# **JPAC SEM Update**

### 7 November 2011

# SEM Process (1)

- Non-judicial
  - Not a litigation or curial process
    - » Intended to be non-adversarial
  - Neutrality in implementation of Art 14 & 15
  - Fairness in ensuring that submitters and interested Parties receive procedural fairness
  - Transparency

# SEM Process (2)

Art. 14(1) "The Secretariat may consider a submission from any non-governmental organization or person asserting that *a Party is failing to effectively enforce its environmental law*, if the Secretariat finds that the submission:"

meets criteria in 6 sub-paragraphs (a-f), informed by the "Guidelines"

# SEM Process (3)

### Who can submit?

- any NGO or person established or residing in the territory of a party to the Agreement
  - Often there are multiple submitters with one taking the lead

# SEM Process (4)

"Not an insurmountable screening device" But there can be problems at 14(1) stage

- -e.g. Submitter fails to:
  - clearly identify the environmental law in question
  - provide sufficient information
  - communicate with relevant authorities
    - Above example from 2008 Cancun Jetty submission

### SEM Process (5)

### Article 14(2) Factors

a.alleges harm (explained further in Guidelines)

b.advances the goals of the NAAEC c.private remedies have been pursued d.doesn't draw exclusively from massmedia reports

# **SEM Process (6)**

### Article 15(1)

"If the Secretariat considers that the submission, in the light of any response provided by the Party, warrants developing a factual record, the Secretariat shall so inform the Council and provide its reasons"

### SEM Process (7)

### **Factual Record**

- contains 4 basic types of information
  - 1. Summary of the initial submission
  - 2. Summary of the Response from the concerned Party
  - 3. Summary of other relevant factual information
  - 4. Information developed by the Secretariat on matters raised in the Submission

# SEM Process (8)

- In a Factual Record the Secretariat does not include a determination stating a Party has failed to effectively enforce
- After factual record is published, process with regard to that factual record is terminated

# **SEM Unit Statistics**

- 76 Submissions filed with CEC as of 18 October, 2011
  - 39 Concerning Mexico
  - 27 Concerning Canada
  - -9 Concerning the United States
  - 1 Concerning both the United States and Canada

# **Since Last Meeting**

- 4 Determinations Issued
  - 2 Art. 14(2)
  - 2 Art. 15(1)
- 1 Draft Factual Record sent to Council
   Final Factual Record in translation/editing
- 2 Draft Factual Records finalized
- 3 Determinations finalized

# Pending

- 10 Submissions currently pending
  - Including 2 awaiting Council votes on whether to develop a factual record
  - Including 2 draft and 1 final factual records in final stages of preparation
- Secretariat progress in reducing the "docket" from a high of 16 active submissions in 2010, and in line with historical timeliness averages

# Status of 10 Active Submissions



### Wetlands in Manzanillo (Mexico)

#### – Submitter

Bios Iguana and Esperanza Salazar Zenil

#### Key assertions

 Mexico is failing to effectively enforce its environmental laws with regard to favorable environmental impact authorizations of two gas projects (LNG-LPG) in what was a protected area.

#### – Phase

• The Secretariat received a response from the concerned government Party and is considering the submission to determine whether the development of a factual record is warranted in accordance with Article 15(1).

# Lake Chapala II (Mexico)

#### Submitters

Instituto de Derecho Ambiental, et al.

#### Key Assertions

 Mexico is failing to effectively enforce its environmental law with respect to the Lerma-Chapala basin. This has resulted in serious environmental deterioration to the basin, as well as the risk that Lake Chapala and its migratory birds will eventually disappear.

#### – Status

• The Secretariat has finalized the draft of a Factual Record in accordance with Council Resolution #08-01 dated May 30, 2008.

### Environmental Pollution in Hermosillo II (Mexico)

#### Submitters

 Academia Sonorense de Derechos Humanos and Domingo Gutiérrez Mendívil

#### – Key Assertions

 Failure to prevent air pollution in areas under state and municipal jurisdiction, and to establish and keep up-to-date a national air quality information system, and moreover to devise state and municipal urban development plans indicating the zones in which polluting industrial facilities may be cited, violates the Mexican Constitution and other Mexican environmental law.

