



September 15, 2003

Ms. Manon Pepin
Commission for Environmental Cooperation of North America
393, rue St-Jacques Ouest, bureau 200
Montréal, Québec H2Y 1N9

Dear Ms. Pepin,

The Canadian Nature Federation is pleased to have the opportunity to prepare this submission to the JPAC to inform their review of specific issues related to Article 14 and 15 of NAAEC. This letter addresses specifically the Article 14 Citizen Submission process.

The Canadian Nature Federation is the national voice of naturalists in Canada. We represent more than forty thousand individual members and supporters in every province and territory, together with over one hundred affiliated organizations, including local and provincial naturalist groups. Our mission is to protect nature, its diversity and the processes that sustain it. As a Canadian BirdLife International co-partner with Bird Studies Canada, the CNF is involved in a global effort to celebrate birds, protect them and educate people about their importance.

The Canadian Nature Federation has been actively involved in the Article 14 submission related to Ontario Logging (SEM 02-001). The CNF strongly supports the mandate and purpose of the CEC in reviewing issues related to the potential non-enforcement of environmental legislation, such as the Ontario Logging case. We have however two broad concerns related to our ongoing experience with this case: the extent of information requested from the submitters, and the potential for a narrowing of the scope of application of the submission.

Information Requested from Submitters

Considerable time, research and resources were committed by the eight submitters and by Sierra Legal Defence Fund in the preparation of the complaint submission. The Commission for Environmental Cooperation's Secretariat carefully reviewed the submission and the government response and recommended the preparation of a factual record. We were therefore significantly dismayed and concerned when the Council ruled counter to the Secretariat and requested that the submitters prepare additional information.

In our initial submission, we believe that we compiled the necessary information to assert the broad scale non-enforcement of Migratory Bird Regulations with respect to forestry operations in Ontario in 2001. The best available information was assembled and modeling was used to provide realistic estimates of the numbers of migratory bird nests destroyed. We used this approach because we felt that alternate approaches, such as eyewitness accounts of nest destruction, were less desirable, a significant safety risk, and potentially illegal.

We therefore believe it was not in the public interest for the Council to require the submitters to prepare additional supporting information. **It is important to note that the additional information that we did compile was specifically identified by the CEC Secretariat as being information that should be included in a recommended factual record.** In other words, the Council was asking us to do the work that the Secretariat believes should be the job of the CEC.

We believe that the time and energy required to develop both the factual record and the additional requested information makes it extremely difficult for an organization like ours to effectively participate in the Article 14 process. I would anticipate that the burden would be even greater on the countless individuals and organizations that face similar concerns, but do not have the capacity and resources that we do. If the Article 14 process is to be effective, then it must be accessible to the North American public.

Scope of Complaint

It is our understanding that the purpose of the Article 14 process is to look not only at site-specific issues, but also to broadly assess the widespread non-enforcement of environmental legislation.

It remains to be seen whether the Council will accept the recommendation of the Secretariat to proceed with a factual record with respect to the Ontario Logging complaint. We note with concern however the proceedings of a similar complaint filed in the US in relation to the enforcement of the U.S. Migratory Birds Treaty Act (SEM-99-002). The submitters in the MBTA complaint requested an investigation into the widespread lack of enforcement of the Act, however the Council narrowed the complaint to look only at two specific cases. The final factual record therefore did little to address the submitters' concerns about broad policy measures of non-enforcement.

The non-enforcement of environmental legislation on a site-specific basis is important in its own right. However, the systemic broad-scale lack of enforcement has potentially far reaching implications. It is therefore of the utmost importance that the scope of Article 14 applications not be unduly narrowed or interfered with.

We thank you for your consideration of our concerns expressed in this letter. We support the efforts of the JPAC to review and improve upon the Article 14 process.

Sincerely,

A handwritten signature in black ink that reads "Marc Johnson". The signature is written in a cursive style with a large, looping initial "M".

Marc Johnson
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