

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submission ID: SEM-04-007 (Quebec Automobiles)

Submitter: Quebec Association Against Air Pollution (*Association québécoise de lutte contre la pollution atmosphérique* – AQLPA)

Party: Canada

Date of this plan: 5 July 2006

Background

On 3 November 2004, the Quebec Association Against Air Pollution (*Association québécoise de lutte contre la pollution atmosphérique*—AQLPA) presented the Secretariat of the Commission for Environmental Cooperation (CEC) with a submission under Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). In the submission, along with supporting materials, the AQLPA asserts that Canada, and in particular 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), as well as sections 19.1, 20 and 51 of Québec’s *Environment Quality Act (Loi sur la qualité de l’environnement*—LQE), pertaining to air emissions of hydrocarbons, carbon monoxide and nitrogen oxides from post-1985 light motor vehicle models. Under these provisions, removing or modifying a catalytic converter from a vehicle constitutes an infraction punishable by a fine and/or a prison term.

On 3 December 2004, the Secretariat determined that the submission met the requirements set forth in Article 14(1) of the NAAEC and requested a response from the Party concerned (Canada), in accordance with Article 14(2) of the NAAEC. Canada submitted its response on 1 February 2005. In the response, the Government of Quebec explains that the problem addressed by these “anti-tampering” provisions was largely resolved by the 1990 ban on leaded gasoline, followed by the introduction of electronic fuel injection and computerized engine controllers. Quebec also stresses that it is working on developing a vehicle inspection and maintenance program that will address the socio-economic and technical issues encountered in other jurisdictions with such programs. Quebec asserts that it wishes to first tackle pollution caused by heavy vehicles, having authorized the preparation of draft legislation to this effect. It adds that above and beyond the strict application of the law, the Quebec Environment Ministry has carried out information, awareness-raising and educational

activities and has monitored the state of the vehicles on Quebec's roads. On 5 May 2005, the Secretariat informed the CEC Council that in light of Canada's response, the submission warranted developing a factual record.

On 14 June 2006, in Council Resolution 06-07, the Council unanimously decided 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* (the *Guidelines*) with respect to the following questions raised in submission SEM-04-007 concerning 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 Quebec to enforce the above-noted environmental laws (including education programs, inspection campaigns, and the development of a heavy vehicle inspection and maintenance program), as well as the history and context of the adoption of those measures.

The Council directed the Secretariat to provide the Parties with an overall work plan for gathering relevant facts and to provide the Parties with an opportunity to comment on the plan. The Council also directed the Secretariat that in preparing the factual record, it may include any relevant facts that existed before the entry into force of the NAAEC on 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 (JPAC); 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 factual information relevant to the following matters concerning 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;
- the measures taken by Quebec to enforce the above-noted environmental laws (including education programs, inspection campaigns, and the development of a heavy vehicle inspection and maintenance program), as well as the history and context of the adoption of those measures.

Overall Plan

The execution of the overall plan, prepared in accordance with Council Resolution 06-07, will not begin before 21 July 2006. All other dates mentioned are best estimates. The overall work plan is as follows:

- Through public notices or direct requests for information, the Secretariat will invite the Submitters; JPAC; community members; the general public; 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*). [**July-October 2006**]
- 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). [**July-October 2006**]
- 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. [**October through December 2006**]
- The Secretariat, as appropriate, will develop, through independent experts, technical, scientific or other information relevant to the factual record. [**October through December 2006**]
- 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. [**October through December 2006**]
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed. [**January through March 2007**]
- 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). [**Mid-May 2007**]
- 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. [**July 2007**]
- 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's determinations, the Council Resolution, and a summary of these are available in the Registry on Citizen Submissions on the CEC home page <www.cec.org>, or upon request to the Secretariat at the following address:

Secretariat of the CEC
Submissions on Enforcement Matters Unit
393 St-Jacques St. West, Suite 200
Montreal, QC H2Y 1N9
Canada