

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submission I.D.: SEM-03-005 / Montreal Technoparc

Submitter(s): Waterkeeper Alliance
Lake Ontario Waterkeeper
Société pour Vaincre la Pollution
Environmental Bureau of Investigation
Upper St. Lawrence Riverkeeper/Save the River!

Party: Canada

Date of this plan: 16 September 2004

Background

On 14 August 2003, the Submitters identified above presented to the Secretariat of the Commission for Environmental Cooperation (CEC) a submission in accordance with Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The submission, along with supporting materials, asserts that Canada is failing to effectively enforce section 36(3) of the federal *Fisheries Act* against the city of Montreal in connection with the discharge of contaminated groundwater 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 for Submissions on Enforcement Matters* under Articles 14 and

15 of the NAAEC (*Guidelines*) in respect of the following items arising in the context of the submission with regard to the 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.”

Overall Scope of the Fact Finding:

To prepare the factual record, the Secretariat will gather and develop information relevant to the following items with regard to the government of Canada’s alleged failure to effectively enforce section 36(3) of the *Fisheries Act* with respect to the Montreal Technoparc site, as asserted in the submission:

- (i) facts surrounding Environment Canada’s inspections of the Technoparc site, before and after the issuance of a warning in 1998;
- (ii) facts surrounding Environment Canada’s 2002-2003 investigation regarding the Technoparc site, in response to a request from members of the public;

- (iii) characteristics and fate of the contamination of the Montreal Technoparc sector;
- (iv) results of the oil containment and pumping system(s) at the Montreal Technoparc sector;
- (v) the ecotoxicological study carried out in 2002 regarding the Technoparc site;
- (vi) information on the division of ownership of the Montreal Technoparc sector and its relevance to enforcement efforts;
- (vii) information on Environment Canada's technical actions and advice and its relevance to enforcement efforts at the Montreal Technoparc sector; and
- (viii) compliance promotion efforts following the decision by Environment Canada not to seek charges with respect to the Technoparc site.

Overall Plan:

Consistent with Council Resolution 04-05, execution of the overall plan will begin no sooner than 1 October 2004. All other dates are best estimates. The overall 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*). **[October-November 2004]**
- 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). **[October-November 2004]**
- 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 2004 through February 2005]**
- The Secretariat, as appropriate, will develop, through independent experts, technical, scientific or other information relevant to the factual record. **[October 2004 through February 2005]**

- 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 2004 through February 2005**]
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed. [**February through May 2005**]
- 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). [**end May 2005**]
- 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. [**August 2005**]
- 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:

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