

Secretariat of the Commission for Environmental Cooperation

Determination in accordance with Article 14(1) of the North American Agreement on Environmental Cooperation

Submitters: Gérard Michaud and Gaston Hervieux
Party: Canada
Revised submission: 27 June 2013
Original submission: 14 December 2012
Date of determination: 8 July 2013
Submission I.D.: SEM-12-002 (*St. Lawrence River Wind Farms*)

I. INTRODUCTION

1. On 14 December 2012, Gaston Hervieux and Gérard Michaud (the “Submitters”) filed a submission with the Secretariat (the “Secretariat”) of the Commission for Environmental Cooperation pursuant to Article 14 of the North American Agreement on Environmental Cooperation (“NAAEC” or the “Agreement”), purporting to make several assertions that Canada is failing to effectively enforce various environmental and other laws with respect to the approval and construction of wind farms in the lower St. Lawrence River and in other parts of North America.
2. On 3 April 2013, the Secretariat determined¹ that submission SEM-12-002 (*St. Lawrence River Wind Farms*) (the “Submission”) did not meet all the requirements of NAAEC Article 14(1). Pursuant to Guideline 6.2 of the CEC Council’s *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]* (the “Guidelines”),² the Secretariat notified the Submitters that they had sixty working days in which to provide the Secretariat with a revised submission meeting the criteria for admissibility in NAAEC Article 14(1); otherwise, the Secretariat would terminate the process with respect to the Submission.
3. On 27 June 2013, the Submitters provided the Secretariat with a Revised Submission.³ The Secretariat has determined that the Revised Submission does not meet the criteria contained in NAAEC Article 14(1), for the reasons set out below. Pursuant to Guideline 6.3, the process is now terminated with respect to the submission.

¹ SEM-12-002 (St. Lawrence River Wind Farms), Article 14(1) Determination (3 April 2013) (the “April 2013 Determination”).

² Commission for Environmental Cooperation, *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (Montreal: CEC, 2012) [Guidelines], online: CEC < www.cec.org/guidelines >.

³ « Communication Révisée par Mise en Demeure Adressée à la CCE » (27 June 2013) (« Revised Submission »).

II. SUMMARY OF THE REVISED SUBMISSION

4. In the Revised Submission, the Submitters allege that Canada “is failing to effectively enforce its environmental laws to ensure that the spirit and letter of the Canada-United States of America Migratory Birds Convention are respected.”⁴
5. The Revised Submission continues by stating that the Commission for Environmental Cooperation refuses to intervene against the installation of industrial wind farms within migratory bird corridors, even as the Canadian Wildlife Service has “declared publicly” that it anticipates the death of thousands of birds that will fly into wind farm structures.⁵
6. The Submitters also attach two newspaper articles. The first describes scientific research into the effects of wind farms located in migratory bird corridors on golden eagles, as well as on peregrine falcons and bald eagles.⁶ The second describes a management plan for reducing damage said to be done by snow goose populations to agricultural land in the lower St. Lawrence River region, and does not mention wind farms.⁷ Neither newspaper article mentions any environmental or other laws.
7. The Submitters write that the “so-called management plan” for the snow goose is in fact an “extermination plan” that has the effect of removing the birds from the migration corridors. The Submitters say that this removal is an unreasonable and abusive use of hunting permits, and make reference in this respect to the Factual Record in SEM-99-002 (*Migratory Birds*).⁸ The Revised Submission concludes with: “all of which complies with the law by abuse of rights.”⁹

III. ANALYSIS

8. The Secretariat now examines whether the Revised Submission meets the admissibility criteria of Article 14(1) of the NAAEC. As the Secretariat noted in its April 2013 Determination,¹⁰ Article 14(1) is not intended to be an insurmountable screening device. This means that the Secretariat will interpret every Submission in accordance with the NAAEC and the Guidelines, yet without an unreasonably narrow interpretation and application of those Article 14(1) criteria.

⁴ Revised Submission, para 1.

⁵ Revised Submission, para 2.

⁶ « Éoliennes et tueries d’oiseaux, » (September 2012) *Journal L’Horizon*, 5.

⁷ « Un plan de gestion des oies blanches, » (22 May 2013) *Le Saint-Laurent Portage*, 46.

⁸ Revised Submission, para 3; Final Factual Record SEM-99-002 (22 April 2003) (*Migratory Birds*) < www.cec.org/Storage/71/6478_MigratoryBirds-FFR_EN.pdf > (last visited 28 June 2013).

⁹ Revised Submission, para 3.

¹⁰ At para 18.

A. Opening Paragraph of Article 14(1)

9. The opening paragraph of Article 14(1) of the NAAEC provides: “[t]he Secretariat may consider a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law, if the Secretariat finds that the submission” meets the criteria in Article 14(1)(a) to (f).
10. The Submitters are Gérard Michaud and Gaston Hervieux, each of whom is a “person” in accordance with Article 14(1).
11. The Secretariat begins with the analysis of whether the Submission contains any *assertions* that a Party is failing to effectively enforce its environmental law. The Secretariat also analyzes whether the purported assertions in the Submission concern alleged failures of the effective enforcement of environmental laws, in accordance with the opening paragraph of NAAEC Article 14(1).
12. In its April 2013 Determination, the Secretariat determined that the Submission did not meet the criteria of the opening paragraph of Article 14(1).¹¹ The Submission did not sufficiently connect any positive statements that a Party is failing to effectively enforce any particular environmental law or laws to information focusing on particular acts or omissions of the Party asserted to demonstrate such failure.
13. The Revised Submission does not mention any particular environmental laws; nor does it provide details of alleged acts or omissions of a Party to illustrate any alleged failure to enforce any such laws.
14. The Revised Submission makes reference to the “Canada-United States of America Migratory Birds Convention.” The Secretariat determines that while the Revised Submission alleges a failure by Canada to enforce its environmental laws, and mentions an international agreement, it does not explain how any such alleged failure is occurring. The Revised Submission does not explain in any detail how any alleged failures are occurring; nor does it specify any “environmental law” as that term is defined in Article 45(2) of the NAAEC.¹² Moreover, the Revised Submission neither specifies any particular obligation in an international agreement, nor does it specify how such obligation is part of Canadian domestic environmental law.¹³
15. The Secretariat found in its April 2013 Determination that the Submission contained no “assertion” that a Party to the NAAEC was failing to effectively enforce its environmental law; the Secretariat also found that there were insufficient details of alleged acts or omissions grounding any such assertion. The Secretariat determines that the Revised Submission, like the Submission itself, lacks clear assertions and as a consequence, it is not possible for the Secretariat to make determinations in respect of paragraphs (c), (d) or (e) of Article 14(1) of the NAAEC.

¹¹ At paras 23-32.

¹² See the April 2013 Determination at paras 28-29.

¹³ See the April 2013 Determination at paras 33-34 and accompanying footnotes.

IV. DETERMINATION

16. For the foregoing reasons, the Secretariat determines that the Revised Submission does not meet the admissibility requirements of Article 14(1) of the NAAEC. Pursuant to Guideline 6.3, the Secretariat hereby informs the Submitters that the process is terminated with respect to Submission SEM-12-002 (*St. Lawrence River Wind Farms*).

Respectfully submitted,

Secretariat of the Commission for Environmental Cooperation



per: Dane Ratliff
Director, Submissions on Enforcement Matters Unit

cc: Mr. Dan McDougall, Canada Alternate Representative
Ms. Michelle DePass, US Alternate Representative
Mr. Enrique Lendo, Mexico Alternate Representative
Dr. Irasema Coronado, CEC Executive Director
Submitters