
**Secretariat of the Commission for Environmental Cooperation
of North America**

**Article 15(1) Notification to Council that Development of a
Factual Record is Warranted**

Submitter: Québec Association Against Air Pollution (Association québécoise de lutte contre la pollution atmosphérique)
Concerned Party: Canada
Date of submission: 3 November 2004
Date of notification: 5 May 2005
Submission I.D.: SEM-04-007 (Québec Automobiles)

I. EXECUTIVE SUMMARY

Article 14 of the *North American Agreement on Environmental Cooperation* (NAAEC) creates a mechanism allowing citizens to file submissions with the Secretariat (the “Secretariat”) of the Commission for Environmental Cooperation (CEC) of North America asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. The Secretariat reviews these submissions based on criteria contained in Article 14(1) of the NAAEC. If it finds that these criteria are met, the Secretariat then determines, based on factors listed in Article 14(2), whether the submission merits requesting a response from the Party concerned. In light of any response from the Party, the Secretariat may inform the Council that the Secretariat considers that development of a factual record is warranted (Article 15(1)). By a two-thirds vote, the Council may instruct the Secretariat to prepare a factual record (Article 15(2)).

On 3 November 2004, the Québec Association Against Air Pollution (Association québécoise de lutte contre la pollution atmosphérique—AQLPA or “the Submitter”) filed a submission with the Secretariat, along with supporting documents, in which it asserts that Canada, and in particular the province of Québec, is failing to effectively enforce sections 96.1 and 96.2 of Québec’s *Regulation respecting the quality of the atmosphere* (*Règlement sur la qualité de l’atmosphère*—RQA) (R.R.Q., c. Q-2, r.20), as well as sections 19.1, 20 and 51 of Québec’s *Environment Quality Act* (*Loi sur la qualité de l’environnement*—LQE) in connection with emissions of hydrocarbons, carbon monoxide and nitrogen oxides from post-1985 light vehicle models. Among other things, these provisions of law establish a right to a healthy environment and its protection, prohibit the emission of pollutants from motor vehicles beyond limits set in regulations, establish requirements for the use of emission control devices, and prohibit tampering with such devices. Violators of these provisions are subject to fines and, in some cases, imprisonment, and conviction requires proof beyond a reasonable doubt in all cases.

On 3 December 2004, the Secretariat determined that the submission met the criteria set out in Article 14(1) of the NAAEC and requested a response from the Party in accordance with Article 14(2). Canada provided its response on 1 February 2005, describing developments in regard to the problem of reducing automobile emissions, providing information concerning the enforcement of section 51 of the LQE and sections 96.1 and 96.2 of the RQA, and identifying educational and administrative measures taken to monitor and control the condition of automobile antipollution devices.

The Secretariat has concluded that the response leaves open central questions raised in the submission regarding effective enforcement of the provisions cited by the Submitter. Although Quebec has considerable flexibility in choosing its approach for enforcing and ensuring compliance with the provisions cited, the province has committed to taking measures such as those listed in NAAEC Article 5 to ensure that those provisions are effectively enforced. The central questions left open relate in large measure to the assertion in the submission that, after years of studies and stated intentions to adopt a comprehensive set of measures for enforcing those provisions, Quebec has failed to establish a firm schedule for doing so. Consequently, in accordance with Article 15(1), the Secretariat hereby informs the Council that the Secretariat considers that the submission, in light of the Party's response, warrants developing a factual record and provides its reasons.

II. SUMMARY OF THE SUBMISSION

In the submission, the AQLPA estimates that there are over 600,000 light vehicles from post-1985 model years—16 percent of the approximately four million light vehicles on Québec's roads—which do not comply with the provisions set out in sections 96.1 and 96.2 of the RQA and section 51 of the LQE.¹ The AQLPA asserts that in the 19 years since the entry into force of these provisions, the Government of Québec has issued fewer than ten indictments for alleged violations of these provisions.² In addition, the Government of Québec has failed to assign responsibility for enforcing these provisions to any government department,³ has not allocated any funds to their enforcement,⁴ and has not provided police with the training or equipment necessary to monitor compliance with them.⁵

The Submitter maintains that it is widely accepted—as reflected in international agreements that Canada has signed,⁶ and as recommended by the Canadian Council of Ministers of the Environment (CCME)⁷—that the only way to ensure effective enforcement of this legislation is by establishing a mandatory motor vehicle inspection and maintenance (“I/M”) program applicable to all Québec automobiles on a sufficiently

¹ Submission at para. 9 and appendix 10.

² *Ibid.* at para. 9, 29.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.* at para. 12, 14, 17, 30.

⁷ *Ibid.* at para. 15, 20, 22.

frequent basis (for example, an inspection every year or two).⁸ The AQLPA states: “Today, more than 19 years after the entry into force of sections 96.1 and 96.2 of the [RQA] and after more than 15 years of studies, reports, consultations, and promises, the Government of Québec and its Ministry of the Environment are still failing to effectively enforce these sections. They are still delaying fulfillment of their promise to implement a mandatory biennial inspection and maintenance program for Québec’s light-duty vehicles aged three years and over.”⁹ The AQLPA stresses that since sections 96.1 and 96.2 of the RQA were adopted to give effect to sections 19.1, 20 and 51 of the LQE with respect to air pollution from vehicle emissions, Québec is failing to effectively enforce all of these provisions, resulting in harmful health and environmental effects. In particular, several cases of poisoning and at least one death are apparently attributable to carbon monoxide emissions from vehicles that did not comply with the RQA.¹⁰

