

## Secretariat of the Commission for Environmental Cooperation

### Overall Plan to Develop a Factual Record

**Submission I.D.:** SEM-02-003

**Submitter(s):** Friends of the Earth  
Union Saint-Laurent, Grand Lacs  
Conservation Council of New Brunswick  
Ecology Action Centre  
Environment North

**Represented by:** Sierra Legal Defence Fund

**Party:** Canada

**Date of this plan:** 15 January 2004

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### Background

On 8 May 2002, the Submitters identified above presented to the Secretariat of the Commission for Environmental Cooperation (CEC) a submission in accordance with Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The submission, along with supporting materials, asserts that Canada is failing to effectively enforce sections 34, 36, 40, 78 and 78.1 of the federal *Fisheries Act* and sections 5 and 6 and Schedules I and II of the *Pulp and Paper Effluent Regulations* (PPER) promulgated in 1992, against pulp and paper mills in Ontario, Quebec and the Atlantic provinces (i.e., New Brunswick, Nova Scotia and Newfoundland). Section 36(3) of the *Fisheries Act* prohibits the deposit of a deleterious substance in water frequented by fish unless the deposit is authorized by regulation, such as the PPER. The Submitters allege that in the period from 1995 to 2000 there were more than 2,400 documented violations of the PPER at mills in central and eastern Canada, and very few prosecutions. The submission and its appendices provide information on alleged violations at approximately 70 of the 116 mills that the Submitters identify, with twelve mills highlighted as mills of particular concern to the Submitters.

On 11 December 2003, in its Resolution 03-16, the Council decided unanimously to instruct the Secretariat to develop 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 NAAEC* (*Guidelines*), for the assertions in Submission SEM-02-003 with regard to alleged failures to

effectively enforce section 36(3) of the *Fisheries Act* and alleged effluent test failures as well as failures to conduct follow-up tests as required under the PPER, with respect to the following mills and time periods identified in the submission:

- Irving Pulp and Paper Ltd. at St. John from 1996 to 2000
- AV Cell Inc. at Atholville for 2000
- Abitibi-Consolidated at Grand Falls for 2000
- Bowater Mersey Paper Company Ltd. at Brooklyn for 2000
- Fjordcell Inc. at Jonquière for 2000
- Interlake Papers at St. Catherines for 2000
- Tembec Inc. at St. Raymond for 2000
- Uniforêt-Pâte Port Cartier Inc. at Port-Cartier for 2000
- F.F. Soucy Inc. at Rivière-du-Loup for 2000
- La Compagnie J. Ford Ltd. at Portneuf for 2000

In light of ongoing investigations, the Council excluded from the factual record two of the twelve mills that the Submitters identified as mills of particular concern: the Abitibi-Consolidated Inc. mill at Iroquois Falls, Ontario, and the Tembec Inc. mill at Temiscaming, Quebec.

The Council also instructed the Secretariat that the factual record shall describe Canada's consideration of actions taken by the provinces to enforce their legislation, regulations and permit conditions related to pulp and paper mills, specifically the information submitted by the provinces to federal officials where such provincial enforcement actions were relied upon by those federal officials, with respect to the mills listed in Council Resolution 03-16; bearing in mind that the submitters do not assert that any of the provinces are failing to effectively enforce provincial environmental law and there is not to be an examination of provincial enforcement of provincial law.

The Council also instructed the Secretariat that the factual record shall describe the other facts directly related to Canada's enforcement of section 36(3) of the *Fisheries Act* and of sections 5 and 6 and Schedules I and II of the PPER, with respect to the mills listed in Council Resolution 03-16.

The Council directed 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, the factual record may include relevant facts that existed prior to 1 January 1994.

Under Article 15(4) of the NAAEC, in developing a factual record, "the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information: (a) that is publicly available; (b) submitted by interested nongovernmental organizations or persons; (c) submitted by the Joint Public Advisory Committee; or (d) developed by the Secretariat or by independent experts."

### **Overall Scope of the Fact Finding:**

To prepare the factual record, the Secretariat will gather and develop information relevant to:

- (i) the facts concerning Canada's actions regarding alleged failures to effectively enforce section 36(3) of the *Fisheries Act* with respect to the mills and time periods identified in Council Resolution 03-16;
- (ii) the facts concerning Canada's action regarding alleged effluent test failures and failures to conduct follow-up tests as required under the PPER with respect to mills and time periods identified in Council Resolution 03-16;
- (iii) the facts concerning Canada's consideration of actions taken by the provinces to enforce their legislation, regulations and permit conditions related to pulp and paper mills, as specified in Council Resolution 03-16, with respect to the mills identified in Council Resolution 03-16;
- (iv) other facts directly related to Canada's enforcement of section 36(3) of the *Fisheries Act* and of sections 5 and 6 and Schedules I and II of the PPER, with respect to the aforementioned mills; and
- (v) whether Canada is failing to effectively enforce section 36(3) of the *Fisheries Act* and sections 5 and 6 and Schedules I and II of the PPER in the context of the mills and time periods listed in Council Resolution 03-16.

### **Overall Plan:**

Consistent with Council Resolution 03-16, execution of the overall plan will begin no sooner than 1 February 2004. All other dates are best estimates. The overall plan is as follows:

- Through public notices or direct requests for information, the Secretariat will invite the Submitters; JPAC; community members; the regulated community (including all of the mills listed in Council Resolution 03-16); and local, provincial and federal government officials to submit information relevant to the scope of fact-finding outlined above. The Secretariat will explain the scope of the fact finding, providing sufficient information to enable interested nongovernmental organizations or persons or the JPAC to provide relevant information to the Secretariat (section 15.2 of the *Guidelines*). **[February 2004]**
- The Secretariat will request information relevant to the factual record from federal, provincial and local government authorities of Canada, as appropriate, and shall consider any information furnished by a Party (Articles 15(4) and 21(1)(a) of the NAAEC). **[February 2004]**

- The Secretariat will gather relevant technical, scientific or other information that is publicly available, including from existing databases, public files, information centers, libraries, research centers and academic institutions. **[February through July 2004]**
- The Secretariat, as appropriate, will develop, through independent experts, technical, scientific or other information relevant to the factual record. **[February through July 2004]**
- The Secretariat, as appropriate, will collect relevant technical, scientific or other information for the preparation of the factual record, from interested nongovernmental organizations or persons, the JPAC or independent experts. **[February through July 2004]**
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed. **[July through November 2004]**
- The Secretariat will submit a draft factual record to Council, and any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5). **[end of November 2004]**
- As provided by Article 15(6), the Secretariat will incorporate, as appropriate, any such comments in the final factual record and submit it to Council. **[January 2005]**
- The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, according to Article 15(7).

### **Additional information**

The submission, the Party's response, the Secretariat determinations, the Council Resolution, and a summary of these are available in the Registry on Citizen Submissions in the CEC home page <[www.cec.org](http://www.cec.org)>, or upon request to the Secretariat at the following address:

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