



MAY 14 2014

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

Dear Dr. Coronado:

I am writing in response to the Notification issued by the Secretariat on 14 April 2014 (the "Notification"), in relation to Canada's 31 January 2014 letter advising the Secretariat of a pending judicial proceeding on the matter raised in the *Alberta Tailings Ponds* submission (SEM-10-002).

After reviewing the Notification, I am compelled to register Canada's objection with the Secretariat's interpretation of the *North American Agreement on Environmental Cooperation* (the "Agreement" or the "NAAEC") with regard to its mandate in the Submission on Enforcement Matters (SEM) process. I would like to make it very clear that our position is that the NAAEC does not give the Secretariat the authority to interpret a notice given by a Party that a matter is the subject of a pending proceeding, in accordance with NAAEC Article 14(3). Further, in Canada's view, the Secretariat cannot attribute to itself powers to interpret a Party's domestic law, which is a power that lies with domestic courts, and not with the Secretariat.

In our letter to the Secretariat of 31 January 2014, we fulfilled our duty under the NAAEC to advise the Secretariat of whether the matter of a submission is the subject of a pending proceeding. At that time, the obligation of the Secretariat was to proceed no further, as per Article 14(3)(a). Furthermore, pursuant to Section 9.6 of the *Guidelines for the Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC*, the Secretariat should have promptly notified the Council and the Submitter, in writing, that the submission process was terminated.

Notwithstanding the actions the Secretariat should have taken upon being advised of this proceeding, I can confirm that the matter at issue in the Boschmann case is the same as the *Alberta Tailings Ponds* submission and that the Boschmann case will remain active in the

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Alberta court system until August 27, 2014. Up to that date, Mr. Boschmann may request a new process hearing in respect of the information sworn on 12 September 2013, on the basis of newly obtained evidence. He may also appeal the Court's decision not to issue process. We maintain that this process must be allowed to reach its conclusion, as it is not the intention of the Agreement that the SEM process operate parallel to such a proceeding.

In its Notification, the Secretariat indicates that it is proceeding with its consideration of whether the submission warrants recommending the development of a factual record, under Article 15(1). I am compelled to reaffirm that the Secretariat lacks the authority to do so, and therefore request that it cease this analysis.

Both the Government of Canada and the Province of Alberta are effectively enforcing their environmental laws. Canada and Alberta are prepared to take the exceptional measure of providing additional information further to the goals of the Agreement that will provide details on our ongoing enforcement actions. We will not be in a position to do so, however, until the Boschmann case has cleared the courts which, as noted above, will be after 27 August 2014. We maintain that our intention in providing this information is without prejudice to Canada's position that the Secretariat has acted contrary to its authority accorded by the NAAEC and that the current Submission should be terminated.

Sincerely,

A handwritten signature in blue ink, reading "D. M. Dougall".

Dan McDougall
Assistant Deputy Minister
International Affairs Branch

cc: Enrique Lendo, Alternate Representative to the CEC Council for Mexico
Jane Nishida, Alternate Representative to the CEC Council for the United States