Country/Region Reports -- United States of America

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1. UNITED STATES OF AMERICA

(1) Introduction

In 1996, the US State Department assumed a newly enlarged environmental role, planning to establish six hubs worldwide to focus on environmental issues. Each hub will examine transboundary environmental issues in its region of the world and will prioritize those environmental issues according to their relevance to the United States. They will also ensure the coordination of US agencies abroad and help maximize the impact of US dollars spent on the environment. The first two hubs will be in San José, Costa Rica, and Amman, Jordan.

(2) The North American Free Trade Agreement (NAFTA)

On January 26, Canada, Mexico and the United States announced that they would work together and through the Commission on Environmental Cooperation (CEC) to concentrate on lowering the levels of mercury, DDT, and chlordane. After a 1995 decision to control PCBs, the countries selected these three pollutants because these are the only three chemicals targeted by the United Nations Environment Programme that are still used in North America. In March, the United States decided to allow specialized companies to import PCBs into the country for incineration (40 C.F.R. pt. 761). This decision was especially important to Mexico, which does not have similar incineration technology and has to dispose of much of the chemical. Problems with chlordane and DDT will be addressed in Mexico, as it is the only NAFTA country still using these chemicals.

The NAFTA countries also agreed on April 9 to share plans and programs for wildlife and natural resource protection. A new trilateral commission created by this agreement is to meet annually and will absorb three previously created commissions: the 1972 United States—Mexico Joint Committee for Wildlife Conservation, the 1988 Trilateral Committee for the Preservation of Aquatic Birds and their habitats, and NAFTA’s 1994 Cooperative Program for Biodiversity Conservation.

On June 6, the CEC Secretariat, acting pursuant to Art. 14 of NAFTA’s environmental side accord, requested that the environmental ministers of the three countries prepare a report on the alleged failure of Mexico to apply its environmental laws in approving construction of pier and port facilities near the island of Cozumel. The request had been prompted by a complaint to the CEC on December 18, 1995, which alleged that Mexico did not require a comprehensive environmental impact study for the project located in a nat-
ural reserve area. In August, the CEC Secretariat recommended development of a “factual record” pursuant to Art. 15, and voted to review Arts. 14 and 15 of the environmental side accord to clarify the procedures for public participation and filing complaints.

After a meeting in August, the environmental ministers of the three NAFTA countries established air pollution and the transborder movement of hazardous substances as their top priorities. The CEC plans to set up compatibility methods and a technology system to monitor air toxins in the three countries. The plan will also further the harmonization of hazardous materials regulations, an objective that must be completed by January 1, 2000, under the NAFTA environmental side accord. A first annual North American Pollutant Release Inventory will be published in February 1997.

Finally, the NAFTA countries worked on a register of North American companies and their compliance with environmental laws. Registration would be voluntary and would supplement management and compliance schemes, such as those incorporated in the International Organization for Standardization’s ISO 14000 standards. The register would show levels of compliance and could be accessed by the three governments, by the CEC, or by private companies that want to verify compliance before doing business with one another. If necessary, each government could monitor the implementation plans for compliance developed by noncomplying companies.

(3) United States—Mexico Border

The United States and Mexico established a Hazardous Waste Tracking System (HAZTRAKS) to assist environmental authorities in monitoring and detecting violations in the movement of waste between the two countries. HAZTRAKS was to begin with in-bond companies (maquiladoras) by the end of 1996 and will eventually encompass all of North America.

A Border XXI Environmental Program was signed in May. Its main objective is to create an infrastructure for development along the border. In response to complaints by the US General Accounting Office, Border XXI was revised to clarify and prioritize its objectives. A status report will be released bi-annually.

The Border Environmental Cooperation Commission (BECC) approved a water supply and wastewater collection and treatment project for the city of Nogales, Sonora, on April 30. The project was jointly funded by the Mexican government and North American Development Bank (NADBank). Later in the year, the BECC also approved sanitary landfill and water treatment projects in several Mexican and US cities. On December 2, NADBank approved $28.9 million for water and waste water projects in Mercedes, Texas, and Brawley, California.

The United States and Mexico agreed to a joint technical study of air pollution at Texas Big Bend National Park. This agreement ended a four-year
dispute about the source of smog in the park during certain parts of the year. The United States funded the entire project, and a final report was expected to be available by mid-1997.

Less successful were efforts to resolve disagreement over a proposed low-level nuclear waste dump in Texas, just 16 miles from the Mexico border. In public hearings on the dump, Texas refused to grant the affected Mexican states the right to be heard, claiming that only the Mexican federal government had such standing. While the Mexican federal government had concluded that the project did not violate its federal or state guidelines, the concerned Mexican states, along with Greenpeace, argued that the decision on the placement of the dump violated both NAFTA and the La Paz Agreement.

(4) Antarctica


(5) Protection of Endangered Species and Biodiversity, Law of the Sea

In 1996, the United States Senate once again failed to ratify the Convention on Biological Diversity. Despite Senate approval of the Agreement Relating to the Implementation of Part XI in 1994, the Law of the Sea Convention also went unratified.

