

9 June 2005

COUNCIL RESOLUTION 05-05

**Instruction to the Secretariat of the Commission for Environmental Cooperation regarding the assertion that Mexico is failing to effectively enforce Article 150 of the General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y Protección al Ambiente*—LGEEPA) and Articles 414 and 415 of the Federal Penal Code (*Código Penal Federal*—CPF) (SEM-03-004).**

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 submissions filed on 25 November 2002 and 17 June 2003 by Mr. Ángel Lara García, and the response provided by the Government of Mexico on 4 December 2003;

HAVING REVIEWED the 23 August 2004 notification submitted to the Council by the Secretariat, recommending the development of a factual record with respect to the submission;

REAFFIRMING that the focus of the factual record process is to examine facts pertinent to assertions that a Party is failing to effectively enforce its environmental law, and not the effectiveness of the law in question;

RECOGNIZING that a Party, in its response to the Secretariat in respect of a submission, is not in a position to respond to assertions or matters that were not raised in the submission;

NOTING that Article 161 of LGEEPA was not raised by the submitter, but by the Secretariat;

FURTHER NOTING that, among other things, the submission alleges a lengthy history of releases of toxic chemicals, as well as continuation of such releases following enforcement action taken by the Government of Mexico in 2001;

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* with respect to the issues raised in the submission, taking the above-noted considerations into account;

TO DIRECT 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

TO FURTHER DIRECT 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:

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Judith E. Ayres  
Government of the United States of America

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José Manuel Bulás Montoro  
Government of the United Mexican States

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David McGovern  
Government of Canada