



March 29, 2012

**Board of Directors**

John Applegate  
Robert Glicksman  
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Rena Steinzor

Lisa P. Jackson  
Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1101A  
Washington, D.C. 20460

**Re: North American Commission for Environmental Cooperation**

**Advisory Council**

Patricia Bauman  
Frances Beinecke  
Eula Bingham  
W. Thompson Comerford, Jr.  
Sally Greenberg  
John Passacantando  
Henry Waxman  
Robert Weissman

Dear Administrator Jackson:

We are writing to express our concern over U.S. policy towards the Commission for Environmental Cooperation (CEC), the regional organization created by the North American Agreement on Environmental Cooperation (NAAEC). Specifically, we believe the Commission's centerpiece, its innovative citizen submissions procedure, is in danger.

As you know, the NAAEC is the path-breaking environmental side agreement to NAFTA, negotiated by the Clinton Administration after Bill Clinton pledged during his 1992 campaign to approve NAFTA only after adding labor and environmental protections. The NAAEC has become the model for the environmental chapters of every subsequent U.S. free trade agreement. These provisions are critical to ensuring that the increased trade resulting from the free trade agreements contributes to environmental protection and sustainable development.

Perhaps the most important of these provisions are the procedures allowing individuals and groups to submit claims of failure to effectively enforce domestic laws. These submissions may, if certain requirements are met, result in investigative reports that shed light on a problem. The CEC procedure, the prototype for the others, has proved its worth many times over. Since the NAAEC entered into force in 1995, it has received 79 submissions and the CEC Secretariat has produced 15 reports. Outside observers have documented that the reports have led to real improvements in policy. The procedure is particularly popular in Mexico, where it provides an important avenue for those affected by environmental harm to raise their voices and be heard.

For the procedure to continue to be successful, it must receive support from the NAFTA governments, including in particular the United States. The CEC Council, composed of you and your counterparts in Canada and Mexico (or your designees) has the authority under the NAAEC to decide, by a two-thirds vote, whether to approve Secretariat recommendations for reports. For most of the history of the CEC, the Council made these decisions fairly quickly. From 1996 to 2004, the Council considered 16 recommendations and took, on average, about five months to make its decision.



In recent years, however, the Council has failed to make these decisions in a reasonable time. The trend began during the second term of the Bush Administration. In those four years, the average length of time for the Council to decide whether to approve Secretariat requests to prepare reports shot up to nearly two years. Shockingly, the trend has become worse – much worse – during the Obama Administration. When President Obama took office, three Secretariat recommendations for reports were pending. Over three years later, only one of those recommendations has been acted upon. The other two still await decision almost four and five years, respectively, after the Secretariat informed the Council that they warranted investigation.

These delays are beyond all reason. Unfortunately, they are part of a larger pattern. The Council has also delayed publishing the reports after they have been completed by the Secretariat, and has not always cooperated with the Secretariat at other stages in the submissions procedure. The result is an enormous increase in the time it takes for the CEC to produce a report on a submission. The three reports currently being prepared by the Secretariat (including one on mercury emissions from power plants in the United States) concern submissions filed in 2003 and 2004 – over *seven years* ago.

In addition to these delays, the Council's decisions have sometimes undermined the procedure. For example, the Council has often authorized reports only after narrowing their scope so much that the Secretariat cannot examine the problem highlighted by the submission. In fact, the only Council approval of a Secretariat recommendation in the last three years narrowed the scope so drastically that the submitters abandoned their request. The Council has also prevented the CEC's Joint Public Advisory Committee, composed of citizens from all three countries, from following up reports to see whether they have been effective.

EPA's National Advisory Committee on the CEC, which is composed of members from academia, business, and non-profit groups, has repeatedly and unanimously expressed its frustration over these actions. In response, EPA has minimized the problems and suggested that, in any event, there is little it can do in the face of Canadian and Mexican resistance.

This is simply unacceptable. It ignores Executive Order 12915 (1994), which commits the United States to approving "to the greatest extent practicable" Secretariat requests for authority to prepare investigative reports on submissions. Of equal importance, it ignores the U.S. experience with the CEC during the Clinton and early Bush Administrations. When the United States has strongly supported the CEC submissions procedure, then it has shown its ability to convince the other governments to support it as well. In June 2001, for example, the Council came together to agree that the Council and Secretariat would make their best efforts to ensure that the entire procedure, from initial filing to final report, would take no more than two years.

We understand that EPA is currently working with the other governments at the staff level to review the submissions procedure. We ask that you instruct EPA officials to make clear that the United States (a) will insist on **timely decisions** (including immediate decisions on the two pending Secretariat requests) as part of a concerted effort to return to the prior two-year commitment, (b) will **always support Council approval** of Secretariat requests without drastically narrowing their scope, and (c) will encourage rather than oppose efforts by the Joint Public Advisory Committee to **follow up reports**.

The CEC submissions procedure is the crown jewel of the structure established by the United States over the last twenty years to build environmental protection into trade agreements. In keeping with its general commitment to making environmental policy more transparent and responsive to the concerns of those directly affected by it, the Obama Administration should make strengthening the submissions procedure a high priority.

Sincerely,

**Rebecca Bratspies**

Member Scholar, Center for  
Progressive Reform  
Professor of Law, City  
University of New York  
School of Law

**Carmen G. Gonzalez**

Member Scholar, Center for  
Progressive Reform  
Professor of Law, Seattle  
University School of Law

**David Hunter**

Member Scholar, Center for  
Progressive Reform  
Professor of Law, American  
University Washington  
College of Law

**John H. Knox**

Member Scholar, Center for  
Progressive Reform  
Professor of Law, Wake  
Forest University

**Noah Sachs**

Member Scholar, Center for  
Progressive Reform  
Professor of Law, University  
of Richmond School of Law

**Dan Tarlock**

Member Scholar, Center for  
Progressive Reform  
Professor of Law, Chicago-  
Kent School of Law

**Chris Wold**

Member Scholar, Center for  
Progressive Reform  
Professor of Law, Lewis &  
Clark Law School