III. SUMMARY OF THE RESPONSE

On 3 December 2004, the Secretariat determined that the submission met all the criteria set out in Article 14(1) of the NAAEC and, in light of the factors contained in Article 14(2), merited requesting a response from Canada.¹¹ Canada responded to the submission on 1 February 2005.¹²

In the response, the Government of Québec contends that the anti-tampering provisions cited in the AQLPA’s submission date back to the introduction of catalytic converters, which are compatible only with unleaded gasoline.¹³ In the past, the lower price of leaded gasoline apparently resulted in numerous vehicle owners removing or modifying their catalytic converters in order to use leaded gasoline, but the magnitude of the problem of intentional deactivation of pollution control devices decreased significantly after leaded gasoline was banned in 1990, followed by the widespread adoption of electronic fuel injection and computer engine control.¹⁴ Also in 1990, the CCME adopted the *Federal Smog Management Plan*, which focused on the development of I/M programs, and employees of the Québec Ministry of the Environment (ministère de l’Environnement du Québec—MENV) began the process—still ongoing—of designing such a program for Québec.¹⁵ In the response, Québec also mentions that the design of I/M programs must take into account socio-economic and technical difficulties,¹⁶ and it states that it is

⁸ *Ibid.* at para. 10.

⁹ *Ibid.* at para. 36.

¹⁰ *Ibid.* at para. 37 to 43.

¹¹ SEM-04-007 (Québec Automobiles), Secretariat Determination under Article 14 (1) and 14 (2) (3 December 2004).

¹² “Québec Automobiles / Commission for Environmental Cooperation / Response to Submission SEM-04-007,” prepared by Ministère de l’Environnement for the Government of Québec, and by Environment Canada for the Government of Canada (February, 2005) (hereinafter the “response”).

¹³ *Ibid.* at 6.

¹⁴ *Ibid.*

¹⁵ *Ibid.* at 7.

¹⁶ *Ibid.* at 7–9.

focusing on pollution from heavy vehicles and has authorized the drafting of a bill to this effect.¹⁷

With respect to the enforcement of the provisions cited by the Submitter, Québec states that it has located a criminal prosecution dating from 1998.¹⁸ Québec also notes that the enforcement framework of the provisions cited by the Submitter bears the imprint of the leaded gasoline problem, with part of section 96.2 of the RQA having become outdated and section 96.1 referring to federal standards that were amended during the transition from leaded to unleaded gasoline.¹⁹ With respect to roadside inspections, Québec states that there are no legislative provisions allowing for random vehicle checks, and it mentions that the courts have ruled that random checks may constitute an illegal detention under the Canadian and Québec charters of rights and freedoms.²⁰ With respect to the inspection of stationary vehicles, without any evidence pointing to the existence of a network of repair shops that remove or tamper with pollution control devices, Québec considers that it would have to send inspectors into garages chosen at random, though such efforts would not guarantee that this investment of human and financial resources would result in a significant number of convictions.²¹ Québec states that beyond a strictly legal approach to the enforcement of the law, the MENV has carried out activities to inform, raise awareness, and educate,²² and has monitored the condition of the automobiles on Québec's roads (two inspection campaigns in 1988–1989; smaller scale inspection clinics; and a voluntary campaign in 1997–1998).²³

IV. ANALYSIS

In light of Canada's response, the Secretariat considers that the submission warrants preparation of a factual record, as recommended in this notification. The reasons for this decision are set out below.

A. Provisions cited by the Submitter

The full text of the provisions cited by the Submitter is included below for reference.

LQE

19.1. Every person has a right to a healthy environment and to its protection, and to the protection of the living species inhabiting it, to the extent provided for by this Act and the regulations, orders, approvals and authorizations issued under any section of this Act and, as regards odours resulting from agricultural activities, to the extent prescribed by any standard originating from the exercise of

¹⁷ *Ibid.* at 9.

¹⁸ *Ibid.* at 9-10.

¹⁹ *Ibid.* at 11-12.

²⁰ *Ibid.* at 12.

²¹ *Ibid.*

²² *Ibid.* at 13.

²³ *Ibid.* at 13-14.

the powers provided for in subparagraph 4 of the second paragraph of section 113 of the Act respecting land use planning and development (chapter A-19.1).

20. No one may emit, deposit, issue or discharge or allow the emission, deposit, issuance or discharge into the environment of a contaminant in a greater quantity or concentration than that provided for by regulation of the Government.

Emission of a contaminant.

The same prohibition applies to the emission, deposit, issuance or discharge of any contaminant the presence of which in the environment is prohibited by regulation of the Government or is likely to affect the life, health, safety, welfare or comfort of human beings, or to cause damage to or otherwise impair the quality of the soil, vegetation, wildlife or property.

51. No one may use or permit the use of either an engine or a motor vehicle

(a) the operation of which has the effect of emitting pollutants into the atmosphere; or

(b) the use of which requires, under a regulation of the Government, the installation of an apparatus to reduce or eliminate the emission of contaminants into the atmosphere, unless the engine or motor vehicle is provided with such apparatus.

RQA

96.1. Sale or use of motor vehicles: Any light motor vehicle of a model subsequent to 1985 offered for sale, on display for sale, sold or used in Québec must be equipped with a device in good working order to reduce the emission of hydrocarbons, carbon monoxide and nitrogen oxides into the atmosphere.

