

To whom it may concern,

I am writing to comment on the proposed changes to the SEM guidelines. At the outset, it is not clear who the people were who were tasked to propose these changes and whether this task force included and/or consulted stakeholders who employ, administer and are affected by the SEM process. More transparency regarding potential conflicts of interest is required if this was not the case.

1) I am pleased to see that submitters can now submit their cases to the CEC online.

2) Guideline 7.5 a: Why do you remove the chance for the submitter to respond whether the factual record would interfere with private remedies?

7.5 b: Why was this added to the document? Given that environmental law is set by the Parties, how can any submitter be able to have his/her case heard?

7.5 c: "Bearing in mind that barriers to the pursuit of such remedies may exist in some cases" should not be removed. My experience is that barriers to the pursuit of such remedies do sometimes exist and removing this line is tantamount to saying that they do not exist.

3) Guideline 8.1: Why is the submitter not entitled to provide info within the first 30 days? Is this for expediency purposes?

4) Guideline 9.1: Have the Parties considered how much translation will cost? Given that CEC funding has been fixed since its inception and that it does not increase with inflation, has any thought been given to these costs? Does the phrase "to the extent practical" include when the costs of translation are too high?

5) Guideline 9.5: Why is "of its reason(s)" removed? Should the submitter not be notified of <the Party's> reason(s) in writing? Moreover I am extremely concerned that the changes to this language allows a Party to inform the Secretariat of a pending proceeding, requiring the Secretariat to terminate the submission, at ANY point in the process, not just at time of response as stated in Article 14(3). This would allow a Party to stop a factual record that is in preparation. Such a possibility would not only undermine the process but also waste valuable public resources.

6) Transparency is an important component of any public process. Guideline 15 is key in delineating how the SEM process is made public. One of the key players in this process is the Council. I noted that in Guideline 15 the following line was removed: (v) the Council has instructed the Secretariat not to prepare a factual record.

As someone who studies the importance of transparency with regards to environmental issues, not informing the public that Council has instructed the Secretariat not to prepare a factual record is very concerning. The public elects public officials to act on their behalf as such it is important that the public be informed of Council's (who in some cases are elected officials and in other cases are representing elected officials) decision. In other words, if decision to go public is made for the case when Council instructs the Secretariat to prepare a factual record, then the same should be done when the Council instructs the Secretariat to NOT prepare a factual record. It is the decision that matters to the public.

7) I am extremely concerned with the potential conflict of interest that appears to now be codified in the new language.

Guideline 10.4: "The Secretariat will prepare a factual record if the Council, by a two-thirds

vote, instructs it to do so. If, *after considering the Secretariat's notification that a factual*

record
is warranted, the Council votes to instruct the Secretariat not to prepare a factual record
or to
prepare a factual record that varies from the Secretariat's notification, the Council will
provide
its reasons for doing so. Where the Council instructs the Secretariat not to prepare a
factual
record or to prepare a factual record that varies from the Secretariat's notification, the
Secretariat will so inform the Party and the Submitter that the
*process regarding said submission, **in whole or in part**, is terminated. Unless the*
Council decides otherwise, any such decision will be noted in the registry and in the
public file
described in these guidelines.” (emphasis added)

The Council represents the Parties hence by including language that allows for the possibility that the Council will instruct the Secretariat to prepare a factual that varies from the Secretariat's notification will undoubtedly be perceived by stakeholders of this process as a conflict of interest. For the SEM process to be respected by stakeholders, the possibility of conflicts of interest must be removed.

In conclusion, I thank you for the opportunity to comment on the SEM process and hope that my comments are received in the spirit that they are given - namely transparency and respect for our North American natural environment.

Sincerely,
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