

20 August 2018

COUNCIL RESOLUTION: 18-01

Instruction to the Secretariat of the Commission for Environmental Cooperation regarding the Secretariat's Article 15(1) Notification that a Factual Record is warranted with regard to Submission SEM-17-001 (*Alberta Tailings Ponds II*) in connection with the assertions that Canada is failing to effectively enforce subsection 36(3) of the federal Fisheries Act.

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;

AFFIRMING that the process provided for in Articles 14 and 15 of the NAAEC was established by the Parties of the NAAEC to provide an opportunity for persons or nongovernmental organizations residing or established in Canada, Mexico, and the United States to present their concerns regarding effective enforcement of environmental law;

RECOGNIZING that the Submissions on Enforcement Matters (SEM) process is designed to promote information-sharing between members of the public and the governments on matters concerning the effective enforcement of environmental law;

ACKNOWLEDGING that factual records are an important way to increase public participation, transparency, and openness on issues related to the enforcement of environmental law in Canada, Mexico and the United States;

HAVING CONSIDERED the submission filed on 26 June 2017, by Environmental Defence Canada, the Natural Resources Defense Council and a Canadian resident, and the Response provided by Canada on 10 November 2017;

HAVING REVIEWED the 19 April 2018 Notification by the Secretariat recommending the development of a factual record with respect to the effective enforcement of subsection 36(3) of the federal Fisheries Act of Canada;

REAFFIRMING that the purpose of a factual record is to provide an objective presentation of the facts relevant to the assertion set forth in a submission and will generally outline the history of the environmental enforcement issue raised in the submission, the relevant legal obligations of the Party, and the actions of the Party in fulfilling those obligations;

TAKING INTO ACCOUNT that Section 10.4 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (Guidelines), in relation to the preparation of a factual record, states that “[t]he Council will provide its reason(s) for the instructions in writing and they will be posted on the [SEM] public registry”.

HEREBY UNANIMOUSLY DECIDES TO:

INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15(4) of the NAAEC and with the Guidelines, on the following matters arising in the context of Submission SEM-17-001 related to effective enforcement of subsection 36(3) of the *Fisheries Act*:

- The state of the publicly available peer-reviewed science on identifying differences between naturally-occurring bitumen-influenced water and anthropogenic oil sands process-affected water;
- Alberta’s relationship with Canada with respect to the assertions and specific sites referred to in the submission, as well as other specific sites mentioned in Canada’s response; and
- How the Oil Sands Monitoring Program (formerly the Joint Oil Sands Monitoring Program) is carried out and how it fits into Canada’s enforcement of the *Fisheries Act*;

DIRECT the Secretariat to post Council’s reasons for its vote on the SEM public registry;

DIRECT the Secretariat to conclude the preparation of the draft factual record, as provided in Section 19.5 of the Guidelines, and present it to the Council in accordance with Article 15(5) of the NAAEC; and

FURTHER DIRECT the Secretariat to provide the Council with its overall work plan for gathering the relevant facts; to keep the Council informed of any future changes or adjustments to such plan; and to promptly communicate with the Council in connection with any clarification required with respect to the scope of the factual record hereby authorized.

APPROVED BY THE COUNCIL:

Isabelle Bérard
Government of Canada

Enrique Lendo Fuentes
Government of the United Mexican States

Jane Nishida
Government of the United States of America