

October 6, 2000

Joint Public Advisory Committee  
Commission for Environmental Cooperation  
393 St. Jacques West, Suite 200  
Montreal, Quebec H2Y 1N9

**Re: Comments on Issues Relating to CEC's Citizen Submissions Mechanism**

Dear Members:

Environmental Health Coalition (EHC) is thankful for the opportunity to comment on the *Draft Document of the Process for Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15* of the NAAEC as well as on *Submissions History Leading to Lessons Learned*. As petitioners of a pending submission under these articles we have gained first-hand experience of this process which in turn can serve to examine the effectiveness and efficiency of Articles 14 and 15 submission process.

The following comments relate only to the *Draft Document of the Process for Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15*. EHC will reserve its comments on the specific issues related to our pending submission as it has moved through the process for future comment sessions next year.

**General Comments on the Draft Document**

- **The Review Process Must Ensure Equal Access.** Under the proposed process, the public, including petitioners in a submission, must first address a particular issue of concern to the JPAC which will in turn carefully review it and analyze it prior to any decision to present it before the Council. A Party however, can go directly to the Council on any issue of concern without JPAC's initial review and analysis. **Under this format, the public, primarily a petitioner bringing an issue for review concerning its submission, will be placed in an unfair disadvantage. The Petitioner(s) will be subject to a first layer of review process compared to a Party which can go directly to the Council despite the fact that it may also part of the same submission.** In essence, such a process poses an undue burden on the public whenever there is a dispute as to the interpretation or implementation of Articles 14 and 15 because it is the only sector of stakeholders who must go through the JPAC prior to the Council for review. In order to ensure a more equitable process, a Party must bring any issue of concern to the JPAC if that Party is part of a submission and the issue relates that submission. The JPAC must in turn apply the same procedures to determine whether the issue of concern merits further review by the Council.
- **The Process Must Ensure Transparency and Fairness to All Involved.** Related to the first comment, the review process must strive to achieve utmost transparency. If a member of the public or a petitioner to a submission brings an issue to the JPAC for review related to a particular submission, the parties involved in the specific submission must be informed and be given an opportunity to comment or respond to the issue being placed for review. Similarly, **if a Party to a submission raises an issue for review related to the submission, the JPAC must notify the petitioners, must send a copy of the statement by the Party to petitioners and must give them an opportunity to respond to the statement prior to any decision by the JPAC or Council.** Because it is expected that the majority of issues raised for review will be concerning the treatment of pending submissions, it is imperative that all the parties involved be given an opportunity to participate in the review process.

- **The JPAC Must Conduct Public Review Before It Makes Its Recommendation to the Commission.** The public should be given the opportunity to present before the JPAC its position as to why should the Council review and resolve the issue being presented. The JPAC will only benefit from such public discussion in order to make a more intelligent and objective recommendation to the Council.
- **The Review Process Must Occur Within a Timely Manner and Must Not Cause Undue Delays in the Overall Article 14/15 Submission Process.** It is imperative that the review process for issues concerning the implementation of Articles 14 and 15 do not serve to further delay the overall submission process. **To safeguard such potential delays, the review of issues should have specific time limitations for review and analysis.** As discussed below in the Specific Comments section, it is unclear from the draft as to the amount of time allowable for review and response of issues presented to the JPAC and Council for review.

### Specific Comments on the Draft Document

- **Raising an Issue with the Council.** The draft document provides that a member wishing to raise an issue must do so in writing not exceeding 3 pages. EHC believes this is an acceptable initial step in identifying and addressing the issue of concern. However, the JPAC must take a flexible approach to allow the submitter to further elaborate and articulate with specificity the nature of the concern at issue when it is of such a complex nature that it may not be able to be fully presented within the 3 page requirement. Additionally, the submitter must be given a priority when
  - **Time the JPAC Has to Review and Respond to Inquiry.** It is unclear from the draft document the amount of time the JPAC will have to review an issue brought by the public. The review process must have strict time lines in order to assure effectiveness and efficiency. Although the draft specifies the time it shall take to publish a particular decision, it does not provide the time the JPAC may take in reviewing a particular issue. **It is of utmost importance to maintain a process with strict mechanisms that will ensure prompt response and transparency. Absent those mechanisms, this review process will prove ineffective, and instead will be disruptive to the overall submission process.** Generally, 30 to 45 calendar days should be considered to be reasonable time to review and respond to an issue presented by the public.

Respectfully submitted,

Cesar Luna, Esq.  
 Environmental Health Coalition  
 Border Environmental Justice Campaign  
 1717 Kettener Bld. Suite 100  
 San Diego, CA 92101  
 Phone: (619) 235-0281  
 Fax: (619) 232-3670  
[cesarl@environmentalhealth.org](mailto:cesarl@environmentalhealth.org)  
[www.environmentalhealth.org](http://www.environmentalhealth.org)