



SIERRA LEGAL
DEFENCE FUND

Tuesday, January 18, 2005

Mr. Geoff Garver,
Director, Enforcement Unit
Commission for Environmental Cooperation
Montreal, Quebec
Canada

Sent electronically and by courier

Re: SEM-04-005 (Coal-fired Power Plants): Supplemental Information Offered Pursuant to the Secretariat's Determination under Article 14(1) of the NAAEC

On 20 September 2004, we filed with the CEC Secretariat, on behalf of the Submitters, a submission pursuant to Article 14 of the *North American Agreement on Environmental Cooperation* (NAAEC). We alleged a failure by the United States to effectively enforce specific provisions of the *Clean Water Act* (CWA) as they apply to mercury emissions from coal-fired utility plants. On December 16, 2004 the Secretariat determined that the submission did with respect to certain assertions meet the requirements of Article 14(f) of the NAAEC. With respect to the assertion that the U.S. was failing to enforce the antidegradation and TMDL provisions of the CWA, however, the Secretariat found the supplied information deficient and requested additional information.

We are pleased to file the additional attached material, which we ask be appended to the original submission as Appendix 12, and which we trust will satisfy the deficiencies articulated by the Secretariat. In our additional research we have focused on ten states, namely Texas, Alabama, North Carolina, Kentucky, Ohio, Michigan, Illinois, West Virginia, Pennsylvania, and Indiana. These states include all of the states of the Ohio Valley --- an area with significant coal-fired power plants, which is located in close proximity to Canada and thus affect this NAFTA party --- and the other three top States with the highest mercury emissions from coal-fired plants.¹ We assert the results of our inquiry into these States as being reflective of the broader problem in the U.S.

As a result of our additional work, we also request that the original period of the allegation be expanded from 1993-2003 to 1993-December 31, 2005. Such a change will not in any way prejudice the party (the U.S.) given that it has not been yet been asked to respond to any of the Submitters' allegations. This change is necessary to accommodate

¹ All of the studied states are among the top ten mercury emitters from coal-fired power plants with the exception of Michigan. The states of _____, _____, and _____ rank above Michigan, however, we include Michigan since it is an Ohio Valley State.



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information that became available subsequent to the original filing, as well as additional information that was obtained in the research necessary to respond to the Secretariat's determination.

We look forward to the Secretariat's determination based on this new evidence.

Sincerely,

Scott Edwards
Waterkeeper Alliance

Albert Koehl
Sierra Legal Defence Fund

On behalf of the Submitters: Friends of the Earth Canada, Friends of the Earth-U.S., Earthroots, Centre for Environmentally Sustainable Development, Great Lakes United, Pollution Probe, Waterkeeper Alliance, Sierra Club (U.S. and Canada)