#### Status

 Secretariat is awaiting Council vote on whether to develop a Factual Record.

### Ex Hacienda El Hospital II-III (Mexico)

#### Submitters

 Members of the community of Ex Hacienda El Hospital, Myredd Mariscal and Roberto Abe Almada

#### Key assertions

 Profepa failed to sanction BASF for having permitted, during the facility's closing, contaminated soil and other material to be taken from the site by community inhabitants for their use; and that Profepa has failed to act despite evidence revealing contaminated soil allegedly attributable to BASF.

#### Status

 Secretariat is awaiting Council vote on whether to develop a Factual Record.

### **Quebec Automobiles (Canada)**

#### – Submitter

The Québec Association Against Air Pollution

### – Key Assertions

• Canada (Province of Quebec) is failing to effectively enforce: articles 96.1 and 96.2 of *Quebec's Regulation respecting the Quality of the Atmosphere* and articles 19.1, 20 and 51 of the *Quebec Environment Quality Act* in connection with emissions from post-1985 light vehicle models.

### – Status

• The Secretariat finalized a Factual Record in accordance with Council Resolution #06-07 dated June 14, 2006. Will be transmitted shortly to Council for vote on publication.

### Alberta Tailings Ponds (Canada)

#### -Submitter

 Environmental Defence Canada, Natural Resources Defense Council (U.S.), John Rigney, Don Deranger, and Daniel T' seleie

#### -Key Assertions

• Inter alia, Canada is failing to enforce its environmental law by abdicating responsibility to monitor, investigate and enforce ss. 36(3) of the Fisheries Act, which prohibits leakages of the sort alleged as well as the "indirect deposition of deleterious substances" in "any place under any conditions where the deleterious substance may enter into such waters."

#### -Status

• The Secretariat has received and is reviewing a revised submission to determine whether it meets the criteria of Article 14(1) and if so, whether it merits requesting a response from the concerned Party under Article 14(2).

### Iona Wastewater Treatment (Canada)

#### – Submitter

• Fraser Riverkeeper Society, et al.

#### – Key Assertions

 Canada is failing to effectively enforce the pollution prevention provision of s. 36(3) of the federal *Fisheries Act* because, despite knowledge of deleterious substance discharges, the Canadian government has failed to take action to prevent such discharges. Submitters claim that the beneficial uses of natural resources have been and continue to be degraded as a result of the alleged discharges.

#### – Status

• The Secretariat requested a response from the Party under Article 14(2).

### PCB Treatment in Grandes Piles (Canada)

#### Submitter

Bennett Environmental, Inc.

#### – Key Assertions

 Canada, by way of Quebec, is failing to enforce its Environmental Quality Act and the Regulations Respecting the Burial of Contaminated Soils by issuing a permit for the use of chemical oxidation to treat PCB-contaminated soils without evidence that the process works.

#### - Status

 Secretariat is reviewing the submission to determine whether it meets the criteria of Article 14(1) and if so, whether it merits a response from the concerned Party under Article 14(2).

### **Coal Fired Power Plants (USA)**

#### – Submitter

• Waterkeeper Alliance, et al.

#### – Key Assertions

 The United States, through the USEPA, is failing to enforce the federal Clean Water Act against coal-fired power plants by allowing mercury discharges that contribute to the degredation of the waters of the US.

#### – Status

 The Secretairat has finalized a draft factual record in accordance with Council Resolution # 08-03 dated June 23, 2008, and

# SEM Unit Processing Statistics

### Efforts at Timely Processing

- Art 14(1) Determination
  - Jetty in Cancún:
  - Quebec Mining:
  - PCBs in Quebec:
  - Bicentennial Bridge:
  - Historic Average:

