promote coordination and cooperation between the Parties through the interaction of the participants. The GAC supports retaining these efforts, but does not see how this approach by itself can achieve the recommendations listed above. Indeed, the governance model would appear to work at cross-purposes with our organizational recommendations.

### ***Center for Environmental Monitoring***

This option decentralizes and expands the functions of the Coordinating Secretariat to include monitoring and reporting on the Parties' environmental performance plus continuation of current Secretariat functions relative to citizens' submissions under Articles 14 and 15. As in the case of the Coordinating Secretariat, the GAC believes these functions have merit, but like the Coordinating Secretariat, this recommendation may be too limited and needs further review and clarification.

### ***Center for Environmental Cooperation – Variant 3***

This option represents the closest match to the consensus recommendation of the GAC. It calls for maintaining many of the current Secretariat functions but proposes to limit discretionary projects to a "single or closely integrated joint environmental priority or initiative." The GAC does not believe this Stratos report option completely captures our recommendation, which is offered below.

### **GAC Recommendation Regarding Secretariat Options**

The GAC recommends that the Secretariat continue to perform the administrative and coordination functions called for in the NAAEC, as well as the reporting (Article 13) and citizens' submissions (Article 14/15) duties. The GAC further recommends that the Parties refocus the discretionary activities of the CEC to trilateral policy coherence and cooperation on a limited number of priority priorities, possibly including:

- air, energy and climate change;
- greening the economy;
- healthy communities (environmental justice); and
- water resource reporting and tri-lateral coordination of bi-lateral efforts.

The GAC further recommends that while developing annual operational plans the CEC should limit the number of discretionary projects and undertake only those that are not or could not more appropriately be undertaken by others. Finally, the GAC wishes to emphasize that given the origins and purpose of the NAAEC, the CEC should maintain a focus on examining and reporting the impact of trade on the North American environment.

Governmental Advisory Committee (GAC)  
to the U.S. Representative to the  
Commission for Environmental Cooperation (CEC)

**Advice 2009-2:**

**Greening the Economy: Green Buildings, Transportation & Renewable Energy**

The U.S. President has proposed a plan to transform our economy by investing in alternative and renewable energy, ending our dependence 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.

The April 2009 charge questions for the GAC focused on the areas of Green Buildings, Transportation and Renewable Energy. They seek guidance on how the CEC could best facilitate progress in this area on a North American scale.

**Green Buildings**

In 2008 the CEC issued “*Report on Green Buildings in North America*,” which the GAC has praised and previously offered the following advice;

*“The GAC encourages the U.S. Government to study and wherever appropriate pursue the recommendations contained within the CEC Report on Green Building in North America.”* (Advice 2008-4; April 17, 2008).

The April 2009 charge questions seek guidance on which of the five key opportunities for North America cooperation identified in the report should be priorities:

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*

During the joint session we learned that the EPA Energy Star “Portfolio Manager” tool for tracking energy performance of existing buildings is being adapted for use in Canada through a partnership between Natural Resources Canada and EPA.

The GAC recommends that the CEC explore the potential for extending the use of the “Portfolio Manager” tool to Mexico, thereby achieving a North American standard for measuring and tracking the energy performance of existing buildings. The expected cost of converting the tool for Canadian use is far lower than the cost to create a new one, therefore it may be possible for the CEC to fund or partially fund the conversion as an incentive for Mexican participation. This recommendation supports cooperation priorities 1 and 4.

## **Transportation**

The presentation of U.S. Green Transportation Initiatives during the joint session prompted a number of questions and suggestions from members of the committee. Most of the North American opportunities appear to center on shared or coordinated fleet efficiency programs and cleaner transportation fuel standardization and availability. Furthermore, the nexus between freight transportation, trade and the environment is inescapably tied to the mission of the CEC.

The GAC recommends the CEC review the three voluntary national highway transport efficiency programs – Fleetsmart (Canada), SmartWay (U.S.) and Transporte Limpio (Mexico) – and seek ways to coordinate and encourage these programs to work together.

The GAC further recommends that the CEC should consider measures to identify report and promote programmatic successes. This should include sub-national programs, such as the Texas Emissions Reduction Plan (TERP), which awards grants and rebates to obtain voluntary reductions in nitrogen oxide (NO<sub>x</sub>) emissions in older heavy-duty vehicles and equipment, and the Texas “Drive a Clean Machine” program which provides vouchers worth up to \$3,500 to help motorists in certain counties replace older, polluting vehicles.

In the area of transportation fuels, the GAC recommends that the CEC examine and report on progress toward the comprehensive use of ultra low sulfur diesel fuel. Currently Mexico is committed to switching to ULSD by 2010; however some members expressed concern that the access to the fuel will be limited for an extended period to major corridors between the U.S. Border and Mexico City. The CEC could monitor the availability of ULSD and report progress over time.

## **Renewable Energy**

Progress in the area of renewable energy development and use has been significant in recent years, especially in the U.S. The GAC has identified several barriers to further development which may be appropriate for CEC consideration.

The need to interconnect high-value renewable sites with the grid is shared among all three nations. Within this issue there are bi-lateral transboundary opportunities along both borders. The CEC could examine these situations to determine whether it might be able to play a role in finding solutions, producing North American renewable resource maps or otherwise sharing information.

One of the most competitive renewable sources is utility-scale wind. Jurisdictions considering applications for the development of wind farms invariably require extensive site-specific studies of bird and bat mortality. The GAC recommends that the CEC undertake a review of regulatory and published studies to better inform developers, regulators and wildlife advocates on the status and significance of bird and bat mortality relative to utility-scale wind turbines.