

**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 *Amici* for Leave to File a Post-hearing Written Submission

Bluewater Network, Communities for a Better Environment, Center for International Environmental Law, and the International Institute for Sustainable Development (jointly, “*Amici*”) hereby apply for leave to file a non-disputing party post-hearing submission in the arbitration between Methanex Corp. and the United States of America under NAFTA’s Chapter 11 and the UNCITRAL arbitration rules.

Amici have previously filed written submissions in this case. In conjunction with those submissions, *Amici* submitted applications to file written submissions. See Application of Bluewater Network, *et al.*, for Leave to File a Written Submission, 9 Mar. 2004; Application of the International Institute for Sustainable Development for *Amicus Curiae* status, 9 Mar. 2004. In those applications, *Amici* provided information concerning their organizations, their affiliation with either disputing party, and their interest in the arbitration. *Amici* refer the Tribunal to those applications for that information, which has not changed. *Amici* set forth here only information specific to this application.

Financial or Other Assistance in Preparing the Submission

The information concerning financial assistance provided in *Amici*’s previous applications applies here. To conserve the Tribunal’s and the disputing parties’ resources, *Amici* have consolidated their post-hearing concerns into this single application and submission. Counsel for *Amici* collaborated on these documents, but have not collaborated with or received assistance from anyone else in preparing this post-hearing submission.

The Issues of Fact or Law Addressed by Applicants

Amici’s submission addresses a single issue of law: whether the scope of the “police powers” exclusion from the realm of measures that can be classed as expropriatory includes *bona fide* non-health environmental measures. The Tribunal need not address this issue if it finds California’s MTBE ban to be a *bona fide* public health measure. If, however, the Tribunal finds the ban not to be a *bona fide* public health measure, it will have to address whether the measure is a *bona fide* non-health-related environmental measure and to determine whether such a measure can constitute a violation of Article 1110. Neither disputing party addressed this question directly, and it is for this reason that *Amici* make this application. *Amici*’s submission demonstrates briefly that international law considers legitimate environmental regulations, like other legitimate police power measures, not to be expropriatory.

Why the Tribunal Should Accept this Submission

The capacity of host states to regulate the environmental impacts of all investments, foreign and domestic, is critical in today's world. The status of such measures under the expropriation rules in relation to foreign investment is, therefore, a vital issue today.

This Tribunal and *Amici* have previously noted the value of public participation in this arbitration. The Tribunal's wisdom in opening the hearings on the merits to public observation is demonstrated by *Amici's* present application. Had it not been for the ability of *Amici* and others to observe the hearings, *Amici* would not have noted the absence of argument concerning the application of the police powers rule to environmental measures. This allowed *Amici* to play one of the most important roles of *amici curiae*: to bring to the Tribunal's attention issues not fully argued by the disputing parties. It is this role that *Amici* seek to fulfill in the present application and submission, on a matter of law that is critical to balancing economic and environmental issues in international law.

Yours sincerely,



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