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## **NORTH AMERICAN TRADING PARTNERS: CANADA, UNITED STATES, AND MÉXICO AS AN ENFORCEMENT NETWORK**

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### **SUMMARY**

This paper will suggest several possible components of a successful international network of cooperation in environmental enforcement. It will then examine the evolution of the environmental enforcement network in North America, including the recent creation of the North American Commission for Environmental Cooperation. Finally, it will suggest ways to enhance environmental enforcement cooperation in North America in each of the areas of cooperation previously outlined, analyzing several legal and policy challenges in building an international enforcement network.

### **1 THE CHALLENGE AND OPPORTUNITY OF A NORTH AMERICAN ENVIRONMENTAL ENFORCEMENT NETWORK**

The United States, Canada and Mexico have committed to strengthening environmental enforcement within each nation, as well as mutual support and cooperation in carrying out this mission. In recent years, the three countries have begun exploring a variety of ways in which cooperation can enhance their ability to address environmental problems. The three countries are now presented with an important new opportunity to enhance their environmental protection capabilities through new international arrangements which formalize an evolving network of enforcement cooperation. The experience of enforcement cooperation in North America suggests a range of new possibilities for similar networks to develop around the globe.

The entry into force this year of the North American Free Trade Agreement (NAFTA) marks a new era of challenge and opportunity in working to achieve environmental protection in North America. NAFTA's promise of increased commerce brings with it a potential increase in domestic and transboundary environmental risks. In addition, free trade requires a level playing field of effective enforcement of each country's environmental laws, to prevent unfair trade advantages which might arise from inadequate enforcement. NAFTA's environmental side agreement, the North American Agreement on Environmental Cooperation (NAAEC), (1) however, establishes ground-breaking new commitments to address the environmental challenges of regional free trade. At the same time, this innovative Agreement creates a new institutional framework for building on past experiences to develop an increasingly sophisticated and effective network of environmental enforcement cooperation.

### **2 BUILDING AN ENVIRONMENTAL ENFORCEMENT NETWORK**

This section offers an analytical framework for developing international networks of environmental enforcement cooperation, describing several possible key aspects and components. Many of the components are suggested by past experience in enforcement cooperation in North

America; others are yet to be fully utilized, but show promise in enhancing the effectiveness of enforcement cooperation in North America and elsewhere.

## 2.1 Respect for national sovereignty

Law enforcement is a unique attribute of national sovereignty. The environmental inspector represents the power of the State to impose order through the rule of law — a function which properly lies within the exclusive territorial jurisdiction of individual nations. Thus, respect for national sovereignty must be a fundamental guiding principle in developing a network of cooperation in environmental enforcement. The challenge is to build a network of cooperation which maximizes the capacity of each country to enforce its environmental laws, which is responsive to transboundary effects of pollution, and which is solidly based on the principles of sovereignty and comity.

## 2.2 Institutional frameworks for cooperation

Although international cooperation on environmental enforcement often develops on an ad-hoc basis, a rational institutional framework for cooperation can enhance the success of an international enforcement network. Mechanisms for cooperation may be formally created by international agreement, or may be informal. Attention to the rational design of such institutions is needed on all levels of interaction: multilateral, bilateral, and internally, among agencies at the national and political subdivision levels.

An effective enforcement network combines partnership among the various actors within and among each government, empowering all stakeholders in the enforcement process. Institutions for cooperation can be structured to allow participation by all relevant agencies, including national and local environmental authorities, and other law enforcement agencies (e.g. customs, transportation, and criminal enforcement authorities). They can also be structured to promote cooperation among equivalent authorities of the countries involved. At the same time, they can be designed to account for different organizational structures and levels of centralization among the governments.

## 2.3 Cooperation in solving environmental problems

Cooperative relationships in environmental enforcement often develop in response to specific environmental problems. Transboundary environmental problems, for example, provide a natural back-drop for developing a network of cooperation. Countries also often face similar domestic environmental problems. For example, they may share similar industries which emit similar pollutants, and are sometimes owned by common multinational corporations. Thus, enforcement cooperation may be of assistance in helping each country solve even wholly domestic environmental problems. There are many possible types of cooperation, depending on the type of environmental problem.

### 2.3.1 Strategic priority-setting and targeting

By establishing common goals, priorities, and strategies for using enforcement tools to address common environmental problems, countries can maximize the impact that their enforcement actions will have on compliance in their respective jurisdictions. Industry will be more likely to comply with the law of the jurisdiction in which it operates, when its managers know that the governments have adopted a conscious, cooperative strategy to mutually enhance their respective enforcement capacities.

Countries may address local transboundary environmental problems through common resolve to focus enforcement resources on a particular type of pollutant, industry, environmental requirement, or sensitive transboundary ecosystem. Countries may also demonstrate their common resolve to address environmental problems caused by similar types of operations in each country, even where transboundary impacts are not apparent. For example, coordination in strategic priority-setting may be appropriate following an agreement by the countries to harmonize and upgrade their environmental

standards applicable to a particular industry or category. This kind of sector-based cooperation and targeting can serve a key role in ensuring the level playing field required for free trade between sovereign nations.

Strategic cooperation requires a high degree of sensitivity to concerns that "joint" decisions about enforcement targets may be perceived as compromising national sovereignty. This problem can be avoided, however. For example, common priorities can be determined mutually by the parties involved, and then implemented by each country's exercise of its own authorities, taking independent enforcement actions within its territory in a manner which respects the exclusive territorial jurisdiction of the other countries. Countries may also cooperate in developing information to identify common environmental problems, but unilaterally choose a different mix of tools to address the problem. Enforcement represents one such tool, which countries independently may employ with differing degrees of emphasis relative to other tools, such as compliance promotion activities.

### 2.3.2 Cooperative compliance promotion

Countries may benefit from cooperative efforts to encourage voluntary compliance by industry. For example, countries may collaborate in encouraging multinational corporations to ensure that their foreign operations comply with the host country's environmental laws, undertake environmental compliance audits, or initiate voluntary plant or management improvements which exceed environmental standards and prevent pollution at the source. Countries may also cooperate in developing and presenting technical compliance information to common industries which operate domestically within each of the countries.

### 2.3.3 Cooperative compliance monitoring

Cooperation may be particularly useful in routine monitoring to detect violations. For example, the transboundary movement of hazardous substances, wastes, and other regulated products, provides a perfect forum for development of cooperative links in this area. Monitoring of ambient air, water and groundwater quality in one country's jurisdiction may also provide useful data to identify violations committed by facilities in a neighboring jurisdiction. Technology can play an essential role in developing mutual capacity to detect violations, such as through collaboration in developing electronic databases and direct electronic data reporting capabilities for tracking of transboundary shipments of regulated materials. (2)

### 2.3.4 Cooperation on specific enforcement cases

The enforcement authorities of different countries may assist each other in investigations of specific cases of violations. Such cooperation may facilitate enforcement of environmental requirements for transboundary shipments of hazardous wastes, toxic chemicals, pesticides, and vehicles, when materials found in one country provide evidence of a violation of the other's laws. Cooperation may also be desired when transboundary effects of air or water pollution is evidence of a violation in the country where the pollution originated, or when a foreign corporation exerts management control over a local subsidiary which is in violation of the host country's laws.

