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9 May 2001

**MS. LIETTE VASSEUR**

President of JPAC in 2001

**Manon Pepin**

Liaison Officer

E-mail: mpepin@ccemtl.org

**Dear Ms. Vasseur:**

Further to your letter of 3 April, I am writing in order to express our comments on the NAAEC Article 14-15 citizen submission mechanism, and the lessons learned from this process. Moving directly to the conclusions under chapter 4, and following the same sequence, we can comment as follows:

**1. Citizens Submissions Play an Essential Role in Achieving the Goals of NAAEC.**

Comment: Unquestionably, for the Comité Pro Limpieza de Río Magdalena, the signing of NAAEC and its Article 14-15 citizen submission mechanism have been of great importance in the search for solutions to environmental problems, and above all, in responding to public demand for the effective enforcement of local environmental provisions.

Although the experience of factual records studied has so far been limited, and we are thus unable to comment on their development more fully or to note improvements made in practice, it is quite clear that the development of a factual record is an opportunity for both citizens and impartial experts, since a detailed evaluation is made of the arguments of both submitter and Party.

If the legal framework itself is the object of evaluation, as in the case of water in Mexico, a factual record developed impartially for the purpose of identifying the jurisdictional areas involved will be vital. It will serve to clarify the need to take local actions to ensure the consistency of legal provisions at the three levels of government. Once the relevant constitutional amendments are made, the powers and obligations of each jurisdiction will be clarified.

If the object of evaluation is something different, for example technical data, or definition of transactional areas, then each factual record is clearly a unique experience.

**It is important that the standard structure of a factual record comprise a part concerning recommendations by Council concerning the case at hand, which must consist in an instruction or recommendation to one of the parties involved in the submission.**

## **2. Secretariat Independence and Resources.**

It is clear that the resources necessary to the Secretariat are important to its being able to transparently and effectively exercise its powers and fulfil its obligations, and to exercise its best judgement independently. In specific cases, the resources in question may consist of qualified personnel and consultants in the required subject areas.

I feel that it is important that the Council and Secretariat have available a revolving bridge credit facility to support their implementation of priority programs and projects, as with the NARAP-mercury program, consisting of, for example:

- A. Identification of remediation technologies for soil/water contaminated by tailings from old mercury amalgamation processes, as is the case in many areas of North America.
- B. Research to determine the systems, their specifications, etc., for disposal of the tailings in remediation processes for mercury-contaminated soil/water.
- C. Funding of specific remediation projects where, due to the magnitude of the problem or the risk involved, remediation is in the public interest.
- D. Public awareness raising on issues relating to water care and conservation, mercury-containing soil, battery recycling and trash burning.

## **3.- The Review of Article 14 and 15 Submissions Must Be Expedited.**

The time periods proposed by the Secretariat to Council for review of submissions in order to expedite the process are consistent in principle with improved response.

## **4.- Open, Informed and Reasoned Decision-making.**

The openness, documentation and reasoning of Secretariat decisions, for a given case, must invariably be justified.

1. It is appropriate that the submitter have a period of 30 days in which to respond when the Party has presented new information.
2. If the submitter is not informed of the Secretariat's recommendations, nor of the moment that these are referred to Council, concerning the factual record, it is appropriate that the submitter and the Party be informed of the Secretariat's decisions in that regard simultaneously.
3. If the Party decides to submit additional information directly to Council in reaction to such a recommendation from the Secretariat, and Council takes it into account, it is also appropriate for the submitters to be so informed, and they must have the same right to present their arguments within a prescribed period of time, or vice versa.

## 5.- Factual Record Follow-up.

If it is true that there is nothing binding or enforceable about a factual record as matters stand, Río Magdalena has the following comments with a view to inducing the Party to take a given action or series of actions:

Part One, Objectives of NAAEC, Art. 1(f), states that one objective of the Agreement is to “strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices”; Art. 10(2)(s) states that “[t]he Council may consider, and develop recommendations regarding other matters as it may decide”; and Art. 10(3) reads: “The Council shall strengthen cooperation on the development and continuing improvement of environmental laws and regulations, including by, without reducing levels of environmental protection, **establishing a process for developing recommendations on greater compatibility of environmental technical regulations, standards and conformity assessment procedures in a manner consistent with NAFTA.**” Does this procedure exist?

In other words, the Council, by a two-thirds vote in accordance with NAAEC 1(f) and 10(2)(s) is empowered to establish a process for developing recommendations on greater compatibility of environmental technical regulations, standards and conformity assessment procedures in a manner consistent with NAFTA.

Although Article 37 indicates that “[n]othing in this Agreement shall be construed to empower a Party’s authorities to undertake environmental law enforcement activities in the territory of another Party”, one **objective** of the Council, i.e. a reason for which it was created, is to strengthen cooperation, and one of its **functions** is to establish a process for developing recommendations on greater compatibility of environmental technical regulations, standards and conformity assessment procedures in a manner consistent with NAFTA, without reducing levels of environmental protection.

It will be helpful for all concerned to acquire further practice and experience.

## 6.- Council Referral Items.

We believe that JPAC has faithfully carried out its work relating to Council Resolution 00-09 of 13 June 2000.

The information currently available does not enable us to fully observe the overall performance of the mechanism, and in particular, whether it is good for all interested parties. However, the changes proposed today can be monitored and assessed once in operation, and if necessary, may be modified to improve them in the future, as further information comes to light and greater experience is acquired. Most important of all is that the current atmosphere of good faith and good will must continue to prevail.

Thank you for your attention to our comments.

Sincerely,

Ing. Luis Felipe Ayala S.  
Committee Secretary