This section does not apply to light motor vehicles designed to comply with the emission standards in Regulations under the Motor Vehicle Safety Act (Revised Statutes of Canada, 1985, chapter M-10) without being equipped with a device covered by the first paragraph.

96.2. Removal of anti-pollution devices: No one may remove or modify or allow to be removed or modified any device installed in a motor vehicle to reduce or eliminate the emission of a contaminant into the environment, or, in the case of a light motor vehicle equipped with a catalytic converter, modify or allow to be modified the opening of the fuel tank or pour leaded gasoline therein.

The Submitter maintains that sections 96.1 and 96.2 of the RQA were adopted to give effect to sections 19.1, 20 and 51 of the LQE.²⁴ Thus, according to the AQLPA, the failure to effectively enforce sections 96.1 and 96.2 of the RQA results in a failure to effectively enforce sections 19.1, 20 and 51 of the LQE with respect to air emissions from post-1985 light vehicle models.²⁵

²⁴ Submission at para. 8.

²⁵ *Ibid.*

(i) The right to a healthy environment and to its protection

Section 19.1 of the LQE, cited by the Submitter, gives “every person” the right to a healthy environment and its protection, to the extent provided by the Act and its regulations. The wording of this section implies that the holder of the right can expect a result (a healthy environment), and that the environment be protected, to the extent provided for under the Act. However, according to the AQLPA, about 16 percent of the light vehicles in use in Québec—over 600,000 vehicles—are non-compliant with the legislative provisions designed to reduce the environmental impact of vehicle exhaust emissions.²⁶

The Submitter argues that vehicle exhaust emissions in Québec have a harmful effect on the quality of the environment in that they contribute to smog, which has a detrimental effect on public health.²⁷ The Submitter also maintains that emissions from non-compliant vehicles are responsible for several cases of carbon monoxide poisoning requiring hospital stays, and at least one death.²⁸ Therefore, according to the Submitter, there has been an infringement of the right to a healthy environment, in violation of section 19.1 of the LQE.

The AQLPA also argues that the environment is not being protected to the extent provided for under section 19.1 of the LQE in that the Government of Québec is failing to ensure motor vehicle compliance with sections 96.1 and 96.2 of the RQA by not implementing an I/M program, despite the recommendations of its Ministry of Health and Social Services²⁹ and of the coroner in the death of Annabel Deslauriers,³⁰ and notwithstanding the government’s stated intention to set up such a program under the *2000-2002 Québec Action Plan on Climate Change*.³¹

(ii) Prohibition against emitting pollutants and contaminants into the atmosphere

Subsection (a) of section 51 of the LQE, cited by the Submitter, prohibits the use of a motor vehicle, the operation of which has the effect of emitting pollutants into the atmosphere.³² Section 1 of the LQE defines “pollutant” as follows:

6) “pollutant”: a contaminant or a mixture of several contaminants present in the environment in a concentration or quantity *greater than the permissible level determined by regulation of the Government*, or whose presence in the environment is *prohibited by regulation of the Government* [emphasis added].

²⁶ *Ibid.* at para. 9.

²⁷ *Ibid.* at para. 38.

²⁸ *Ibid.* at para. 43.

²⁹ *Ibid.* at para. 40.

³⁰ *Ibid.* at para. 43.

³¹ *Ibid.* at para. 33.

³² Section 1 of the LQE defines “atmosphere” as “the ambient air surrounding the earth, excluding the air within any structure or underground space.”

The RQA does not currently establish thresholds or prohibitions with respect to emissions of contaminants to the atmosphere by motor vehicles. However, the second paragraph of section 20 of the LQE prohibits the emission of any contaminant the presence of which in the environment³³ is, among other things, likely to affect the life, health, safety, welfare or comfort of human beings. Section 1 of the LQE defines “contaminant” as “a solid, liquid or gaseous matter, a microorganism, a sound, a vibration, rays, heat, an odour, a radiation or a combination of any of them likely to alter the quality of the environment in any way.” Thus, to the extent that a motor vehicle has the effect of emitting into the environment a contaminant likely to affect the life, welfare or comfort of human beings, in citing section 20 of the LQE,³⁴ the Submitter appears to be maintaining that such emissions may be covered by the prohibition set out in the second paragraph of section 20.

Under section 106.1 of the LQE, whoever contravenes section 20 commits an offence and is liable:

(a) in the case of a natural person, to a fine of not less than \$2 000 nor more than \$20 000 for a first offence and to a fine of not less than \$4 000 nor more than \$40 000 for a second or subsequent conviction, or, in either case, to imprisonment for not more than one year or to both the imprisonment and fine, notwithstanding article 231 of the Code of Penal Procedure (chapter C-25.1);

(b) in the case of a legal person, to a fine of not less than \$6 000 nor more than \$250 000 for a first offence, to a fine of not less than \$50 000 nor more than \$1 000 000 in the case of a second conviction and to a fine of not less than \$500 000 nor more than \$1 000 000 for any subsequent conviction.

(iii) The requirement to equip one’s vehicle with a pollution control device

Under subsection (b) of section 51 of the LQE, it is not permitted to use a motor vehicle, the use of which requires, under a regulation of the government, the installation of an apparatus to reduce or eliminate the emission of contaminants into the atmosphere, unless the engine or motor vehicle is provided with such apparatus. Section 96.1 of the RQA states that all light motor vehicles from post-1985 model years used in Québec must be equipped with a device in good working order to reduce the emission of hydrocarbons, carbon monoxide and nitrogen oxides into the atmosphere. Thus, while there are no provincial standards in Québec regulating the amount or concentration of pollutants in motor vehicle exhaust emissions or that prohibit the emission of such pollutants, there is nevertheless an obligation, for anyone in Québec who operates a motor vehicle from a post-1985 model year, to equip it with a device in good working order that reduces emissions of hydrocarbons, carbon monoxide and nitrogen oxides to the atmosphere.

