

**IN THE ARBITRATION UNDER CHAPTER ELEVEN
OF THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL ARBITRATION RULES
BETWEEN
METHANEX CORPORATION AND THE UNITED STATES OF AMERICA**

Application of Non-Disputing Parties for Leave to File a Written Submission

On behalf of **Bluewater Network, Communities for a Better Environment** and the **Center for International Environmental Law, Earthjustice** hereby applies for leave to file a non-disputing party submission in the arbitration between Methanex Corp. and the United States of America under NAFTA's Chapter 11 and the UNCITRAL arbitration rules.

Applicants¹

Applicants are all nonprofit, nongovernmental organizations registered as charitable organizations under Section 501(c)(3) of the US Internal Revenue Code. All Applicants are based in the United States. None of the Applicants has any parent organization.

Bluewater Network's mission is to protect the Earth's ecosystems by promoting policies to reduce air and water pollution. Bluewater's activities include research, public education and advocacy on issues such as the removal of MTBE from gasoline, tougher emission standards for motorized vehicles, and the reduction of greenhouse gas emissions. Bluewater Network has approximately 2300 members and maintains a network of nearly 20,000 "e-activists" who support the organization's work.

Communities for a Better Environment (CBE) is a non-profit environmental health and justice organization with approximately 20,000 members in California. CBE's mission is to protect public health and the environment by reducing air and water pollution, and equipping

¹ Applicants have attempted to conserve the Tribunal's and disputing parties' resources by applying to file one joint non-disputing party submission. Because of the need to describe four different organizations in the allotted five pages, Applicants have included only the most salient information. Counsel will gladly provide additional information on request. Further information is also available on the Applicants' websites: www.bluewaternet.org, www.cbecal.org, www.ciel.org, www.earthjustice.org.

residents of urban areas to monitor and transform their immediate environment. CBE has advocated the removal of MTBE from gasoline in California.

The *Center for International Environmental Law* (CIEL) is a public interest environmental law firm dedicated to strengthening international environmental law and policy and promoting sustainable development. CIEL's Trade program works to reform global economic laws and institutions to promote sustainable development and a healthy environment. CIEL's activities include providing legal services in international, conducting policy research, advocacy on sustainable development issues, and public education. CIEL has no members.

Earthjustice, counsel for Applicants, is a public interest law firm dedicated to protecting the environment. Earthjustice's International Program works to ensure that environmental and health protections withstand the pressures of international economic policies, and to empower citizens to defend their right to a healthy environment. Earthjustice represents individuals and nongovernmental organizations in international and US federal and state tribunals, and promotes citizen enforcement of environmental standards worldwide. Earthjustice has no members.

Affiliation with a Disputing Party

With the following exceptions, none of the applicants has any direct or indirect affiliation with a disputing party. CIEL's president sits on the US Trade Representative's Trade and Environment Policy Advisory Committee. His position on the committee is as a representative of an environmental interest group. Also as representatives of their organizations, staff of CIEL and Earthjustice sit on the Subcommittee on Investment of the US Department of State's Advisory Committee on International Economic Policy. CIEL also presently receives funds from the US Agency for International Development's office in the Philippines to support work on community-based property rights in the region.

Financial or Other Assistance in Preparing the Submission

Earthjustice provided Applicants all services related to the preparation of this submission free of charge. Earthjustice's work on this submission is part of its program on international trade and investment, which is funded by grants from the Charles Stewart Mott Foundation (www.mott.org), the CS Fund (www.csfund.org), and general support funds donated by Earthjustice's individual supporters. Other than staff of Applicants and of Earthjustice, undersigned counsel has not collaborated with or received assistance from anyone in preparing the submission. At earlier stages of this arbitration, when Applicants were seeking permission from the Tribunal to participate in these proceedings, counsel for Applicants collaborated with counsel for the International Institute for Sustainable Development (IISD). IISD counsel provided no assistance in the preparation of the attached submission.

Applicants' Interest in the Arbitration

This arbitration may affect California's MTBE measures, as well as the willingness and ability of governments worldwide to implement measures to protect the environment or health in the future. A decision requiring the United States to compensate Methanex could create pressure on California to rescind the MTBE measures or affect the cost to US and California taxpayers of maintaining them. Because the Tribunal's decision in this case will be considered by tribunals in future investment arbitrations, its decision will help determine the rights and obligations of governments in implementing future health and environmental measures.

These are matters of direct interest to Applicants, all of which are dedicated to strengthening health and environmental protections and to ensuring the unfettered ability of governments to regulate to protect these important public values. CBE and Bluewater have worked extensively to educate the public concerning the environmental and health risks posed by

MTBE and to require its removal from California gasoline, efforts that culminated with the California's MTBE measures. Both groups have provided comments to the California legislature and executive agencies concerning the risks posed by MTBE. Bluewater has also worked with the US Congress concerning the risks of MTBE, bringing the issue to national attention.

CIEL and Earthjustice each have a long history of working to achieve an environmentally sustainable global economy by addressing the relationship between the environment and global economic institutions and policies. These efforts have included research, writing and public advocacy concerning the intersection of investment rules and environmental regulation, as well as promoting the right of civil society organizations to have access to dispute resolution processes in international trade and investment disputes. As this brief description indicates, the outcome of this dispute will directly affect the interests of all Applicants.

The Issues of Fact or Law Addressed by Applicants

Applicants' submission addresses the legitimacy, under NAFTA's Chapter 11, of California's intent in adopting and implementing the MTBE measures. This is the only question raised by Methanex's Second Amended claim and squarely within the parameters of this stage of the arbitration as defined by the Tribunal in its First Partial Award. In particular, Applicants address issues of international law that are relevant to this Tribunal's determination of California's intent. These issues include the promotion of environmental protection that is part of the context of NAFTA in which Chapter 11 must be interpreted; the precautionary principle; the right of governments to choose an appropriate level of protection against risk; and the international human rights obligations of all governments.

Why the Tribunal Should Accept this Submission

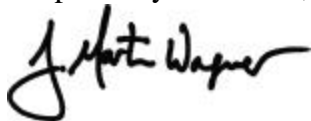
This Tribunal has noted that

[t]here is undoubtedly a public interest in this arbitration. The substantive issues extend far beyond those raised by the usual transnational arbitration between commercial parties. ... The public interest in this arbitration arises from its subject-matter.... There is also a broader argument [for permitting public participation], as suggested by the Respondent and Canada: the Chapter 11 arbitral process could benefit from being perceived as more open or transparent; or conversely be harmed if seen as unduly secretive.²

As described above and recognized by the Tribunal, this arbitration raises issues of broad public concern, including issues related to the particular MTBE measures at issue here and the larger question of governmental capacity to regulate to protect health and the environment. It is thus appropriate and useful for the Tribunal to accept input from nongovernmental organizations with substantial interest and expertise in the subject matter of the dispute.

In addition, Applicants' submission is helpful to the Tribunal because it offers analysis of applicable rules and principles of international law that neither disputing party has presented to the Tribunal. These are useful in light of the Tribunal's responsibility to decide this dispute in accordance with applicable rules and principles of international law.³ As noted, the specific issues addressed in Applicants' submission relate directly to the Tribunal's assessment of California's intent in implementing the MTBE measures at issue in this case.

Respectfully submitted,



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March 9, 2004

² Decision of the Tribunal on Petitions from Third Persons to Intervene as "Amici Curiae" (15 January 2001), ¶ 49.

³ See, e.g., NAFTA Article 1131(1).