

14 June 2006

COUNCIL RESOLUTION 06-07

Instruction to the Secretariat of the Commission for Environmental Cooperation regarding the assertion that Canada, and more specifically the province of Québec, is failing to effectively enforce sections 96.1 and 96.2 of Québec's *Regulation respecting the Quality of the Atmosphere (Règlement sur la qualité de l'atmosphère—RQA)* and sections 19.1, 20 and 51 of the *Québec Environment Quality Act (Loi sur la qualité de l'environnement—LQE)* (SEM-04-007).

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 submission filed on 3 November 2004 by the Québec Association Against Air Pollution (Association québécoise de lutte contre la pollution atmosphérique – AQLPA) and the response provided by Canada on 1 February 2005,

HAVING REVIEWED the 5 May 2005 notification submitted to the Council by the Secretariat, recommending the development of a factual record with respect to the submission,

REAFFIRMING that, consistent with the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, and as stated in the CEC's guidebook "Bringing Facts to Light," a factual record "outlines, in as objective a manner as possible, the history of the issue, the obligations of the Party under the law in question, the actions of the Party in fulfilling those obligations, and the facts relevant to the assertions made in the submission of a failure to enforce environmental laws effectively,"

FURTHER REAFFIRMING that a factual record thus contains neither an assessment of a Party's policy choices made in the exercise of its discretion in respect of investigatory, prosecutorial, regulatory or compliance matters, nor an assessment of a Party's decisions to allocate and prioritize its resources for the enforcement of environmental matters,

CONSIDERING THAT, as such, assessments of the decisions not to implement a vehicle inspection maintenance program for light vehicles during the time period referenced in the submission, and not to establish a firm schedule for the implementation of such a system, are beyond the scope of the factual record process,

NOTING that section 20 of the LQE is not applicable to the facts raised in the submission,

FURTHER NOTING that Canada's response did not indicate that the implementation of a vehicle inspection and maintenance program was a preferred means of enforcing compliance with sections 51 of the LQE and 96.1 and 96.2 of the RQA,

HEREBY UNANIMOUSLY

INSTRUCTS the Secretariat to prepare a factual record in accordance with the above-noted considerations, as well as Article 15 of the NAAEC and the Guidelines, in respect of the following items arising in the context of Submission SEM-04-007 with regard to the alleged failure to effectively enforce sections 96.1 and 96.2 of the RQA and sections 19.1 and 51 of the LQE:

- the history and context of the development of the above-noted environmental laws, up to the time of their enactment; and
- the measures taken by Québec to enforce the above-noted environmental laws (including educational measures, inspection campaigns, and the development of an inspection and maintenance program for heavy vehicles), as well as the history and context of the adoption of those measures,

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

FURTHER DIRECTS that the Secretariat may include, in its preparation of a factual record, any relevant facts that existed prior to the entry into force of the NAAEC on 1 January 1994.

APPROVED BY THE COUNCIL:

Judith E. Ayres
Government of the United States of America

José Manuel Bulás Montoro
Government of the United Mexican States

David McGovern
Government of Canada