For violations of section 96.1 of the RQA and/or section 51 of the LQE, section 109 of the LQE states that whoever contravenes the Act or a regulation made under it commits an offence and is liable, in all cases where no other penalty is imposed, to a fine of not less than \$300 and not more than \$5,000.

³³ Section 1 of the LQE defines “environment” as “the water, atmosphere and soil or a combination of any of them or, generally, the ambient milieu with which living species have dynamic relations.”

³⁴ Submission at para. 6.

(iv) Prohibition against removing or altering a pollution control device

Section 96.2 of the RQA, cited by the Submitter, states:

[n]o one may remove or modify or allow to be removed or modified any device installed in a motor vehicle to reduce or eliminate the emission of a contaminant into the environment, or, in the case of a light motor vehicle equipped with a catalytic converter, modify or allow to be modified the opening of the fuel tank or pour leaded gasoline therein.

In cases where a pollution control device is removed or altered, the RQA provides for the following penalties:

96.6. A natural person who commits an offence against the provisions of section 96.2 is liable to a fine of 500 \$ to 1 500 \$ in the case of the first offence, and to a fine of 1 000 \$ to 5 000 \$ in the case of any subsequent offence, or, in either case, to imprisonment for not more than one year or to both the imprisonment and the fine.

A corporation that commits an offence against the provisions of section 96.2 is liable to a fine of 2500 \$ to 50 000 \$ in the case of the first offence, and to a fine of 10 000 \$ to 100 000 \$ in the case of any subsequent offence.

B. Why preparation of a factual record is warranted

The submission, taken together with Canada’s response, leaves open central questions regarding whether Québec is failing to effectively enforce sections 96.1 and 96.2 of the RQA and sections 19.1, 20 and 51 of the LQE with respect to hydrocarbon, carbon monoxide and nitrogen oxide air emissions from post-1985 light motor vehicle models. Additional information must therefore be gathered for a proper consideration of the allegations made in the submission. The preparation of a factual record would allow for this information to be gathered. The factual record would contain relevant information that would help to understand the measures taken by Québec to enforce and promote compliance with these provisions in regard to motor vehicle emissions in Québec.

(i) Enforcement of the provisions cited by the AQLPA

In its response to the submission, Québec states:

Clearly, the AQLPA is arguing for a significant decrease in automobile emissions, an objective that the Government of Québec wholeheartedly supports.³⁵

As regards section 51 of the LQE and sections 96.1 and 96.2 of the RQA, Québec mentions in its response to the submission that “[...] these are the only provisions that truly apply to automobile pollution.”³⁶ According to the Submitter, the goal of reducing motor

³⁵ Response at 15.

³⁶ *Ibid.* at 10.

vehicle emissions is reached through the enforcement of these provisions.³⁷ Under paragraph 1 of Article 5 of the NAAEC, in order to achieve high levels of environmental protection and compliance with environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action, including, for example, “monitoring compliance and investigating suspected violations, including through on-site inspections.” Thus, under the Agreement, law enforcement can be achieved through a wide range of governmental actions.

(a) Authorization and implementation of a Québec I/M program

In the submission, the AQLPA contends that: “[...] it is estimated that there are more than 600,000, or 16% of the approximately four million light-duty vehicles in use in Québec, that are non-compliant with sections 96.1 and 96.2 of the [RQA] and section 51 of the [LQE].”³⁸ In the response, Québec confirms that this was the rate of non-compliance observed between 1997 and 1998, during voluntary inspections of approximately 7,200 vehicles.³⁹

Under paragraph (c) of section 2 of the LQE, Québec’s Minister of the Environment may:

[...] prepare plans and programmes for the conservation, protection and management of the environment and emergency plans to fight any form of contamination or destruction of the environment and, with the authorization of the Government, see to the carrying out of those plans and programmes.

According to the Submitter:

[A] motor vehicle inspection and maintenance program applicable to all light-duty vehicles in Québec aged three years and older (beginning with the Montreal metropolitan area) and providing for mandatory biennial inspections is unanimously recognized by all the stakeholders as essential to the effective enforcement of sections 96.1 and 96.2 of the [RQA] and section 51 of the [LQE].⁴⁰

In its response to the submission, Québec declares:

To [significantly decrease automobile emissions], the Québec Ministère de l’Environnement is responsible for delivering a simple and effective automobile emission monitoring and inspection system that achieves the greatest positive impact on the environment for a reasonable price.⁴¹

Thus, the AQLPA and Québec agree that the implementation of an I/M program is a preferred means of reducing air pollution associated with motor vehicle emissions and enforcing compliance with sections 51 of the LQE and 96.1 and 96.2 of the RQA. They also agree that setting up such a program would take about two years.⁴² However, according to the Submitter, the design of such a program for Québec has been “under review” for at least 15 years. The Submitter criticizes the government for not having, to

³⁷ Submission at para. 9–11.

³⁸ *Ibid.* at para. 9.

³⁹ Response at 13.

⁴⁰ Submission at para. 25.

⁴¹ Response at 15.