In addition to case investigations, cooperation may assist in fashioning appropriate remedies for violations. Violations in one country may cause environmental threats in another, requiring cooperation to ensure that adequate authorities are brought to bear to redress injuries that cross international borders. (3) A sound enforcement network can provide for cooperation at every stage of case development, from initial investigations to implementation of enforcement remedies.

### 2.3.5 Sharing experiences to build enforcement capacity

The countries in an enforcement network may be able to enhance their enforcement capacity by sharing their experiences, and by taking advantage of economies of scale provided by combined capacity-building efforts.

#### 2.3.5a Consultation on laws and policies

Countries may be able to learn from their different approaches to, and experiences in, environmental regulation and enforcement. Consultations among countries to learn about each others' environmental laws and policies for responding to violations can enhance mutual capacity-building. An enforcement network may involve formal exchanges, such as joint seminars and conferences, as well as the informal exchange that will come with increased collaborative efforts on enforcement matters.

#### 2.3.5b Training and technical assistance

Technical cooperation in the development of tools and technologies for identifying environmental violations may enhance each country's enforcement capacity. Cooperative training in the principles of environmental enforcement, and in the techniques of environmental inspection, provide similar opportunities. Inspectors of one country may be invited as observers during inspections on another country's territory, at facilities or border crossings. Such field training exercises can occur without compromising the sovereignty of the government in whose territory the facility lies. For example, it can be made clear to all parties that the foreign trainee's presence is one of observer status only, and that he or she is not present to exercise inspection authority over the visited facility.

### 2.3.6 Enforcement results information-sharing

Cooperative sharing and public disclosure of information on enforcement activities can facilitate dialogue on the role of enforcement in addressing environmental problems. Sharing information about enforcement results will encourage the countries to develop tools for evaluating program success, and the countries may be able to learn from each others' efforts in this area. One challenge will be to address the comparability of methods employed in each of the countries to account for environmental enforcement activities and accomplishments.

## 2.4 Communications strategy

Coordinated communication to the public of the cooperative activities undertaken by the countries has great potential to encourage compliance behavior. Effective communication of cooperative enforcement activity can maximize the efficiency of limited enforcement resources, by discouraging companies from committing future environmental violations. Coordinated announcements can achieve economies of scale in encouraging compliance, by getting the message to a wider audience that governments are cooperating to enhance their enforcement capacities and address violations.

## **3 THE EMERGENCE OF A NORTH AMERICAN ENVIRONMENTAL ENFORCEMENT NETWORK**

The United States, Mexico, and Canada have begun to experiment with many of the components of enforcement cooperation outlined in the previous section. This section reviews the evolution of North America's environmental enforcement network to date, beginning with bilateral

cooperative efforts, and leading up to the creation of a new, trilateral institutional structure for enforcement cooperation.

### 3.1 U.S./Mexico environmental cooperation

Environmental cooperation between the U.S. and Mexico began in the late nineteenth century, with an early focus on protecting water resources. In 1944, the U.S. and Mexico entered the Treaty on the Utilization of Waters of the Colorado and Tijuana Rivers, and the Rio Grande. (4) This Agreement established the International Boundary and Water Commission (IBWC), with authority to undertake projects dealing with water quality and conservation on transboundary rivers. The IBWC also serves as a vehicle for water quality monitoring and data collection, and has limited jurisdiction over groundwater.

In 1983, the U.S. and Mexico entered an Agreement on Cooperation for Protection and Improvement of the Environment in the Border Area (the "La Paz" Agreement). (5) The La Paz Agreement provides a framework for cooperation between the two countries on protecting the environment in the 100-kilometer area on each side of the international boundary. Since 1983, the U.S. and Mexico have negotiated five annexes to the La Paz Agreement, addressing themes such as border sanitation problems, emergency planning for responding to pollution accidents, air pollution problems, and transboundary movement of hazardous wastes.

Cooperative projects under the La Paz Agreement are implemented through a series of binational Work Groups. Originally, four Work Groups were set up to address: Air, Water, Emergency Response, and Hazardous Waste. In 1991-1992, two additional Work Groups were created, a Pollution Prevention Work Group, and a Cooperative Enforcement Strategy Work Group.

#### 3.1.1 Early enforcement cooperation experience: transboundary movement of hazardous waste

The initial U.S./Mexico cooperative relationship on environmental enforcement under the La Paz Agreement centered on the transboundary movement of hazardous waste. Mexican law requires foreign companies operating "maquiladora" (6) facilities to return hazardous wastes to the country of origin of the raw materials. Mexico also accepts substantial quantities of hazardous waste from the U.S. steel industry for recycling, while prohibiting hazardous waste imports for disposal. This two-way flow of waste between Mexico and the U.S. gave rise to a cooperative relationship in both countries' efforts to enforce their hazardous waste export and import laws.

Under Annex III to the La Paz Agreement, negotiated in 1986, the U.S. and Mexico agreed to ensure enforcement of their respective domestic laws for transboundary shipments of hazardous waste, and to provide mutual assistance to increase the capability of each Party to enforce its laws applicable to transboundary shipments. The Annex calls for a program of cooperation, including exchange of information from monitoring and spot-checking of transboundary shipments. (7)

The U.S. and Mexico focused early efforts on developing a joint capacity to monitor transboundary waste shipments, in accordance with these bilateral commitments. This effort has culminated in the development of a binational Hazardous Waste Tracking System (now known as "HazTracks"). A first-of-its-kind effort, the system matches information from the U.S. and Mexico tracking transboundary waste shipments. It provides a useful tool for monitoring compliance with both countries' requirements and identifying possible violations. (8) The U.S. and Mexico also began to cooperate in promoting industry compliance with both countries' transboundary waste shipment requirements, through an annual Maquiladora Conference and regular outreach to the maquiladora plants and their U.S. parent corporations.

#### 3.1.2 Toward a cooperative enforcement strategy

The disposition of hazardous waste from the maquiladora industry became a central focus of public concern during the U.S. debate over the North American Free Trade Agreement. There was

great public concern that the U.S.-owned maquiladoras could escape expensive U.S. compliance costs by dumping its wastes illegally in Mexico instead of complying with Mexico's requirement to return them to the U.S. In addition to posing severe environmental risks in Mexico, such practices were thought likely to result in environmental harm in the U.S., through transboundary surface-water, groundwater and air pollution. Public concern about maquiladora compliance with transboundary waste shipment requirements was indicative of a broader concern about the potential impact of differential enforcement practices on a company's decision to locate a plant, once tariff barriers to international trade were lowered between the U.S. and Mexico.