In 1995, the Humane Society had brought suit against the US Secretary of Commerce in the US Court of International Trade, alleging that the Secretary had failed to perform its mandatory duty to identify Italy as a nation that continued large-scale drift-net fishing in the Mediterranean in defiance of international, European, and American law. In March 1996, the court ordered the Commerce Secretary, under the High Seas Driftnet Enforcement Act (16 U.S.C.A. 1826a(b)(1)(B)), to identify Italy as a nation whose nationals or vessels are believed to be conducting large-scale driftnet fishing and to notify Italy and the President of the United States (Humane Society v. Brown, 1996 WL 132988, Mar. 18, 1996). President Clinton began consultations with Italy, as required by the Act. In July, after months of negotiations, the United States and Italy announced an agreement to stop illegal driftnet fishing by Italian nationals in the Mediterranean Sea.

In February, the US Fish and Wildlife Service successfully ended a six-year undercover investigation after the suspect, a world renowned breeder and expert on wild tropical birds, pled guilty to violating federal laws prohibiting the importation of endangered species. The birds that were being smuggled were listed as endangered under the Convention on International Trade in Endangered Species, as well as the Endangered Species Act.
In February, an Organisation for Economic Cooperation and Development (OECD) report pointed to the United States' lack of progress in reducing greenhouse gas emissions. In urging reduction of gas emissions, the report emphasized the role of the United States in influencing other OECD nations toward reduction.

The Environmental Protection Agency (EPA) released a report in April, pursuant to the UN Framework Convention on Climate Change, concerning US greenhouse gas emissions from 1990-94. The United States, along with 17 other industrialized countries, has committed itself to returning national greenhouse gas emissions to 1990 levels by 2000. The Clinton Administration predicted US failure in meeting this goal, however, because the US plan under the Convention focuses only on volunteer efforts and the use of government-sponsored programs. In July, at the Second Conference of the Parties, the United States called for a binding target on phasing out all greenhouse gases, which would be enforced internationally.

The EPA issued a final rule (61 Fed. Reg. 52848) exempting certain chemicals that are used as substitutes for ozone-depleting chemicals from regulations controlling volatile organic compounds. The EPA considers these chemicals to be merely "negligibly reactive," and they will be substituted for chemicals to be phased out by January 1997 as required by the Clean Air Act.

On January 17, the World Trade Organization concluded that certain provisions of the US Clean Air Act discriminated against foreign oil producers in violation of the Uruguay Round of General Agreement on Tariffs and Trade. The ruling jeopardized 1995 rules of the 1990 Clean Air Act which established allowable levels of chemicals in gasoline sold in cities with major pollution problems. The EPA rules gave US companies one year to comply with the reformulated gasoline program, while foreign companies had to comply immediately. Venezuela unsuccessfully fought the rules in both EPA administrative hearings and in US federal court. In June, the United States agreed to comply with the World Trade Organization decision disallowing different stricter baselines for foreign refiners under the reformulated gasoline program. In December, the United States and Venezuela reached an agreement whereunder the United States will phase out the reformulated gasoline rules over a 15-month period.

In preparation for the December meeting in Geneva of the Ad Hoc Group on the Berlin Mandate for the Framework Convention on Climate Change, the US State Department revealed a proposal to establish a system of international tradable allowances for greenhouse gases. However, at the meeting, no agreement was reached on reducing emissions after the year 2000.
(7) Hazardous Materials and Pesticides

In April, the State Department announced that the Clinton Administration might negotiate bilateral agreements to allow Basel Convention parties to ship hazardous waste to the United States. Also in April, the EPA published its final rule codifying an OECD Council policy relating to the import and export of wastes destined for recovery (61 Fed. Reg. 16290). The rule establishes a gradual system for controlling movement of waste among OECD countries, and precludes the EPA from changing the rule because other OECD nations could refuse US waste if the rule were changed. The OECD decision, upon which the rule was based, called for a three-tiered approach to waste management with wastes being classified as least hazardous, hazardous, or most hazardous.

(8) Nuclear Energy and Waste

In February, the United States agreed to accept and store 20 tons of bomb grade uranium from European research reactors. After an environmental study, the United States determined this was the better alternative to either reprocessing the fuel or continuing to use weapons-grade uranium as fuel in the reactors.

(9) Water Pollution

In the latest Canadian-US document setting out a strategy for controlling persistent toxic pollutants in the Great Lakes, the countries for the first time formally agreed on a prioritized list of chemicals targeted for control. The strategy consists of a four-step process to work toward the goal of virtual elimination of toxic chemicals in the Great Lakes. First, the EPA and Environment Canada will identify the full range of toxic sources in the area. Second, the agencies will assess existing laws and programs. Third, the agencies will identify cost-effective options for more reduction. Finally, the agencies will implement specific actions for the virtual elimination of toxins.

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