⁴² Submission at para. 50 and response at 8.

this day, authorized any program at all, despite the fact that “Québec is surrounded by jurisdictions that are applying effective light-duty vehicle inspection and maintenance programs with respect to their atmospheric emissions,”⁴³ and that in 1999, at the end of its first mandate from the MENV, the AQLPA recommended to the MENV the implementation of an I/M program whose components enjoyed broad-based consensus amongst the many stakeholders involved with the file.⁴⁴

According to the Submitter, in December 1999, instead of going ahead with the program put forward by the AQLPA and its partners, the MENV asked the AQLPA to continue:

[...] the analysis already begun to define an inspection program that would offer the best possible performance in terms of pollutant emissions reduction while remaining acceptable to the public. We were also to propose a cost-efficient program in which consumers would feel confident and that would protect them from fraud and incompetence.⁴⁵

The AQLPA tabled its second report to the MENV in April 2001.⁴⁶ According to the Submitter:

The Ministry of the Environment of the Government of Québec then mandated the AQLPA to undertake a third phase of the *Un air d'avenir* project in accordance with the *Environmental Code of Practice* of the *Canadian Council of Ministers of the Environment (CCME)*, the purpose being to invite the agencies responsible for implementing motor vehicle inspection and maintenance programs to put forward complementary initiatives designed to increase the reduction of air pollution from the road transport sector.⁴⁷

Subsequently, MENV representatives apparently implied, on various occasions, that the adoption of a vehicle inspection and maintenance program was on the verge of being announced by the government, though no such program was ever authorized.⁴⁸

⁴³ Submission at para. 49.

⁴⁴ Submission at para. 24 and appendices 10, 15, 17.

⁴⁵ Submission at appendix 15. Letter from AQLPA president André Bélisle to the MENV in AQLPA, “Programme de promotion de l’inspection, l’entretien et l’efficacité énergétique des véhicules routiers au Québec,” Final Report, *Un air d'avenir*, Phase II (Submitted to the MENV in April 2001).

⁴⁶ Submission at appendix 15.

⁴⁷ Submission at para. 34. See also submission at appendix 17. AQLPA, “La fiche signalétique des principaux acteurs et le contexte de mise en œuvre du volet des véhicules lourds” (preliminary version, July 2001), and AQLPA, “La fiche signalétique des principaux acteurs et le contexte de mise en œuvre du volet des véhicules légers” (preliminary version, August 2001). The organizations sitting on the various committees formed to study the different aspects of this issue include, aside from the AQLPA and the MENV, the Société de l’arbre du Québec; STOP; CAA-Québec; l’Association de l’industrie automobile (AIA); the firm Parsons; les Centres d’estimation agréés du Québec; ESP-Envirotest; Lapointe systèmes d’échappement; l’Association des véhicules anciens, historiques ou de collection; l’Association des mandataires en vérification mécanique du Québec; SNC Lavalin; l’Office de l’efficacité énergétique; l’Association des transporteurs urbains du Québec; Hydro-Québec; la Ville de Brossard; the Kidney Foundation of Canada; le Comité sectoriel de la main-d’œuvre de l’industrie des services automobiles (CSMISA); le Comité paritaire de l’automobile de Montréal; l’Association du transport écolier du Québec; the Canadian Petroleum Products Institute; l’École des métiers de l’équipement motorisé de Montréal; Camo Route inc.; Entretien préventif Rondeau; Dessau Soprin; Environment Canada; l’Association du camionnage du Québec.

⁴⁸ Submission at appendix 17. Minutes of the Advisory Committee meeting of 31 October 2001 (final version, 8 November 2001) at 3: “Mr. Anctil expects the Minister of the Environment to officially

According to the Submitter, despite the efforts made by all stakeholders—including MENV employees—over the years, these efforts did not result in the Québec Government authorizing an I/M program at the end of the *Un air d'avenir* pilot project. The AQLPA adds that “[...] the lack of a commitment from the Minister [...] resulted in certain partners who were key to the program’s development and implementation preferring to wait for clear direction, which never came.”⁴⁹ According to the AQLPA:

[...] officials from Camo-Route, representing the heavy vehicle sector with respect to both training and vehicle owner relations, announced in January 2002 that they were withdrawing from the Advisory Committee. The same is true of the Manpower Sector Committee of the Automobile Services Industry (*Comité sectoriel de la main-d’œuvre de l’industrie des services automobiles—CSMISA*), which was forced to interrupt its training of light-duty vehicle mechanics. In the fall of 2001, the CSMISA initiated a training process in which nearly 2000 mechanics had enrolled; due to a lack of commitment, the CSMISA was forced to halt this process. Officials from these two organizations felt they could no longer invest time and money in the process.⁵⁰

The AQLPA claims that:

[t]he aforementioned failures of the Government of Canada and the Government of Québec have, furthermore, caused direct harm to the author of this submission, *Association québécoise de lutte*

announce the implementation of an inspection/maintenance program in the days to come.” Minutes of restricted Advisory Committee meetings. Minutes of the restricted Advisory Committee meeting of 1 October 2001 (final version, 16 November 2001) 11 at 12: “It can still be said that the program will probably be up and running during the winter of 2002 or early in 2003.” Minutes of the restricted Advisory Committee meeting of 15 November 2001 (final version, 1 December 2001) 15 at 16–17: “Mr. Anctil explained that the bill was forwarded in early November to the 11 ministries and organizations most affected by the implementation of an inspection/maintenance program. Their initial reactions were apparently particularly encouraging. There appears to be unprecedented openness from the Société de l’assurance automobile du Québec. [...] For Mr. Anctil, the adoption of the bill by the National Assembly is the signal that the various stakeholders should wait for before committing further to the process (particularly as regards funding).” Minutes of the restricted Advisory Committee meeting of 23 January 2002 (final version, 16 February 2002) 27 at 29: “The official signal that the stakeholders are waiting for will likely not come until the regulations (roadside inspections) and/or draft legislation (statutory inspections) are adopted. Minutes of the restricted Advisory Committee meeting of 10 May 2002 (final version, 22 June 2002) 49 at 53:

“The first inspections could take place by spring 2003.” Minutes of the restricted Advisory Committee meeting of 21 June 2002 (3 July 2002 version) 57 at 59: “The first inspections should take place in spring or summer 2004.”