In 1991, the U.S. and Mexico added to the La Paz Agreement work groups a new Cooperative Enforcement Strategy Work Group (Enforcement Work Group). This new work group was created to coordinate and focus attention on cross-cutting enforcement issues, with the goal of mutually enhancing enforcement capacity while respecting national sovereignty and jurisdiction. The U.S./Mexico Border Environmental Plan, developed in 1992, calls for the Enforcement Work Group to implement a cooperative enforcement strategy which emphasizes targeting of enforcement actions by each government against priority targets; pollution prevention and waste minimization as a principal goal of enforcement; and cooperation in developing a communications capability, using the stigma of unfavorable publicity to encourage industries to avoid the risks of noncompliance. (9)

### 3.1.2a Initial cooperation in case investigations and voluntary compliance promotion

In September of 1991, soon after establishment of the Enforcement Work Group, Mexico's Secretariat of Urban Development and Ecology (SEDUE) provided information which assisted EPA in developing a cluster of cases enforcing U.S. import/export laws. Eight of these cases involved violations related to hazardous waste exports to Mexico. A cooperative pilot effort to encourage voluntary compliance with Mexican laws by U.S. firms with subsidiary operations in Mexico was undertaken in 1991 and early 1992. Several U.S. companies pledged to use best efforts to ensure that their Mexican operations comply with Mexican law, and some companies submitted data evidencing a compliance review. (10)

### 3.1.2b Cooperative targeting and communication strategy

In June 1992, Mexico and the United States announced the first cooperative effort at targeting enforcement actions. The actions were focussed in the border area, demonstrating that environmental compliance in the border area was a common priority. Mexico announced that it conducted 42 inspections with violations at 22 facilities, resulting in 8 shut-down orders and 4 performance bond forfeitures. On the same day, the United States announced that it had undertaken 15 civil judicial and administrative enforcement actions, and issued 2 criminal indictments. (11) So far, the U.S. cases have resulted in collection of at least \$273,800 in civil and criminal penalties, as well as imposition of environmental restitution and cleanup requirements, and agreements by facilities to undertake supplemental environmental projects, such as facility audits or process/management changes to reduce pollution beyond that required by regulations. This initial effort at cooperative targeting of enforcement activities by the U.S. and Mexico also provided an initial experience in coordinating efforts to communicate enforcement results.

### 3.1.2c Cooperative training and technical assistance

In June to July of 1992, Mexico reorganized its environmental enforcement authorities into a new Secretariat of Social Development (SEDESOL), with an independent Attorney General's Office for Environmental Protection (PROFEPA) in charge of SEDESOL's environmental inspectorate. PROFEPA turned to the initial task of reforming and upgrading its environmental inspectorate, and launched an aggressive new program of inspections, enforcement actions, and compliance audits.

Cooperative training and technical assistance between Mexico and the United States helped SEDESOL build this new enforcement capacity. From March, 1992 through July, 1993, EPA conducted six "Multi-Media" Inspector Training courses, providing training to 370 SEDESOL inspectors countrywide, including 200 in the U.S./Mexico border area. Two SEDESOL officials received EPA-sponsored training in August-September of 1992 in the use of aerial surveillance to identify potential waste disposal sites. Twenty SEDESOL personnel participated in an EPA course in environmental impact assessment in December, 1992. In July and October of 1992, EPA and SEDESOL inspectors participated in joint training programs in volatile organic compound (VOC) inspection techniques, while in April of 1992 and April of 1993, EPA hosted two Hazardous Waste Inspector Training Workshops, attended by 34 SEDESOL inspectors.

### 3.1.2d Cooperative compliance monitoring and case investigations

During this period, EPA and SEDESOL established subgroups to cooperate in enforcement activities for Texas/Tamaulipas and California/Baja California, facilitating information exchange and enforcement actions. U.S./Mexico case-specific cooperation continued to increase. Cooperative case investigations have resulted in the initiation of cleanup at several illegal waste sites in Mexico and investigations into potential violations in both countries. (12)

The two countries have worked to improve transboundary shipment surveillance efforts. In the past, border surveillance efforts focused on occasional "spot checks", in which U.S. officials set up visible surveillance teams, often with Mexican participation. Albeit an excellent field training opportunity, these "spot checks" rarely detected significant violations, because of their visibility to would-be violators. The U.S., and the border states, thus adopted a new strategy of building the capacity for more routine checking for transboundary shipment violations.

This was done in San Diego County, California, through a task force of U.S. federal and state agencies. U.S. and Mexican Customs met in Tijuana in March 1992 to discuss hazardous waste inspection and safety. This sparked increased binational customs coordination, which almost immediately led to the U.S. indictment of an illegal hazardous waste exporter. Since then, several additional cooperative investigations have been undertaken involving shipments at several border crossings. (13) EPA recently began funding U.S. border states to provide a routine presence of environmental inspectors at border crossings, and to encourage bilateral cooperation through joint field training and surveillance exercises. These efforts have promise in building a bilateral partnership of agencies at all levels of government. (14)

In the meantime, the Hazardous Waste Work Group has continued to develop the binational Hazardous Waste Tracking System ("HazTracks"). The system produced enforcement results in June of 1993, when the United States filed a number of RCRA enforcement cases based on Tracking System data. Additional U.S. cases developed from the database have since been filed, and EPA and SEDESOL are working toward improving the utility of the database as a tool for identifying violations of Mexican waste export requirements, and potentially targeting maquiladora facilities suspected of not exporting their hazardous wastes.

### 3.1.2e Consultations and exchange of enforcement results data

EPA and SEDESOL have begun mutual consultations on environmental laws and enforcement policies. In March of 1993, SEDESOL hosted a visit by EPA lawyers, including enforcement attorneys, to gain a better understanding of Mexico's environmental laws, as well as its enforcement and environmental audits programs. EPA provided SEDESOL with information on its policies for assessing monetary penalties in enforcement cases.

Finally, EPA and SEDESOL have begun exchanging statistics on enforcement activities and accomplishments. (15) (See box). This effort provided initial experience in dealing with the nations' differing methodologies of accounting for enforcement activities and results. Differences in reporting capabilities and methodologies were found to stem from the differing degrees of centralization, stages

### U.S./Mexico Exchange of Enforcement Statistics (October, 1993)

#### U.S. Enforcement Program:

In fiscal years 1992 and 1993, EPA estimated that in the border region more than 351 EPA inspections and 1671 state inspections were executed, 15 civil judicial enforcement actions, 114 administrative actions, and 3 EPA led-criminal prosecutions were initiated, enforcing the Clean Air Act (CAA), the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).\*

#### Mexican Enforcement Program:

From the creation of the Environmental Prosecutor's Office in July, 1992 through September, 1993, SEDESOL conducted approximately 16,386 inspections, resulting in temporary partial closure of 1,161 companies, 216 temporary total closures, and more than 100 permanent closures. Some 2,447 of these inspections were carried out in the border area. Of the 2,447 inspections, 202 resulted in temporary partial closure and 58 in temporary total closure.

\* Note: Although U.S. nation-wide data was not available at the time of this data exchange, EPA now estimates that during FY 1992 and 1993, 699 civil judicial case referrals, 7406 administrative actions, and 247 criminal prosecutions were initiated at the federal level; and at least 14,321 administrative actions and 930 civil judicial referrals were initiated by states, for all EPA-administered statutes. During FY 1993, more than 36,000 inspections were conducted by EPA and state agencies under the CAA, CWA, and RCRA. This data derives from state and Regional reporting for each individual EPA-administered statute, illustrating some of the challenges in addressing comparability to data generated in a more centralized enforcement program.

of development, and remedies sought by the respective enforcement programs. This experience left both agencies with the recognition that comparability of enforcement statistics, and defining common terms for articulating enforcement results, would present a challenge in the new North American Commission for Environmental Cooperation.

