

**Commission for Environmental Cooperation
Draft Factual Record Under Articles 14 and 15
SEM-97-001, Synopsis**

The Commission for Environmental Cooperation (CEC) is an international organization created under the *North American Agreement on Environmental Cooperation (Agreement)* by Canada, Mexico, and the United States. The CEC operates through a Council (made up of the highest-level environmental official in each country), a Joint Public Advisory Committee (JPAC), comprised of five citizens from each country, and a Secretariat (headquartered in Montreal).

Article 14 of the *Agreement* allows citizens to file submissions claiming that any of the three countries, Canada, Mexico, or the United States, is failing to effectively enforce its environmental laws. The Council may instruct the Secretariat to prepare a factual record in connection with particular submissions. A key purpose of factual records is to develop information concerning specific enforcement practices of a country. Among other benefits, a factual record may assist the public in assessing the effectiveness of such practices. A factual record may be particularly valuable where facts are disputed or where the facts simply have not been put before the public.

The Secretariat submits each draft factual record to the Council. Any of the three countries may provide comments concerning the accuracy of the draft. The Secretariat incorporates, as appropriate, any such comments in the final factual record and submits the final record to the Council. The Council then determines whether to make the final factual record available to the public.

Two documents explain the process the Secretariat is to follow in developing a factual record, the *Agreement* itself, and the *Guidelines for Submission on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (Guidelines)*. The *Guidelines* specify that the Secretariat shall include the following in its draft and final factual records:

- 1) a summary of the submission;
- 2) a summary of the country's response;
- 3) a summary of any other relevant factual information; and,
- 4) the facts presented by the Secretariat with respect to the matters raised in the submission.

The *Agreement* provides that the Secretariat shall consider information submitted by any Party. It also authorizes the Secretariat to consider relevant information that is publicly available, submitted by any interested non-governmental organization or person or the JPAC, or that the Secretariat or independent experts develop.

The Council has instructed the CEC Secretariat to prepare a draft factual record with respect to Submission No. SEM-97-001. This Submission, filed by the Sierra Legal Defence Fund and the Sierra Club Legal Defense Fund (now Earthjustice) on behalf of

several non-governmental organizations, claims that BC Hydro operations have violated Fisheries Law Section 35(1) on repeated occasions by damaging fish habitat, and that Canada has failed to take effective enforcement with respect to these violations. Canada asserts that its enforcement efforts have been effective, and have included a wide range of measures, including prosecutions when required, as well as a series of other strategies such as water use planning.

It is the Secretariat's responsibility, pursuant to the instruction of the Council, to prepare a draft factual record relating to the effectiveness of Canada's enforcement practices. In doing so, the Secretariat will review the information the Submitters and Canada have already provided. The Secretariat will develop additional information by, among other activities, reviewing the legal and policy context associated with the alleged violations, developing information by working with independent experts, and obtaining information from interested stakeholders.

In particular, an Expert Group will be convened and asked to provide information concerning the effectiveness of the Canadian approach to enforcement. Further, stakeholders (e.g., the Submitters, Canada, British Columbia, and BC Hydro) will have the opportunity to provide information concerning the effectiveness of the Canadian approach to enforcement. Each of the major stakeholders listed above will have an opportunity to meet with, and provide information to, the independent experts in mid-January during the experts' initial round of meetings. The Secretariat also will accept written comments on the effectiveness of Canadian enforcement efforts until February 23, 1999.

The Secretariat has retained the services of Stephen Owen and Alex Grzybowski at the University of Victoria Institute for Dispute Resolution (UVic IDR) to assist the Secretariat to obtain information from experts and interested parties. Information relating to the effectiveness of the Canadian enforcement efforts may be submitted to the Secretariat, care of Mr. Grzybowski, [c/o UVic IDR, University of Victoria, Begbie Building, PO Box 2400 STN CSC, Victoria, B.C. V8W 3H7, grzybowski@tnet.net], again by no later than February 23, 1999.

The Secretariat has established a repository containing key background documents, such as the Submission itself, Canada's Response, the Submitters' Reply, the Council's Resolution, and the *Agreement* and *Guidelines*, at the University of Victoria Institute of Dispute Resolution (located in the Law Faculty, Begbie Building, UVic Campus). These documents are available for review [please call (250) 721-8777 to make arrangements]. They also are available on the internet from:

<http://cec.org/templates/registrytext.cfm?&varlan=english&documentid=74&format=1>

<http://cec.org/templates/registrytext.cfm?&varlan=english&documentid=79&format=1>

<http://cec.org/templates/registrytext.cfm?&varlan=english&documentid=81&format=1>

<http://cec.org/templates/registrytext.cfm?&varlan=english&documentid=88&format=1>

<http://cec.org/templates/registrytext.cfm?&varlan=english&documentid=160&format=1>

<http://cec.org/templates/registryview.cfm?&varlan=English&submissionID=9&format=1>

Set forth below is the schedule for conducting the process described above.

Factual Record Development Process and Schedule

1. Legal and Policy Analysis Dec. 18, 1998 to Feb. 23, 1999

2. Expert Group Review Dec. 18, 1998 to Feb. 12, 1999
 - Preparatory work Dec. 18, 1998 to Jan. 11, 1999
 - Initial meeting [to include sessions with various stakeholders] week of Jan. 11, 1999
 - Final report from Group week of Feb. 8, 1999
 - Final meeting of Group week of Feb. 8, 1999

3. Stakeholder Comment Period Dec. 18, 1998 to Feb. 23, 1999
(note: comments received prior to January 20th will be provided to the expert group for its information)

For more information, please contact Alex Grzybowski at (250) 656-1317 or grzybowski@tnet.net.

We look forward to your participation in providing information for this factual record process.