

Secretariat of the Commission for Environmental Cooperation

**Request for Information
for Preparation of a Factual Record
Submission SEM-03-005 (Montreal Technoparc)
8 February 2005**

Contents

- 1. The factual record process**
- 2. The Montreal Technoparc submission and Council's instructions**
- 3. Request for information**
- 4. Additional background information**
- 5. Where to send information**

1. The factual record process

The Commission for Environmental Cooperation (CEC) of North America is an international organization created in 1994 under the *North American Agreement on Environmental Cooperation* (NAAEC) by Canada, Mexico and the United States. The CEC operates through three organs: a Council, made up of the highest-level environmental official in each member country; a Joint Public Advisory Committee (JPAC), composed of five citizens from each country; and a Secretariat located in Montreal.

Article 14 of NAAEC allows persons or nongovernmental organizations in North America to inform the Secretariat by a written submission that any member country (hereinafter a "Party") is failing to effectively enforce its environmental law. This initiates a process of review of the submission, after which the Council may instruct the Secretariat to prepare a factual record in connection with the submission. A factual record seeks to provide detailed information to allow interested persons to assess whether a Party is effectively enforcing its environmental law with respect to the matter raised in the submission.

Under Articles 15(4) and 21(1)(a) of NAAEC, in developing a factual record, the Secretariat shall consider any information furnished by a Party and may ask a Party to provide information. The Secretariat also may consider any relevant technical, scientific or other information that is publicly available, submitted by JPAC or by interested nongovernmental organizations or persons, or developed by the Secretariat or independent experts.

On 20 August 2004, in Council Resolution 04-05, the Council decided unanimously to instruct the Secretariat to prepare a factual record in connection with the submission, in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC (Guidelines)*. The Secretariat is now requesting information relevant to matters to be addressed in the factual record. The following sections provide background on the submission and describe the information requested.

2. The Montreal Technoparc submission and Council's instructions

On 14 August 2003, Waterkeeper Alliance, Lake Ontario Waterkeeper, Société pour Vaincre la Pollution, Environmental Bureau of Investigation, and Upper St. Lawrence Riverkeeper/Save the River! presented to the CEC Secretariat a submission in accordance with Article 14 of the NAAEC. The submission, along with supporting materials, asserts that Canada is failing to effectively enforce section 36(3) of the federal *Fisheries Act* in connection with the discharge of deleterious substances from the city's Technoparc site to the Saint Lawrence River. Section 36(3) of the *Fisheries Act* prohibits the deposit of a deleterious substance into water frequented by fish unless the deposit is authorized by regulation.

On 15 September 2003, the Secretariat determined that the submission met the requirements of Article 14(1) of the NAAEC and requested a response from the Party concerned (Canada) in accordance with Article 14(2). Canada submitted its response on 14 November 2003. The response explains Environment Canada's responsibilities in regard to administration of section 36(3) of the *Fisheries Act*, presents summary information concerning the history and environmental condition of the sector of the Montreal Technoparc, and describes enforcement and compliance promotion actions undertaken by Environment Canada in regard to deposits of deleterious substances from the sector of the Montreal Technoparc into the Saint Lawrence River. On 19 April 2004, the Secretariat informed the CEC Council that it considered that the submission, in light of Canada's response, warranted developing a factual record.

On 20 August 2004, in Council Resolution 04-05, the Council decided unanimously to instruct the Secretariat to prepare a factual record in accordance with Article 15 of the NAAEC and the *Guidelines* in respect of the following items arising in the context of the submission with regard to Canada's alleged failure to effectively enforce section 36(3) of the *Fisheries Act*:

- facts surrounding Environment Canada's inspections, before and after, the issuance of a warning in 1998;
- facts surrounding Environment Canada's 2002-2003 investigation, in response to a request from members of the public;
- characteristics and fate of the contamination of the Montreal Technoparc sector;

- results of the oil containment and pumping system(s) at the Montreal Technoparc sector;
- the ecotoxicological study carried out in 2002;
- information on the division of ownership of the Montreal Technoparc sector and its relevance to enforcement efforts;
- information on Environment Canada’s technical actions and advice and its relevance to enforcement efforts at the Montreal Technoparc sector; and
- compliance promotion efforts following the decision by Environment Canada not to seek charges.

The Council directed the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and to provide the Parties with the opportunity to comment on that plan. The Council further directed the Secretariat to consider, in developing the factual record, whether the Party concerned “is failing to effectively enforce its environmental law” since the entry into force of the NAAEC on 1 January 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to 1 January 1994, may be included in the factual record.

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.”

3. Request for information

The Secretariat seeks information relevant to:

- facts surrounding Environment Canada’s inspections, before and after, the issuance of a warning in 1998;
- facts surrounding Environment Canada’s 2002-2003 investigation, in response to a request from members of the public;
- characteristics and fate of the contamination of the Montreal Technoparc sector;
- results of the oil containment and pumping system(s) at the Montreal Technoparc sector;
- the ecotoxicological study carried out in 2002;
- information on the division of ownership of the Montreal Technoparc sector and its relevance to enforcement efforts;
- information on Environment Canada’s technical actions and advice and its relevance to enforcement efforts at the Montreal Technoparc sector;
- compliance promotion efforts following the decision by Environment Canada not to seek charges;

- information on communications and relations between Environment Canada, the Quebec Ministry of the Environment and the City of Montreal to promote compliance with and enforce the *Fisheries Act* (R.S.C. 1985, c. F-14) ;
- any other information considered relevant.

4. Additional background information

The submission, Canada's response, the Secretariat's determination, the Council Resolution, the overall plan to develop the factual record and other information are available on the Citizen Submissions on Enforcement Matters page of the CEC web site: <<http://www.cec.org/citizen>>. These documents may also be requested from the Secretariat.

5. Where to Send Information

Relevant information for the development of the factual record may be sent to the Secretariat **until 31 May 2005**, by e-mail to info@cec.org or by regular mail to the following address:

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

Please reference SEM-03-005 (Montreal Technoparc) in all correspondence.

For any questions, please call Katia Opalka, Legal Officer, Submissions on Enforcement Matters Unit at (514) 350-4337 or send her an e-mail at kopalka@cec.org.