## 3.2 U.S./Canada environmental cooperation

### 3.2.1 Great Lakes protection

Environmental cooperation between the United States and Canada, like that between the U.S. and Mexico, began with a focus on transboundary water resources. In 1909, the U.S. and Canada entered into the Boundary Water Treaty, committing the countries to cooperation in protecting the Great Lakes, and creating the International Joint Commission (IJC), to coordinate and make recommendations on such cooperation. (16) The Boundary Water Treaty was updated in 1972, with the Great Lakes Water Quality Agreement (GLWQA), setting forth a framework for enhanced cooperation to protect the Great Lakes. (17)

A 1987 Protocol to the GLWQA called for the two countries, in consultation with state and provincial governments, to designate Areas of Concern which have been degraded by pollution. The Protocol calls for the states and provinces to develop and implement Remedial Action Plans (RAPs), detailing plans for remediation in each of the Areas of Concern. In addition, Lakewide Management

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Plans (LaMPs) must be developed, for implementation at the federal level, with the goal of improving the quality of open lake waters. (18)

Much of the cooperative work to date under the GLWQA has focussed on the development, rather than enforcement, of new regulatory controls to protect the Great Lakes from toxic discharges, and implementation of non-regulatory approaches that encourage pollution prevention and designate areas for special protection. (19) The GLWQA, however, provides a bilateral framework for cooperative efforts in implementing common strategies for targeting violators and enforcing the regulations developed by both countries to protect the Great Lakes.

### 3.2.1a Cooperative priority-setting: unilateral enforcement targeting

Although the two countries have not yet engaged in cooperative enforcement activities to target violations in the Great Lakes Basin, EPA has undertaken a number of unilateral enforcement initiatives as part of the U.S. strategy for implementing the GLWQA. (20) Discrete high-risk geographic areas are selected for concentrated inspections and enforcement activity. Amongst other factors, an area may be selected for geographic targeting based on its designation as an Area of Concern under the GLWQA. (21)

Enforcement targeting in the Great Lakes has also been linked to broader pollution prevention and cleanup initiatives. In negotiating enforcement case settlements, strong emphasis is placed on commitments for the violator to undertake "supplemental environmental projects", such as remediating more pollution than he or she is directly responsible for, or conducting environmental audits leading to process or management changes to reduce pollution at its source. EPA has found that its leverage for negotiating meaningful pollution prevention and cleanup projects is enhanced through "multimedia" enforcement actions which allege violations of more than one U.S. statute and pollution to more than one environmental medium in a single proceeding. (22)

### 3.2.2 Transboundary movement of hazardous waste

The U.S. and Canada enjoy a history of growing cooperation in assuring compliance with requirements pertaining to the transboundary movement of hazardous wastes. In 1986, the two countries entered the Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste. (23) The agreement obligates the countries to ensure that their domestic laws are enforced within their respective jurisdictions, and commits the U.S. and Canada to cooperate in monitoring transboundary shipments to ensure compliance.

### 3.2.2a Cooperative compliance monitoring

EPA has conducted occasional border spot checks on the U.S./Canada border, working with the U.S. Customs Service and other U.S. federal and state officials in monitoring transboundary traffic to detect illegal hazardous waste shipments. These spot checks are usually done in coordination with Canadian environmental and Customs officials, with Canadian officials setting up their own corresponding spot checks, or with U.S. and Canadian officials participating as observers at the others' border crossing.

In 1989, EPA enforcement officials learned through press reports of an alleged criminal conspiracy to export PCBs and hazardous waste, mixed in fuels, from New York to Canada. The press articles alleged that these contaminated fuels had been sold to customers in Southern Ontario and Quebec. The perpetrators were allegedly profiting from the dilution of their fuels with hazardous waste, and then paying tax on only the undiluted fuel. This incident led to increased, direct communication between the countries' environmental agencies. Both countries stepped up their compliance monitoring efforts. Canada limited the number of ports of entry available for such

shipments to facilitate monitoring, and Canadian federal and provincial officials did extensive sampling of shipments to investigate the allegations. (24)

U.S. and Canadian officials communicate regularly over the processing of hazardous waste export notifications, often leading to cooperation in investigating suspected violations. (25)

### 3.2.3 Other areas of cooperation: case-specific matters and consultations

An increasing number of circumstances have arisen involving the need for cooperation in investigating specific cases in other contexts. For example, EPA has encountered a number of cases requiring service of complaints or information-requests on Canadian companies under the U.S. Comprehensive Environmental Response, Compensation and Liability Act, (26) and the Toxic Substances Control Act. (27) This has provided the basis for increasing experience by the two countries in procedures for requesting foreign assistance in litigation of civil enforcement cases.

Although no formal structure exists for U.S./Canada environmental enforcement cooperation, environmental enforcement officials of the two countries consult regularly. Canadian officials attended a recent meeting of EPA Regional and Headquarters enforcement officials to discuss enforcement of transboundary waste regulations, each country sharing information on how they track transboundary waste shipments. (28) In September, 1993, enforcement officials of EPA and Environment Canada met in Ottawa to develop a mutual understanding of each country's system of environmental regulation and enforcement. Similar meetings have taken place between EPA and the Ontario Ministry of the Environment in Toronto.

## **4 A NEW TRILATERAL ENFORCEMENT NETWORK**

NAFTA's environmental side agreement, the NAAEC, provides a new legal and institutional context within which to build North America's environmental enforcement network, supplementing existing bilateral activities. The Agreement creates the North American Commission for Environmental Cooperation (NACEC), a unique new institution for conducting cooperative enforcement activities and promoting effective enforcement of each nation's environmental laws. The Commission consists of a governing Council of cabinet-level (or equivalent) officials of the Parties; a Secretariat, which provides technical, administrative and operational support to the Council; and a Joint Public Advisory Committee. (29)

### 4.1 Obligation to effectively enforce

The Agreement's centerpiece is its obligation that each country "effectively enforce its environmental laws and regulations through appropriate governmental action." (30) Article 5 gives examples of a number of possible elements of an effective enforcement program which would constitute "appropriate governmental action". (31) (See box).

The establishment of the obligation of each country to effectively enforce its environmental laws has broken new ground in the developing regime of international environmental law. However, in negotiating this innovative concept, the Parties took account of the variety of possible methods for implementing an effective enforcement program. The resulting Agreement therefore provides substantial flexibility to the Parties in selecting appropriate tools in the design of their own enforcement programs. Rather than setting forth precise standards for determining the effectiveness of each country's enforcement actions, the Agreement leaves this level of detail to future development. More precise guidance for measuring the effectiveness of a country's enforcement program is therefore likely to evolve through cooperative efforts of the Parties to improve their programs and to report enforcement results. (See Section 4.3). Case-by-case resolution of individual disputes among the Parties alleging ineffective enforcement may also contribute to defining the scope of the obligation.

