



November 15, 2013

Dr. Irasema Coronado  
Executive Director  
Secretariat of the Commission for Environmental Cooperation  
393, rue St-Jacques Ouest, bureau 200  
Montréal (Québec)  
H2Y 1N9

Re.: SEM-09-002 “Wetlands in Manzanillo” 15(1) Notification

Dear Irasema:

In my capacity as Alternate Representative Chair, and on behalf of the Council, I would like to thank the Secretariat for its August 19, 2013 Article 15(1) notification to Council (the “Notification”) indicating that the preparation of a factual record is warranted for the *Wetlands in Manzanillo* (SEM-09-002) submission.

Council appreciates the effort put forth by the Secretariat in developing this Notification. However, Council has significant concerns regarding the Secretariat’s application of the *Guidelines for Submissions on Enforcement Matters under Article 14 and 15 of the North American Agreement on Environmental Cooperation* (“SEM Guidelines”). In particular, Council is concerned that the SEM Guidelines are not being applied consistently throughout the Notification.

In reviewing the Notification, Council has noted that the Secretariat has been inconsistent with its application of the SEM Guidelines, at times referring to the “old” SEM Guidelines (in place before being revised on July 11, 2012) and at others invoking the “new” SEM Guidelines (in place after revisions were approved on July 11, 2012). For example, in paragraph 81, the Secretariat applies the old SEM Guidelines, stating that the “Guidelines that were in effect at the time of the submission apply to this notification,” while applying the new SEM Guidelines in paragraph 109 of the Notification (see also paragraph 137). In addition, it is not clear to which SEM Guidelines the Secretariat is referring in paragraphs 100 and 178.

Furthermore, Council notes that the Secretariat indicates in paragraph 253 that “it will make best efforts to produce the factual record in as timely a manner as is practicable, should the Council



decide to instruct it to prepare a factual record.” On this point, Council considers that this statement disregards revised SEM Guideline 19.5 which would apply to the next step in the process of this file, calling on the Secretariat to “prepare the draft factual record normally within 180 working days of being so instructed by Council,” if the Council so decides.

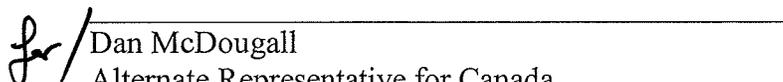
To the extent that there is any confusion on the part of the Secretariat regarding the appropriate applicability of the revised SEM Guidelines, Council would like to make it clear that these Guidelines took effect at the moment of their adoption on July 11, 2012 and apply to all active submissions files.

In light of Council’s concerns regarding the application of the SEM Guidelines, pursuant to Guideline 10.1 which provides that the Council “may request further explanation of the Secretariat’s reasons, which the Council will receive prior to taking its decision under Article 15(2) of the Agreement concerning whether or not a factual record will be prepared” and pursuant to its authority under Article 10 of the Agreement, Council asks that the Secretariat provide further explanation in writing regarding its application of the SEM Guidelines, revising its Notification accordingly.

Council notes that it is postponing its vote on the preparation of a factual record, as per Article 15(2) of the Agreement, until it receives a revised notification from the Secretariat. Mindful that the SEM Guidelines were modified while the Secretariat was preparing the Notification and thus the deadline established in Section 19.3 of the revised SEM Guidelines does not apply to this particular file at this stage of the process, the Council looks forward to receiving a new 15(1) Notification as soon as is practicable, in accordance with the Secretariat’s commitment to move forward with the legacy submissions in as expeditious a manner as possible.

Sincerely,



 Dan McDougall  
Alternate Representative for Canada  
Assistant Deputy Minister, International Affairs  
Environment Canada

c.c.: Ms. Jane Nishida, Alternate Representative for the United States  
Mr. Enrique Lendo, Alternate Representative for Mexico