⁴⁹ Submission at appendix 17. Organization and management of an advisory committee for the implementation phase of a Québec motor vehicle inspection and maintenance program, *Le rapport d’activités* (AQLPA, June 2002) 1.

⁵⁰ *Ibid.* See also the minutes of the restricted Advisory Committee. Minutes of the restricted Advisory Committee meeting of 15 February 2002 (final version, 1 March 2002) 31 at p. 32: “Mr. Fontaine declared that in his view, the AIA can no longer operate on assumptions and that a clear signal is urgently needed for it to continue participating.” Minutes of the restricted Advisory Committee meeting of 14 March 2002 (final version, 14 May 2002) 43 at p. 47: “The courses on electricity and electronics have already been offered to a certain number of mechanics. However, participation remains well below the levels anticipated on the basis of the survey carried out last October. [...] Without ignoring other possible reasons for the lack of interest among the clientele of mechanics targeted by the refresher courses, Mr. Boudreau (CSMISA) explained that the government’s indecision in announcing the program may well be playing a big role.”

contre la pollution atmosphérique (AQLPA) and its partners, who have invested their credibility, efforts, in-kind resources, and considerable direct monetary resources in numerous procedures and studies mandated by the Ministry of the Environment of Québec, which resources were only partially subsidized, still without giving rise to an effective program after eight years of work.⁵¹

In the submission, the AQLPA also contends that no agency or employee of the Government of Québec is responsible for enforcing sections 96.1 and 96.2 of the RQA and that since 1985, there has been no budget allocated to the enforcement of these provisions.⁵²

In its response to the submission, Québec answered that from 1990 to 2001, the MENV's Air Quality Division formed the first committee responsible for developing an implementation plan for an I/M program, and this committee submitted its report to the MENV in 1995.⁵³ From the fall of 1996 to March 2001, the MENV gave the AQLPA the mandate of organizing and administering a pilot project intended to establish the basis of a Québec I/M program,⁵⁴ and the AQLPA tabled its reports to the MENV in 1999 and 2001. In 2001, the MENV gave the engineering firm SNC-Lavalin "the mandate of carrying out an economic study to identify the measures or parameters that might be adopted to improve the structure and components of the program already recommended by the partners of the *Un air d'avenir* pilot project."⁵⁵ SNC-Lavalin submitted its final report to the MENV in March 2002. Québec mentions in the response that since 2001, the development of an I/M program has been turned over to a division within the ministry devoted entirely to the development of such a program. A budget of two million dollars was allocated to develop the program between 2001 and 2003.⁵⁶ Québec specifies that the program team is made up of six full-time employees. This team currently has an annual budget of \$415,000 to put into place the most effective means of reducing automobile pollution.⁵⁷ The response goes on to state:

The I/M program team continues with the thinking and updates the work initiated in 1997 to build an I/M program targeting light vehicles, and focuses on the implementation of an I/M program for heavy vehicles.⁵⁸

In preparing a factual record for the Québec Automobiles submission, the Secretariat would gather additional relevant information concerning how the MENV draws upon the expertise of both its own staff and all other stakeholders in order to meet the government's requirements and ensure compliance with sections 96.1 and 96.2 of the RQA through the implementation of an I/M program for Québec. The Secretariat would also gather information on the MENV program team's state of knowledge of this issue and on any lack of information that may pose an obstacle to the authorization of an I/M program for

⁵¹ *Ibid.* at para. 53.

⁵² *Ibid.* at para. 29.

⁵³ Response at 7.

⁵⁴ *Ibid.*

⁵⁵ Submission at appendix 17. Minutes of the working group on existing technologies and programs, 10 January 2002 (final version, 20 February 2002) at 5.

⁵⁶ Response at 7.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

Québec. The presentation of this information in the context of a factual record is necessary to allow for a consideration of whether or not Canada, and in this case Québec, is failing to effectively enforce sections 19.1, 20 and 51 of the LQE, and sections 96.1 and 96.2 of the RQA, with respect to air emissions of post-1985 vehicle models.

In its response to the submission, Québec states:

In the new millennium, it is not enough to imitate U.S. programs to produce an effective, efficient I/M program for Québec. An effective program must take into account the problems encountered by neighbouring states and provinces in the enforcement of similar programs, follow technological developments in methods to measure automobile emissions, and target vehicles according to a series of socio-economic and environmental constraints that have changed over the years.⁵⁹

Thus, the Government of Québec apparently:

[...] has made a strategic choice. That is, to concentrate on the implementation of a program to monitor and inspect emissions from the most polluting vehicles -- heavy vehicles, especially those fuelled by diesel.