North American Agreement on Environmental Cooperation, Art. 5

Possible Elements of an Effective Enforcement Program Constituting  
Appropriate Government Action:

- a. Appointing and Training Inspectors.
- b. Monitoring compliance and investigating suspected violations, including through on-site inspections.
- c. Seeking assurances of voluntary compliance and compliance agreements.
- d. Publicly releasing non-compliance information.
- e. Issuing bulletins or other periodic statements on enforcement procedures.
- f. Promoting environmental audits.
- g. Requiring record keeping and reporting.
- h. Providing or encouraging mediation and arbitration services.
- i. Using licenses, permits or authorizations.
- j. Initiating, in a timely manner, judicial, quasi-judicial or administrative proceedings to seek appropriate sanctions or remedies for violations of its environmental laws and regulations. Sanctions and remedies shall take into consideration, among other things, the economic benefit derived from the violation by the violator.
- k. Providing for search, seizure or detention.
- l. Issuing administrative orders, including orders of a preventative, curative or emergency nature.

The Agreement also requires each Party to ensure that enforcement proceedings are available to sanction or remedy violations of its environmental laws and regulations. Sanctions and remedies for environmental violations must, as appropriate, take into consideration the nature and gravity of the violation, any economic benefit derived from the violation by the violator, the economic condition of the violator, and other relevant factors. Possible sanctions and remedies include compliance agreements, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution. (32)

#### 4.2 Sanctions for enforcement failure

The obligation of each country to effectively enforce its environmental laws is backed up, for the first time in an international environmental agreement, with the possibility of sanctions. A Party complaining that there has been a persistent failure of effective enforcement by another Party may request a special session of the Council to seek to resolve the dispute. If the matter cannot be resolved, the Council may establish an arbitral panel empowered to make findings of fact, determinations as to whether there has been a persistent pattern of failure to effectively enforce environmental laws, and recommendations for remedial action. Failure to implement a satisfactory remedy may lead to imposition of monetary sanctions, which, in the case of the U.S. and Mexico, may be recouped through trade sanctions if the Party does not pay the monetary assessment. (33) In Canada, the monetary assessment may be recouped through the Canadian national courts. (34)

The dispute resolution procedures laid out in the Agreement ensure that the Parties will have ample opportunities to resolve the dispute through consultation and negotiation. Thus, while establishing the potential for monetary and trade sanctions as a response to enforcement ineffectiveness, the Agreement encourages such disputes to be resolved, and sanctions to be avoided, through cooperation in developing and implementing a satisfactory plan for improving enforcement performance.

The Agreement also provides an avenue for public complaints that a Party has failed to effectively enforce its environmental laws. Articles 14 and 15 allow non-governmental organizations and other persons to petition the Secretariat to investigate allegations that a Party is failing to effectively enforce its environmental law. Upon Council instructions to do so, the Secretariat will prepare a factual record, and may conduct its own investigation in preparing such a record. The factual record may be made available to the public upon approval of the Council. (35) The procedures governing public complaints to the Secretariat do not automatically invoke the formal dispute resolution process which leads to monetary or trade sanctions—only a Party to the Agreement may seek the initiation of arbitral proceedings. Nonetheless, the Agreement provides the public a novel avenue for shedding light on, and pressuring the governments to redress, shortcomings in their enforcement efforts. The Parties retain the option of resolving problems highlighted by the Secretariat's fact-finding activities through cooperation, or by initiating formal dispute resolution procedures.

#### 4.3 Enforcement cooperation under the NACEC

The NACEC serves a dual function. In addition to providing a forum for dispute resolution and investigations of claims that a Party has failed to effectively enforce its environmental laws, the Commission is also charged with promoting cooperation in environmental enforcement. Article 10(4) of the Agreement requires the NACEC Council of Ministers to encourage effective enforcement by each Party of its environmental laws and regulations, compliance with those laws and regulations, and technical cooperation among the Parties. (36) Under Article 12, the Secretariat must prepare an annual report which includes data on each of the Party's enforcement activities and actions taken to ensure effective enforcement of its environmental laws. (37)

The obligation for effective enforcement and the possibility of public scrutiny and/or monetary and trade sanctions increases the importance of enforcement cooperation as a means of ensuring and demonstrating that each country's environmental enforcement program is effective. Thus, the NACEC will likely play a major role, not just in arbitrating disputes, but also in encouraging increasing sophistication in bilateral and multilateral enforcement cooperation. Active promotion of enforcement cooperation by the Commission will help to minimize the frequency of claims of lax enforcement or the likelihood that such claims will result in sanctions.

## 5 FUTURE EVOLUTION OF THE NORTH AMERICAN ENVIRONMENTAL ENFORCEMENT NETWORK

Although environmental enforcement cooperation between the U.S. and Mexico and the U.S. and Canada has grown, the current climate provides new opportunities for strengthening these cooperative links. This section examines these opportunities within the suggested components of an environmental enforcement network, consistent with the analytical framework set out in Section 2 of this paper.

### 5.1 Institutional framework for cooperation

#### 5.1.1 Trilateral framework

A trilateral institutional framework for North America's environmental enforcement cooperation network can be provided by the newly established North American Commission for Environmental Cooperation (NACEC). (38) The NACEC provides a forum for developing an active agenda of enforcement cooperation. Indeed, a vigorous program of trilateral enforcement cooperation may be the best way to minimize the use of the agreement's dispute resolution procedures to address complaints of ineffective enforcement.

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A strong enforcement cooperation agenda for the Commission may best be developed and implemented through a standing Enforcement Work Group under NACEC's Council, staffed by environmental enforcement officials of each country. The Work Group could serve as a forum to coordinate cooperative activities in environmental enforcement and compliance promotion. To ensure each Party's commitment to implementing agreed-upon priorities for enforcement cooperation, the Council could adopt a Work Plan of specific projects, developed annually by the Work Group.

### 5.1.2 Bilateral structures

The Parties to the NAAEC will need to define the Commission's relationship to bilateral cooperative enforcement activities. The Council's Enforcement Work Group could serve a role in encouraging cooperative bilateral enforcement initiatives, reporting on the bilateral cooperative enforcement activities of the Parties, and identifying bilateral activities which could benefit from expansion to a trilateral level.

The trilateral institutional structure provided by the Commission can be strengthened through existing, new, or revised bilateral arrangements. Such bilateral arrangements can be structured to take account of the different organizational structures for environmental enforcement within each of the countries of North America.

For example, Mexico's environmental enforcement structure is currently more centralized than the U.S. structure, which relies heavily on state enforcement backed up by federal civil judicial, criminal, and administrative enforcement tools implemented both regionally and nationally. As a result, bilateral arrangements for enforcement cooperation between the United States and Mexico need to account for Mexico's relatively centralized decision-making, while ensuring appropriate Regional and state participation consistent with the U.S. enforcement scheme.

The U.S. and Mexico have begun to develop an organizational structure for the existing U.S./Mexico Enforcement Work Group which incorporates both a national-level work group structure and the creation of regional subgroups, corresponding to the U.S. and Mexican states along the U.S./Mexico border. The regional subgroups can play a key role in identifying and implementing priorities for cooperative interaction to address geographically localized transboundary environmental problems. The subgroups can serve as a forum to allow participation by states, as well as regional offices of federal agencies involved in environmental protection.