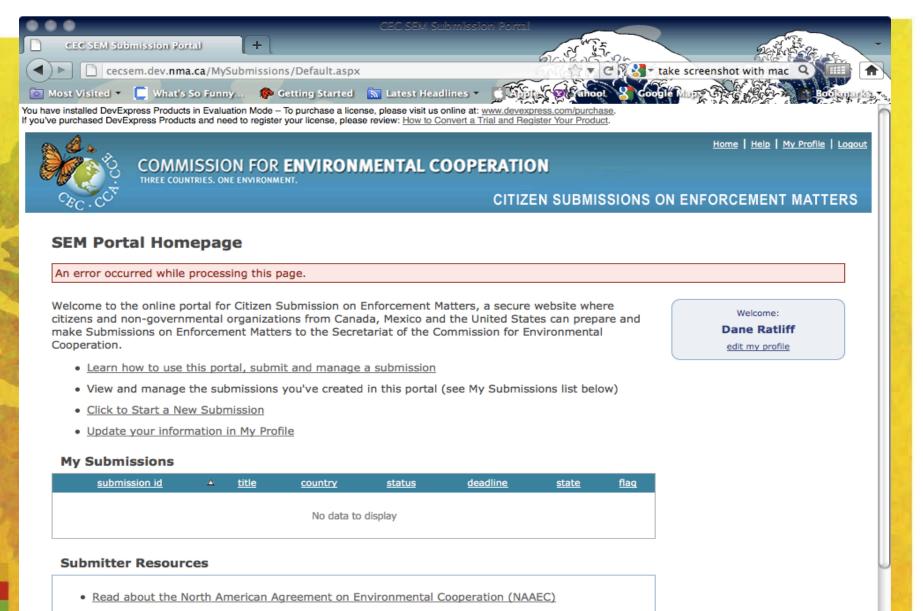
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- Art 15(1) Determination
   Transgenic Maize: 7 m
  - Historic Average:

7 months 1 year

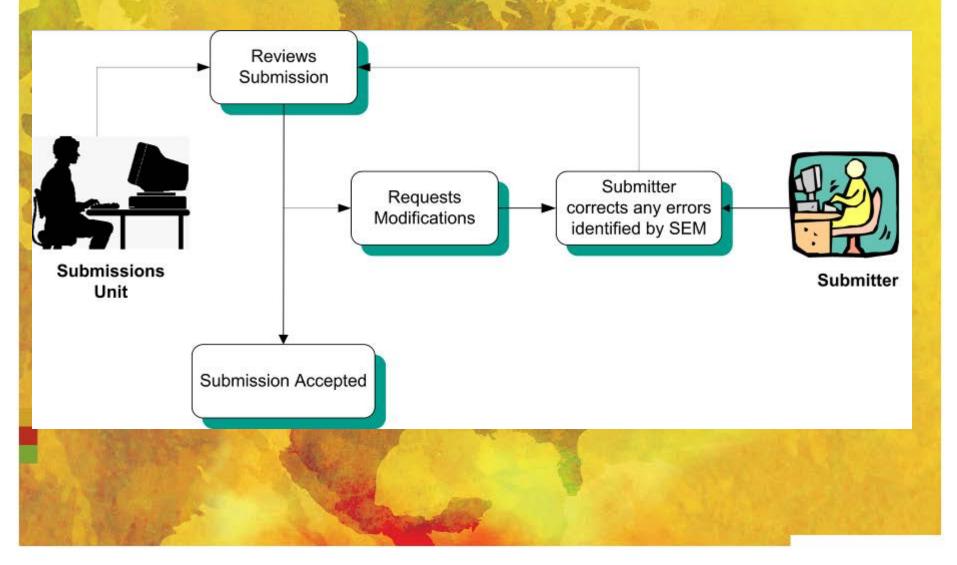
### **Internal Timeliness Guidelines**

- 14(1) 30-45 days
- 14(1)(2) 60 days
- 15(1) 180 days
- Draft Factual Record ca. 1 year (Council Res. - 2 yrs. max)
  - Above depends on complexity of submission and response, workload, staff capacity, etc.
  - Internal work scheduling system is helping meet deadlines



- Download the booklet "Bringing the Facts to Light" a guide to Article 14 and 15 of the NAAEC
- <u>Read an online version of the Guidelines for Submissions on Enforcement Matters</u>
- View and print a checklist of required items for making a submission
- Link to the Registry of Citizen Submissions on the CEC website

# SEM Online Application will facilitate submission process



### **SEM Analytical Index**

- Research tool
- Article 14 & 15 & Guideline Database
- Key words
- Key phrases
- Organize searches of determinations
- Ensure predictability and fairness in future determinations
- Possibly available online

# **Analytical Index**

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The Commission for Environmental Cooperation