As for light vehicles, the Ministry prefers to orient its future actions along the same lines as the technological, legal and social changes that have taken place since 1985. The expectation is that this will avoid the major dilemmas for enforcement that many programs in the United States have faced, some of which led to a temporary suspension in the enforcement of the program.⁶⁰

The preparation of a factual record for this submission would allow the Secretariat to gather additional relevant information regarding the grounds for the Government of Québec's decision to opt for an I/M program for heavy-duty vehicles that run on diesel, and regarding the components and implementation thereof. In this regard, the Secretariat would also gather relevant information concerning how Québec has drawn on the experience of other jurisdictions in designing its own I/M program.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.* at 15. In November 2001, a MENV representative apparently made the following statements during a meeting to take stock of the progress of the project to adopt a Québec inspection and maintenance program:

A necessary exercise: Mr. Anctil explained that Québec must take full advantage of the experience of others in order to put in place a program that demonstrates optimal cost/benefit performance. Indeed, Treasury Board and Finance Ministry officials have made this a requirement. This could mean better targeting polluting vehicles and the use of economic measures specifically oriented toward repair assistance.

[...]

Heavy vehicles: Mr. Anctil explained that the heavy vehicle file is moving along briskly. There is apparently an agreement in principle with respect to the participation of the [Société de l'assurance automobile du Québec] in the inspection/maintenance program; however, nothing is official yet.

Submission at appendix 17. Minutes of the restricted Advisory Committee meetings. Minutes of the restricted Advisory Committee meeting of 30 November 2001 (final version, 24 January 2002) 21 at 22.

In preparing a factual record, the Secretariat would also gather additional information concerning the difficulties encountered by the Government of Québec in structuring an I/M program for light vehicles. This information would be relevant to a consideration of whether or not Québec is failing to effectively enforce the provisions cited by the AQLPA. This would involve gathering additional information regarding, among other things, the following constraints identified by Québec in its response to the submission:⁶¹

- The cost of identifying defective vehicles is considered too high when compared to the outlay the government can require for the repair of a vehicle, given the fact that the owners of old, polluting cars often have low incomes.
- In addition to socio-economic difficulties, there are perceived technical difficulties, given that there have been changes in the methods of measuring vehicle emissions.

To lessen the impact of socio-economic problems, Québec mentions in its response that it is considering repair assistance, putting in place a repair insurance program, or applying the I/M program only to pre-owned vehicles, which could be tied to a vehicle scrapping assistance program.⁶² With respect to technical problems, Québec states:

To avoid launching an already obsolete I/M program targeting light vehicles in Québec, it should be structured in two parts: systematic OBD testing of more recent models, although current testing protocols present problems that have not yet been fully resolved, and exhaust pipe gas measurement on a limited scale, possibly applicable to second-hand vehicles that are pre-1996 models.⁶³

In preparing a factual record, the Secretariat would gather further relevant information concerning the options selected and the authorizations issued by the Government of Québec to address the difficulties mentioned in its response to the submission and to put in place an I/M program for light vehicles.

(b) Other enforcement measures

In the submission, the Submitter asserts that Québec is failing to effectively enforce section 51 of the LQE and sections 96.1 and 96.2 of the RQA in that there have been “[...] in total, *fewer than ten indictments* issued by the Government of Québec and its Ministry of the Environment for violations of these sections [...]”⁶⁴ [italics in the original]. In its response to the submission, Québec provided information on the case of *Québec (A.G.) v. Tremblay*.⁶⁵ According to Québec, this is the only relevant case that could be

⁶¹ Response at 7-9.

⁶² *Ibid.* at 8.

⁶³ *Ibid.* at 8-9.

⁶⁴ Submission at para. 65.

⁶⁵ Case no. Q006004-CA (1998).

found with respect to automobile pollution.⁶⁶

In the *Tremblay* case, the accused was successfully prosecuted in the Small Claims Division of the Court of Québec for having replaced the catalytic converter on his car with a resonator, and for having done so in violation of an undertaking made to the vehicle's purchaser. The evidence and the Court of Québec judgment were forwarded to the MENV Investigations Branch, which issued a notice of infraction (offence under section 109 of the LQE, making the accused liable to penalties set out in section 96.6 of the RQA). Mr. Tremblay pled guilty and paid a fine of \$500 (the minimum amount) and costs of \$100.⁶⁷ According to Québec, "[...] the Tremblay Case is a good example of the difficulties in securing evidence for penal prosecutions under these provisions."⁶⁸

In its response, Québec adds:

Indeed, how could we subject all automobiles in Québec to a systematic inspection to verify that anti-pollution systems have not been removed or modified in light or heavy vehicles (while they are required by law), and then gather the evidence necessary for the institution of a penal proceeding?⁶⁹

Québec asks if it would be feasible to gather evidence by having police officers randomly check vehicles on the road, while noting that under the law, police officers do not have the authority to stop vehicles for non-compliance with an environmental standard. Québec also suggests that there is legal precedent that might construe random roadside checks as illegal detentions under the federal and provincial charters of rights and freedoms.⁷⁰

Preparation of a factual record would involve gathering additional relevant information concerning, in particular, challenges related to the enforcement of the provisions cited by the Submitter through the use of random roadside inspections to gather evidence necessary for the institution of a penal proceeding. This information would help to consider whether, taken together, the measures adopted by Québec ensure effective enforcement of the provisions cited by the AQLPA in the submission.

In its response, Québec mentions that it would also be possible to inspect garages, but that in the absence of any indication of the possible existence of a network of repair shops that remove or modify pollution control devices, inspectors would have to be sent to garages chosen at random, and these efforts would not guarantee that the human and financial resources expended will secure a significant number of convictions.⁷¹ According to the Submitter, information exists to indicate that Québec is "a veritable haven for manufacturers of fake catalytic converters."⁷² In preparing a factual record, the Secretariat

⁶⁶ Response at 9.