The national level of the U.S./Mexico Enforcement Work Group can identify priorities which cut across regional lines, or participate in regional subgroup priority-setting where national-level interests are uniquely at stake. The relationship between the national-level Work Group and its regional subgroups could be flexible enough, however, to account for the different degrees of centralization in Mexico and the United States. For example, the Mexican component of the subgroup might suggest local priorities for adoption by central decision-makers, and implement those decisions. In contrast, the actual priority-setting decision might be made in the United States at the more decentralized subgroup level.

In the future, the U.S. and Canada could explore similar formal mechanisms to engage in bilateral enforcement cooperation. A work group structure at the bilateral level, focussed on cooperative priority-setting and enforcement targeting, might supplement the trilateral program of enforcement cooperation under the NACEC. Canada's enforcement regime is less centralized than that of the United States, with a very limited federal role and strong reliance on provincial enforcement authorities. Arrangements between the U.S. and Canada would therefore need to account for Canada's relative decentralization of authority for determining and implementing priorities. The work group might be structured to allow maximum participation by states and provinces, while allowing the federal authorities an appropriate role in determining and implementing cooperative enforcement priorities.

### 5.1.3 Domestic structure: interagency partnership

Within the United States, expanding the network of cooperation to more actively involve other federal and state agencies could improve enforcement cooperation with the other countries of North America. Such interagency cooperation may occur through enhanced coordination in the field. For example, the concept of a multi-agency task force to investigate transboundary shipments violations, experimented with in San Diego County, California, may serve as a model for other task forces along both the U.S./Mexico and U.S./Canada borders. Interagency cooperation could also be improved through continued development of interagency electronic communication links. For example, EPA is working with U.S. Customs to examine the possibility of an automated interface, providing for instantaneous exchange of compliance monitoring data, and is exploring with industry the electronic transmittal of hazardous waste manifest data on a voluntary, pilot basis. (39)

Building of domestic interagency enforcement links could be undertaken in a manner which promotes involvement and cooperation of corresponding agencies in the other countries, as well. For example, increased bilateral coordination between customs services, state and local governments, federal criminal investigative units, and other agencies involved in environmental enforcement may supplement the increased coordination of the national environmental authorities for improving enforcement.

## 5.2 Strategic priority-setting and targeting

By emphasizing the development of cooperative enforcement strategies for problems of transboundary concern, countries can increase the sophistication of their efforts to ensure compliance. The U.S., Mexico and Canada could consider increased cooperation in implementing targeted enforcement initiatives. Such initiatives could be based on mutually determined strategic priorities, but implemented with each country conducting inspections and taking responsive enforcement actions in its own territory. Although this type of cooperation has great promise, its usage in North America has been limited to date. The countries might actively discuss how to accomplish such cooperative initiatives in a manner which does not in any way compromise sovereignty.

Bilateral initiatives may be targeted at specific, geographic-based problems of transboundary pollution, as a means of protecting sensitive populations or ecosystems. For such geographic initiatives, strong reliance could be placed on the regional, state or provincial, and local authorities in identifying priority problems of common concern. Efforts of the U.S. and Canada to protect the Great Lakes could, for example, be further enhanced by expanding each country's unilateral enforcement activities through the implementation of cooperative strategies to target enforcement actions toward problems of regional concern. Similarly, a number of serious, local environmental problems in the sister cities in the U.S./Mexico border area and the Gulf of Mexico might be addressed through cooperative geographically-targeted enforcement initiatives.

Bilateral, or even trilateral cooperative enforcement initiatives may also be targeted at common environmental problems which do not necessarily present geographic risks of transboundary pollution. Cooperative targeting of common industry sectors, pollutants, or analogous regulatory requirements could, for example, serve a key role in ensuring the level playing field required for free trade among the sovereign nations of North America. Enforcement of domestic laws implementing international obligations such as the Basel Convention, (40) or the Montreal Protocol (41) are also prime areas for cooperative targeted initiatives.

In targeting priority problems for cooperative enforcement activities, the countries should make every effort to integrate pollution prevention as a primary goal of targeted enforcement activities. This goal could be implemented by each of the parties in a number of ways. For example, environmental inspectors may be able to play an important role in promoting pollution prevention which exceeds regulatory standards, by disseminating information on prevention approaches to facilities inspected. Pollution prevention goals may also be pursued by seeking to negotiate case settlements and

compliance agreements with facilities which require changes in facility processes or management practices which reduce pollution, even where such changes are not specifically required by regulations.

### 5.3 Cooperative compliance promotion

A particularly ripe area for expanded bilateral and trilateral enforcement cooperation lies in promotion of voluntary compliance. The U.S., Mexico and Canada might be able to enhance the effectiveness of their voluntary compliance promotion efforts by collectively reaching out to multinational corporations operating in two or more of the countries, to encourage compliance with their respective environmental laws. Cooperative compliance promotion may be linked to efforts to also encourage industry to undertake pollution prevention efforts which go beyond the minimum required to achieve regulatory compliance.

For example, Mexico has adopted an innovative program of promoting compliance through participation in environmental audits conducted by independent consultants. The U.S., Mexico and Canada might collaborate bilaterally in encouraging U.S. and Canadian corporations operating in Mexico to participate in Mexico's audit program, and in promoting voluntary compliance and pollution prevention for the corporations' operations in the other countries.

Such voluntary compliance efforts might be tied to cooperative enforcement targeting initiatives described above. For example, while the inspectors of each country takes enforcement action within their territorial jurisdiction against cooperatively agreed-to targets, their authorities might also join forces to promote voluntary compliance and pollution prevention in the targeted geographic region, industry, or group of industries using targeted chemicals or subject to targeted regulatory requirements.

### 5.4 Cooperative compliance monitoring

The EPA/SEDESOL effort to develop HazTracks, a binational tracking system for transboundary hazardous waste shipments, represents an innovative approach to building both countries' compliance monitoring capacity through cooperation. The countries could continue to work on full utilization of HazTracks as a tool for detecting potential transboundary shipment violations. Such work could seek full cooperation of the customs services and local environmental authorities of both countries in obtaining compliance data for the tracking system. In addition, the countries could explore the development of computer interfaces to allow direct electronic transmission of compliance data by the regulated community and "real-time" sharing of data between the two countries.

In addition, the U.S., Canada, and Mexico may wish to explore expansion of the tracking system concept to include hazardous waste shipments between the U.S. and Canada, and between Mexico and Canada, to facilitate enforcement of the Basel Convention. (42) The countries might also explore development of similar systems to track transboundary movements of ozone-depleting chemicals to assist in implementation of the Montreal Protocol. (43) Similar possibilities exist for cooperation in development of a computerized tracking capability to monitor compliance with import and export requirements for toxic chemical products and pesticides.

The countries might also expand the exchange of data on inputs and emissions from industrial processes. Data collected on chemical exports and imports, for example, may provide useful information for targeting high-risk industries in the importing country. Such efforts may require reliance on data collected by the customs services of the countries involved, particularly where there are no specific environmental requirements for tracking raw chemical product shipments. Some of this type of information may be considered confidential due to its proprietary (trade secret) or enforcement-sensitive nature, in one or more of the countries involved. Procedures for exchanging and protecting confidential information might be developed at the trilateral level within the NACEC, as well as at the bilateral and domestic levels, to ensure the free intergovernmental exchange of such information without compromising its confidential nature.

