

Secretariat of the Commission for Environmental Cooperation

Request for Information for Preparation of a Factual Record Submission SEM-04-007 (Quebec Automobiles) 1 Septembre 2006

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1. The factual record process

The Commission for Environmental Cooperation (CEC) of North America is an international organization created in by Canada, Mexico and the United States in 1994, under the *North American Agreement on Environmental Cooperation* (NAAEC). 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 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 14 June 2006, in Council Resolution 06-07, the Council decided unanimously to instruct the Secretariat to prepare a factual record in connection with submission SEM-

04-007 (Quebec Automobiles), 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. Quebec Automobiles submission and Council's instructions

On 3 November 2004, the Quebec Association Against Air Pollution (*Association québécoise de lutte contre la pollution atmosphérique—AQLPA*) presented the Secretariat of the CEC with a submission under Article 14 of the NAAEC. In the submission, along with supporting materials, the AQLPA asserts that Canada, and in particular 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*), as well as sections 19.1, 20 and 51 of Québec's Environment Quality Act (*Loi sur la qualité de l'environnement—LQE*), pertaining to air emissions of hydrocarbons, carbon monoxide and nitrogen oxides from post-1985 light motor vehicle models. Under these provisions, removing or modifying a catalytic converter from a vehicle constitutes an infraction punishable by a fine and/or a prison term.

On 3 December 2004, the Secretariat determined that the submission met the requirements set forth in Article 14(1) of the NAAEC and requested a response from the Party concerned (Canada), in accordance with Article 14(2) of the NAAEC. Canada submitted its response on 1 February 2005. In the response, the Government of Quebec explains that the problem addressed by these "anti-tampering" provisions was largely resolved by the 1990 ban on leaded gasoline, followed by the introduction of electronic fuel injection and computerized engine controllers. Quebec also stresses that it is working on developing a vehicle inspection and maintenance program that will address the socio-economic and technical issues encountered in other jurisdictions with such programs. Quebec asserts that it wishes to first tackle pollution caused by heavy vehicles, having authorized the preparation of draft legislation to this effect. It adds that above and beyond the strict application of the law, the Quebec Environment Ministry (now the Ministry of Sustainable Development, Environment and Parks) has carried out information, awareness-raising and educational activities and has monitored the state of the vehicles on Quebec's roads. On 5 May 2005, the Secretariat informed the CEC Council that in light of Canada's response, the submission warranted developing a factual record.

On 14 June 2006, in Council Resolution 06-07, the Council unanimously decided to instruct the Secretariat to develop a factual record, in accordance with Article 15 of the NAAEC and the *Guidelines*, with respect to the following questions raised in submission SEM-04-007 concerning the alleged failure to effectively enforce sections 96.1 and 96.2 of the RQA and sections 19.1 and 51 of the LQE:

- the history and context of the development of the above-noted environmental laws, up to the time of their enactment; and
- the measures taken by Quebec to enforce the above-noted environmental laws (including education programs, inspection campaigns, and the development of a heavy vehicle inspection and maintenance program), as well as the history and context of the adoption of those measures.

The Council directed the Secretariat to provide the Parties with an overall work plan for gathering relevant facts and to provide the Parties with an opportunity to comment on the plan. The work plan was submitted on 5 July 2006. The Council also directed the Secretariat that in preparing the factual record, it may include any relevant facts that existed before the entry into force of the NAAEC on 1 January 1994.

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 the following:

Any information relative to the history of sections 96.1 and 96.2 of the RQA and sections 19.1 and 51 of the LQE, up to the time of their enactment, and any information related to measures taken by the Quebec government to enforce these laws.

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 30 November 2006**, 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-04-007 (Quebec Automobiles) 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>.