

Montreal, 20 August 2004

COUNCIL RESOLUTION 04-05

**Instruction to the Secretariat of the Commission for Environmental Cooperation Regarding the Assertion that Canada is failing to effectively enforce sections 36(3) of the federal *Fisheries Act* (SEM-03-005).**

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

CONSIDERING the above noted submission, filed on 14 August 2003 by Waterkeeper Alliance, Lake Ontario Waterkeeper, Société pour Vaincre la Pollution, Environmental Bureau of investigation and the Upper St. Lawrence Riverkeeper/Save the River!, and the 14 November 2003 response provided by the Government of Canada;

HAVING REVIEWED the 19 April 2004 notification to Council by the Secretariat recommending the development of a factual record with respect to the submission;

HEREBY UNANIMOUSLY DECIDES TO:

INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters* under Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* in respect of the following items arising in the context of Submission SEM-03-005 with regard to alleged failure to effectively enforce section 36(3) of the *Fisheries Act*:

- facts surrounding Environment Canada’s inspections, before and after, the issuance of a warning in 1998;
- facts surrounding Environment Canada’s 2002-2003 investigation, in response to a request from members of the public;
- characteristics and fate of the contamination of the Montreal Technoparc sector;
- results of the oil containment and pumping system(s) at the Montreal Technoparc sector;
- the ecotoxicological study carried out in 2002;
- information on the division of ownership of the Montreal Technoparc sector and its relevance to enforcement efforts;
- information on Environment Canada’s technical actions and advice and its relevance to enforcement efforts at the Montreal Technoparc sector; and
- compliance promotion efforts following the decision by Environment Canada not to seek charges.

DIRECT the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and to provide the Parties with the opportunity to comment on that plan; and

TO DIRECT the Secretariat to consider, in developing the factual record, whether the Party concerned “is failing to effectively enforce its environmental law” since the entry into force of the NAAEC on 1 January 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to 1 January 1994, may be included in the factual record.

APPROVED BY THE COUNCIL:

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José Manuel Bulás  
Government of the United Mexican States

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Judith E. Ayres  
Government of the United States of America

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Norine Smith  
Government of Canada