## 5.5 Cooperation on specific enforcement cases

As trade between the countries increases, and as the countries cooperate to enhance their compliance monitoring capacities, there will likely be an increase in the number of violations detected involving transboundary impacts, and the situations in which evidence of a violation in one country is found in another. In addition, implementation of the Basel Convention will focus attention on actions to address the environmental harm caused by illegal hazardous waste exports, through repatriation or alternative sound management of the wastes in question.

Recognizing this, the countries of North America will need to ensure the existence of clear lines of communication for seeking cooperative assistance in individual cases. The bilateral Mutual Legal Assistance Treaties (MLATs) that the United States has entered into with Mexico and Canada (44) provide a framework of procedures for cooperation in investigating criminal violations. Similarly, the Hague Conventions on Service of Process and on Taking of Evidence Abroad (45) provide multilateral procedural frameworks for cooperation in initiating and investigating cases, where civil enforcement mechanisms are employed. These formal procedures can be supplemented, however, with informal relationships and understandings. In the United States, most of the investigatory work in individual cases is carried out by regional offices of the federal government or state environmental agencies. Accordingly, the links for case-specific cooperation might be developed at this level, for example, through the regional subgroups of bilateral enforcement work groups.

## 5.6 Sharing experiences to build enforcement capacity

### 5.6.1 Consultation on laws and policies

The NACEC may serve as a trilateral forum for exchanges between Mexico, Canada and the United States regarding their laws, regulations, significant enforcement cases, court or administrative decisions, and significant regulatory actions. Similarly, the NACEC could promote consultations among the Parties regarding their respective enforcement policies, practices, and procedures. In addition to utilizing the NACEC as a trilateral forum for such exchanges, the parties may benefit from increased routine bilateral interaction and consultations regarding their environmental laws and enforcement policies.

### 5.6.2 Training and technical assistance

The parties might seek opportunities to build joint training and capacity-building exercises into cooperative enforcement initiatives. For example, the countries could decide to target a particular pollutant of concern for enforcement responses in their respective jurisdictions. In carrying out inspections to implement these targeting decisions, one country might invite inspectors from the other along, to serve as observers for the purpose of training. Similarly, focusing on a pollutant or industry of concern would provide the countries an opportunity to mutually develop their compliance monitoring capabilities, through pooling of pollution sampling and analytical capabilities, or by using the targeted initiative as an opportunity to enhance sharing of data on chemical inputs and releases for the industry or pollutant of concern.

Other training opportunities may be pursued as well. The U.S. and Mexico may work to enhance their multimedia inspector training program, and to involve Canada in the program. Goals for this program could include training course improvements to integrate industry-specific enforcement and pollution prevention information and providing "train-the-trainer" courses to allow each country to fully benefit from in-house training capacities. In addition to inspector training, the countries may wish to consider cooperating in training of enforcement policy personnel, utilizing the Principles of Environmental Enforcement course which the U.S. has taught in several countries, and upon which the case study exercises being conducted during this conference are based.

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A trilateral training and technical assistance program might involve each country assisting the others in areas where it has developed special expertise. For example, while the U.S. might concentrate on inspector and policy-maker training, Mexico could provide training to the U.S. and Canada in conducting environmental audits, while Canada might provide training in promoting voluntary compliance. Other possible areas for cooperative exercises might include training in the development and implementation of penalty policies to recoup the economic benefit of non-compliance; technical assistance in enforcement case-tracking; technical assistance in enhancement of laboratory capacity for analyzing samples taken by inspectors; training in good laboratory practice techniques; and technical assistance and training for integrating pollution prevention goals in enforcement and compliance promotion activities.

#### 5.7 Enforcement results information-sharing

Although the U.S. and Mexico initiated bilateral exchanges of enforcement statistics to respond to public interest during the NAFTA debate, such exchange is now memorialized on a trilateral level. The NACEC Secretariat is required to develop an annual report with information on the effectiveness of each country's enforcement programs. The Parties thus will be required to report on their enforcement accomplishments to the Secretariat, including information on inspections, fines and other sanctions, and the results of enforcement actions in achieving compliance with environmental laws and clean-up of pollution. In addition to this trilateral exchange of country-wide enforcement information, bilateral cooperation may continue for exchanging information on regional enforcement activities, particular in the U.S./Mexico border area.

The NACEC Council's cooperative enforcement activities could include developing ideas on how to measure results of enforcement programs. A key challenge will be addressing the comparability of enforcement statistics collected by the countries, each of which adopts different methods of measuring enforcement activities, and utilizes different enforcement tools to achieve results.

For example, Mexico publicizes detailed data on the number of inspections it undertakes, and resulting facility shut-downs. Canada has compiled statistics on numbers of inspections, investigations, warnings, prosecutions, and convictions. In the U.S., national statistics are readily available on enforcement cases initiated and monetary penalties obtained. Compilation of national inspection statistics, however, is currently a more difficult task, due to decentralization of inspection authority among separate programs in the states and EPA Regional offices. In addition, there are significant variations between countries in terms of the frequency with which different enforcement responses (*i.e.*, shutdowns, criminal prosecutions, and civil prosecutions) are employed. Due to such differences, meaningful comparisons of enforcement activities among the three countries may require mutual determination of the key data elements, and improvements over time in the measuring systems each uses.

Moreover, reporting only on quantitative enforcement activities, such as inspections realized, cases brought, or penalties collected, does not provide a complete measure of the actual results of enforcement in improving the environment. A cooperative dialogue on measures of enforcement success may lead to development of new measures that will account for the behavioral and environmental benefits that result from enforcement action.

#### 5.8 Communications strategy

International coordination in public communication of enforcement activity provides great promise in deterring non-compliance. Coordinated announcements of cooperative activities also provide the countries an opportunity to demonstrate that, while the countries are cooperating on enforcement, they are doing so within the principles of sovereignty and comity. This technique, however, has only been used to date in North America to a very limited extent. Successful use of this technique requires the countries involved to agree to the means, timing, and content of a public

announcement. The North American enforcement network might further explore the use of cooperative public communications to demonstrate the consequences of enforcement cooperation. The network could provide a means for mutually agreeing on communication plans in advance of the cooperative activity to be announced.

## **6 CONCLUSION: VISION FOR A NORTH AMERICAN ENFORCEMENT NETWORK**

With respect for national sovereignty as the defining context, the nations of North America are in the process of building a cooperative enforcement network which maximizes the capacity and enhances the effectiveness of each country's domestic enforcement and compliance program. A variety of tools are available, ranging from cooperation in individual cases; to cooperation in training and developing technological tools that enhance compliance monitoring capabilities; to cooperation in promoting voluntary compliance; to conscious strategic collaboration in setting priorities for enforcement activity, selecting targets for enforcement action, and communicating enforcement results to maximize their deterrent effect. The evolving network will work best by building partnerships of cooperation, both between the countries of North America, and among the multiplicity of national and local agencies contributing to environmental enforcement.