⁶⁷ *Ibid.* at 10.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.* at 12.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Submission at appendix 17. Minutes of the restricted Advisory Committee meetings. Minutes of the restricted Advisory Committee meeting of 28 February 2002 (final version, 15 March 2002) 27 at 42: "Fake catalytic converters:

would gather additional information concerning the alleged phenomenon of fake catalytic converters and the efforts of the MENV to look into and/or eliminate this problem.

In its response, Québec maintains that the MENV has held regular inspection workshops for updates on the status of the Québec automobile fleet (two campaigns in 1988 and 1989, which inspected 1,500 vehicles; subsequent less extensive inspection campaigns; and the inspection of 7,200 vehicles as part of the *Un air d'avenir* pilot project in 1997–1998).⁷³ According to Québec:

[t]he Ministère de l'Environnement analyzed the data gathered during the inspection campaigns. The data showed no increase in the occurrence of disabling anti-pollution systems. The rate of non-compliance for automobiles noted in the *Un air d'avenir* workshops (1997–1998) was 16%. In the inspection clinics that the Québec Ministère de l'Environnement conducted from 1988 to 1991, the rate was higher than 16%. During this period, a slight decrease in non-compliant vehicles is observed; probably a result of improvements to the reliability of anti-pollution systems.⁷⁴

A factual record would gather additional relevant information concerning, among other things, the scale and frequency of inspection campaigns carried out to enforce sections 96.1 and 96.2 of the RQA; the voluntary or mandatory nature of inspections; the number of inspections required to arrive at statistically valid projections concerning the rate of non-compliance on a provincial level; and the factors to be considered in comparing results from one year (or one inspection campaign) to the next. This information would allow for an appreciation of the place of inspections within the range of measures taken by Québec to enforce the provisions cited by the AQLPA in the submission with a view to considering whether Québec is failing to effectively enforce these provisions.

(ii) Alternative measures

In its response, Québec stresses that beyond strict judicial enforcement of the law, the MENV has adopted a range of educational measures aimed at encouraging vehicle owners to properly maintain the pollution control devices on their vehicles.⁷⁵ It mentions, among other things, the development of an instructional video for auto mechanics; the distribution of a brochure to auto mechanics; and the distribution of a survey to 500 businesses, designed to assess the effects of automobile regulation. Developing a factual record would involve gathering further relevant information concerning these measures, in particular concerning their frequency, geographical extent, target audience, and follow-up, which

Context. According to information obtained by Mr. Bélisle (AQLPA), Québec is a haven for makers of fake catalytic converters. Over 100,000 have apparently been sold since the early 1990s. The AQLPA representative mentioned two reasons to explain this situation: a) the absence of regulatory standards in Québec dealing with pollution control devices, and b) the absence of an inspection/maintenance program.

A worrisome situation. Mr. Anctil (MENV) found the situation to be worrisome and asked Mr. Bélisle to compile—as soon as possible—a file that would shed light on this question, which, if founded, could pose certain problems in applying the program.”

See also submission at appendix 17. AQLPA, “Programme d’inspection et d’entretien des véhicules automobiles au Québec (PIEVA) – Convertisseurs catalytiques – Avis déposé au ministre de l’Environnement du Québec” (June 2002).

⁷³ Response at 13.

⁷⁴ *Ibid.* at 14.

⁷⁵ *Ibid.* at 13.

would allow for a consideration of whether these alternative measures contribute to ensuring compliance with the provisions cited by the Submitter.

V. RECOMMENDATION

For the aforementioned reasons, the Secretariat considers that the submission, in light of Canada's response, warrants developing a factual record and so informs the Council through the present notification. Certain questions raised in the submission and the response merit closer examination; the gathering of factual data regarding these questions would allow for a consideration of whether, as alleged by the Submitter, Québec is failing to effectively enforce sections 96.1 and 96.2 of the RQA, and sections 19.1, 20 and 51 of the LQE with respect to air emissions of hydrocarbons, carbon monoxide, and nitrogen oxides by post-1985 light vehicle models.

As outlined in detail in the preceding pages, the preparation of a factual record is warranted to develop and present additional relevant information concerning the range of measures adopted by Québec to enforce and ensure compliance with sections 19.1, 20 and 51 of the LQE and sections 96.1 and 96.2 of the RQA with respect to air emissions by post-1985 light vehicle models. The presentation of this information in a factual record would allow for a consideration of whether or not Québec is failing to effectively enforce the provisions cited by the AQLPA. Thus, during the development of a factual record, the Secretariat would gather additional relevant information concerning the authorization and implementation of a Québec I/M program. The Secretariat would also gather additional relevant information concerning the challenges involved in gathering the evidence required to take initiate penal proceedings to enforce the provisions cited by the AQLPA, and it would gather additional information regarding alternative measures taken by Québec, all of which with a view to considering whether, taken together, the measures adopted by Québec amount to effective enforcement of the provisions cited by the Submitter.

Consequently, in accordance with Article 15(1), and for the reasons stated in this document, the Secretariat hereby informs the Council that it considers that preparation of a factual record for this submission would further the objectives of the NAAEC.

Respectfully submitted on 5 May 2005.

Secretariat of the Commission for Environmental Cooperation

(original signed)
by: William V. Kennedy
Executive Director