

# **UCLA**

## **Electronic Green Journal**

### **Title**

The Environment and NAFTA: Understanding and Implementing the New Continental Law

### **Permalink**

<https://escholarship.org/uc/item/7446781z>

### **Journal**

Electronic Green Journal, 1(8)

### **Author**

Holton, Graham E.L.

### **Publication Date**

1998

### **DOI**

10.5070/G31810305

### **Copyright Information**

Copyright 1998 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

**Review: *The Environment and NAFTA: Understanding and Implementing the New Continental Law***

By Pierre M. Johnson and Andre Beaulieu

Reviewed by [Graham E.L. Holton](#)  
La Trobe University, Melbourne

.....

Johnson, Pierre M. and Beaulieu, Andre. *The Environment and NAFTA: Understanding and Implementing the New Continental Law*. Washington, DC: Island Press, 1996. 413pp., index. US \$30.00 paper ISBN: 1-55963-468-5. Recycled, acid-free paper.

Two international experts examine how the North American Agreement on Environmental Cooperation (NAAEC) makes a groundbreaking attempt to integrate the social agenda of trade with the North American Free Trade Agreement (NAFTA), thereby transforming the international trade and environment debate. The authors analyze the environmental dispute settlement process through NAAEC, allowing a more significant role for non-governmental organizations (NGOs) in international environmental forums. The centerpiece of NAAEC is the Commission on Environmental Cooperation (CEC) with its environmental cooperation mandate, which provides windows for increased communication with the public and a broader constituency of NGOs.

The provisions of NAFTA that affect environmental policies and their implementation are discussed, with preliminary conclusions on the environmental record of NAFTA/NAAEC. The analysis of NAFTA is covered in five parts, with six appendices covering the consultation and resolution of disputes in the NAFTA agreement. A large bibliography which includes international treaties, government reports and relevant legal cases, extensive footnotes, contents list, and a thoroughly cross-referenced index make this book practical for research.

This highly authoritative study will prove invaluable to environmentalists, consultants, development economists, NGOs and students, or to anyone who wants a better understanding of the procedures dealing with environmental dispute resolutions concerning NAFTA.

P.M. Johnson, senior counsel with Guy & Gilbert in Montreal and professor of law at McGill University, and A. Beaulieu, a senior policy analyst in the Office of the Privy Council, Ottawa, have written a

groundbreaking, readable and concise analysis. Their professionalism is clearly revealed in the quality and depth of analysis of this complex and important subject. They consider the context of the implications brought to the negotiations, and the legal mechanism established to address them. Questions on NAFTA's impact on trade liberalization are raised. They then explain how NAAEC overcomes problems related to national sovereignty, environmental dumping and pollution havens, international environmental harmonization, and the lack of transparency and access. Johnson and Beaulieu support their explanations with an examination of the agreements and related court cases.

NAFTA, although primarily an economic agreement, goes further than any previous trade agreement in addressing environmental concerns and promoting environmental protection. The NAAEC provides for the upward harmonization of environmental enforcement levels through panel-sanctioned trade measures. The treaty goes further than other treaties in that the NAAEC's dispute settlement mechanism provides that a party refusing to comply with the panel's determination be subjected to fines or trade sanctions. But the authors also point out the treaty's glaring omissions. These omissions include the lack of a formal provision to compel the Trade Commission to accept recommendations from the CEC. In addition, NAFTA does not improve the access of NGOs, and therefore the NAAEC's specific provisions fall short of realizing 'transparency and public participation', while NAFTA Article 1114 covering pollution havens could have been improved by allowing NGO participation (164). For all its shortcomings the NAAEC is the only environmental agreement specifically designed to complement a trade treaty. A must have book for anyone interested in, or concerned by, NAFTA.

Graham E.L. Holton <[gholton@werple.net.au](mailto:gholton@werple.net.au)> is a Research Fellow at the Institute of Latin American Studies, La Trobe University, Melbourne, Australia.