The resulting cooperative efforts may be mobilized to maximize the environmental protection impact of enforcement, by leveraging pollution prevention, addressing sensitive ecosystems, and promoting environmental justice. These experiences in building a network of environmental enforcement cooperation in North America may suggest similar opportunities for developing similar networks elsewhere on the globe, and for extending North America's enforcement network to other neighbors and trading partners.

## **ENDNOTES**

1. North American Agreement on Environmental Cooperation, Between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States (entered into force January 1, 1994).
2. See Schwarz, D.S., *Moving Environmental Data Electronically: The Opportunities and Challenges of Electronic Data Interchange (EDI)*, Presented at 86th Annual Meeting and Exhibition, Air and Waste Management Association, Denver, Colorado, June 13-18, 1993 (on file with authors).
3. See Los Angeles County, California, District Attorney News Release (June 15, 1993). (Announces settlement of criminal environmental prosecution for violations of California hazardous waste laws. Settlement included payment by defendant of \$2 million for cleanup of wastes which were unlawfully transported to Mexico.)
4. Treaty Between the United States of America and the United Mexican States on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande (1944).
5. Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area (Done at La Paz, Mexico, August 14, 1983).

6. Mexico established its "maquiladora" program in the 1960's to encourage foreign investment. The maquiladora industry serves as an export platform for goods produced in Mexico from imported raw materials. A maquiladora facility may import raw materials to Mexico without paying import duties, on the condition that resulting products and wastes are then shipped back to the country of origin of the raw materials. For products made from U.S.-origin raw materials, the U.S. requires the importer to pay the duty only on the value added to the raw materials during their use in the maquiladora operation. A large number of maquiladora plants in Mexico are wholly or partially owned by U.S. parent corporations.
7. Annex III to the Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area: Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances, arts. II and XII (Signed in Washington, D.C., November 12, 1986).
8. See Bromm, S.E., *The United States' Enforcement Approach to the Export and Import of Hazardous Waste*, Proceedings of the Third International Conference on Environmental Enforcement, Oaxaca, Mexico, April 25-28, 1994.
9. Integrated Environmental Plan for the Mexican-U.S. Border Area (First Stage, 1992-1994), U.S. Environmental Protection Agency and Mexico's Secretaria de Desarrollo Urbano y Ecologia, V.3-V.7 (1992).
10. Joint Progress Report of the U.S.-Mexico Integrated Border Environmental Plan, Annual Meeting of the National Coordinators, La Paz Agreement, p.3. (Ensenada, Baja California, Mexico, October 1993).
11. Id., at 2.
12. Id., at 3.
13. Id.
14. See Bromm, S.E., *The United States' Enforcement Approach to the Export and Import of Hazardous Waste*, supra, note 8.
15. Joint Progress Report of the U.S.-Mexico Integrated Border Environmental Plan, supra, note 10, at 2.
16. Boundary Water Treaty Between the United States of America and Canada (1909). See Peterson, L., USEPA Regulation of Cross Boundary Pollution: The Great Lakes Initiative and Binational Pollution Prevention Initiatives, *Environmental Control Law*, vol. 23, no.1, p.1 (September, 1992) (hereinafter "Peterson, L., Environmental Control Law").
17. Great Lakes Water Quality Agreement Between the United States of America and Canada (signed April 15, 1972). See Peterson, L., *The Great Lakes Enforcement Strategy: Using Enforcement Resources to Maximize Risk Reduction and Environmental Restoration in the Great Lakes Basin*, Proceedings of the Third International Conference on Environmental Enforcement, Oaxaca, Mexico, April 25-28, 1994 (hereinafter, "Peterson, L., The Great Lakes Enforcement Strategy").
18. See Peterson, L., *The Great Lakes Enforcement Strategy*, supra, note 17.
19. Id.
20. Enforcement initiatives have focused on remediation of waste sites responsible for polluting the Niagara River, issuing letters to thousands of facilities to promote compliance with requirements to report toxics releases; hundreds of inspections to check the adequacy of required oil spill containment plans; and inspection and enforcement actions to ensure compliance with EPA's Underground Storage Tank (UST) regulations. Peterson, L., *Environmental Control Law*, supra, note 16.

21. Individual facilities within selected geographic areas are targeted for inspection if they present a high risk of negative impacts on the Great Lakes. High-risk facilities include those with a history of non-compliance, or those which report the release of large quantities of critical pollutants to the Toxics Release Inventory, as required by the Emergency Planning and Community Right to Know Act (EPCRA). Peterson, L., *The Great Lakes Enforcement Strategy*, supra, note 17.
22. In a recent settlement of a multimedia enforcement case brought as part of a targeted geographic initiative, the defendant agreed to pay civil penalties of \$3.5 million for its violations, and to conduct corrective action to remediate environmental releases for which it was directly responsible. In addition, the facility agreed to \$26 million worth of supplemental environmental projects. It will spend \$7 million on facility audits and plant improvements to prevent pollution, and \$19 million to remediate contaminated sediments in a region identified as an Area of Concern under the GLWQA. *U.S. v. Inland Steel Corp.*, No. H-90-0328 (N.D.Ind.). See Peterson, L., *The Great Lakes Enforcement Strategy*, supra, note 17.
23. Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste, arts. 5 and 7 (signed in Ottawa, Canada, October 28, 1986).
24. See Bromm, S.E., *The United States' Enforcement Approach to the Export and Import of Hazardous Waste*, supra, note 8.
25. Id.
26. 42 U.S.C.A. §§ 9601 to 9675.
27. 15 U.S.C.A. §§ 2601 to 2671.
28. Bromm, S., *The United States' Enforcement Approach to the Export and Import of Hazardous Waste*, supra, note 8.
29. North American Agreement on Environmental Cooperation, supra, note 1, arts. 8, 9, 11, and 16.
30. Id., art. 5(1).
31. Id.
32. Id., arts. 5(2) and 5(3).
33. Id., arts. 22-36.
34. Id., Annex 36A.
35. Id., Arts. 14-15.
36. Id., art. 10(4).
37. Id. art. 12.
38. The emergence of this new trilateral Commission is described in Section 4 of this paper.
39. See Bromm, S.E., *The United States' Enforcement Approach to the Export and Import of Hazardous Waste*, supra, note 8.
40. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, U.N.E.P. Doc. IG.80/3, March 22, 1989, reprinted in I.L.M. 649 (1989).
41. Montreal Protocol on Substances that Deplete the Ozone Layer, 26 I.L.M. 1541 (1987); 30 I.L.M. 537 (1991).
42. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, supra, note 40.

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43. Montreal Protocol on Substances that Deplete the Ozone Layer, supra note 41.
  44. Treaty on Cooperation Between the United States of America and the United Mexican States for Mutual Legal Assistance (signed in Mexico City, Mexico, December 9, 1987); Treaty Between the Government of the United States of America and the Government of Canada on Mutual Legal Assistance in Criminal Matters (signed in Quebec City, Canada, March 18, 1985).
  45. Convention on the Service of Process Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, opened for signature November 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638; Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, done March 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444.