

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
Concerned Party: Canada
Date of submission: 14 December 2012
Date of this determination: 3 April 2013
Submission I.D.: SEM-12-002 (*St. Lawrence River Wind Farms*)

I. INTRODUCTION

1. On 14 December, 2012, Gérard Michaud and Gaston Hervieux (the “Submitters”) filed SEM 12-002 (*St. Lawrence River Wind Farms*) (the “Submission”), a submission on enforcement matters pursuant to Article 14 of the *North American Agreement on Environmental Cooperation* (“NAAEC” or the “Agreement”),¹ with the Secretariat of the Commission for Environmental Cooperation (the “Secretariat” of the “CEC”). Articles 14 and 15 of the NAAEC provide for a process allowing any person or non-governmental organization to file a submission asserting that a Party to the Agreement is failing to effectively enforce its environmental law. The Secretariat initially considers submissions to determine whether they meet the criteria contained in NAAEC Article 14(1) and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]* (the “Guidelines”).² When the Secretariat determines that a submission meets the criteria set out in Article 14(1), it then determines, pursuant to the provisions of NAAEC Article 14(2), whether the submission merits a response from the NAAEC Party named in the submission. In light of any response from the concerned Party, and in accordance with NAAEC and the Guidelines, the Secretariat may notify the Council that the matter warrants the development of a factual record, providing its reasons for such recommendation in accordance with Article 15(1). Where the Secretariat decides to the contrary, or where certain circumstances prevail, it proceeds no further with its consideration of the submission.³

¹ *North American Agreement on Environmental Cooperation*, United States, Canada and Mexico, 14-15 September, 1993, Can TS 1994 No 3, 32 ILM 1480 (entered into force 1 January, 1994) [NAAEC], online: CEC < www.cec.org/NAAEC >.

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 Previous Secretariat Determinations and Factual Records can be found on the CEC’s website at: < www.cec.org/SEMregistry >. In this Determination, unless otherwise stated, reference to an “Article” is to an article of the NAAEC.

2. The Secretariat has determined that the Submission does not meet the admissibility requirements of Article 14(1) and that, in accordance with Guideline 6.2, for the reasons set out below, the Submitters are being notified that they have sixty working days from the date of this Determination to provide a Submission that conforms to all of the requirements of Article 14(1), failing which the Secretariat will terminate the process with respect to this Submission. The Secretariat's reasons for this determination are set out below in Section III.

II. SUMMARY OF THE SUBMISSION

3. The Submission is structured in two parts: a “Preamble and Summary”, referred to by the Submitters as R-37 (the “Preamble and Summary”), and the Submission, referred to by the Submitters as R-28 (the “main Submission”). This determination refers to these latter parts of the Submission individually where necessary. In addition, the Submitters attached thirty-six annexes to the Submission.
4. The Submitters purport to make several assertions of failures to effectively enforce environmental law. They also invoke, without making assertions, provisions of other laws of Canada, the United States and international agreements, project and policy statements and reports, maps, speeches, newspaper articles and statements of principle, some of which are included as annexes to the Submission.
5. In the following paragraphs, the Secretariat summarizes the Submitters’ purported assertions.
6. The Preamble and Summary begins by asserting that
[...] Canada, a party to the NAAEC, is failing to effectively enforce its environmental law by going so far as to approve the installation of industrial wind parks along migratory [bird] corridors, **when the government has full knowledge, through the Canadian Wildlife Service, a branch of Environment Canada, that thousands of bird deaths will likely result** (see ‘NABCI’).⁴
7. In paragraph 2 of the Preamble and Summary, the Submitters write:

In support of our submission, we invoke, *inter alia*, several laws and regulations related to the *Migratory Birds Convention Act, 1994*, an agreement between Canada and the United States [sic], which latter is implicated because of the failure to effectively enforce **section 703 of the Migratory Bird Treaty Act (MBTA, 19 November 1999), which prohibits anyone from killing ... migratory birds ‘by any means or in any manner,’** except where a valid permit has been issued for this purpose by the U.S. Fish and Wildlife Service.⁵

⁴ Preamble and Summary at para 1[emphasis in original].

⁵ [Emphasis in original]

8. In paragraph 4, “the Submitters emphasize that Canada, Québec and the United States are failing to ensure that their laws are enforced by other levels of government and complied with by wind park developers, yet **they are fully informed that the latter are violating the law** [...]” In paragraph 6, they suggest that “Canada, the United States and Mexico have not so far managed to intervene so as to protect migration corridors, and [...] have to the contrary favoured means of getting around the law by their inaction [...]” Paragraph 6 concludes by suggesting that the governments of Canada and Québec are both funding and giving regulatory approval to wind farm development “**without taking account of human rights, including democratic and health rights as well as environmental rights.**”⁶ In paragraph 55 of the main Submission,

[...] B. The Submitters hereby assert that the governments of Canada and Québec and the municipal governments are failing to effectively enforce, or deliberately deciding not to effectively enforce laws, conventions, or other intergovernmental agreements; the Submitters therefore request that the Secretariat of the CEC, pursuant to NAAEC Articles 14 and 15, receive this submission and prepare a factual record reaching, among other conclusions, the conclusion in paragraph (A) above [...].⁷

9. Paragraph 55 C describes the Viger-Denonville industrial wind park as “a specific case that typifies the **general failure to effectively enforce the environmental law** at issue,” and that

[...] all other aspects raised by this Submission must be taken into account by the CEC, since in several aspects, it is a matter of **shedding light on the mechanisms by which the law is circumvented while giving the impression that it is being upheld** (e.g. the application of environmental impact assessment methodologies that are themselves questionable).⁸

The main Submission declares at paragraph 42 that

the Commission for Environmental Cooperation must act quickly to put an end to the non-enforcement of and non-compliance with the laws, regulations, and agreements, and additionally must secure the dismantling of windmills sited along migratory corridors in violation of the law; and, in the case of the Viger-Denonville project, must request that the Minister of Sustainable Development suspend (moratorium) the approvals and hearing process in anticipation of the outcome of the NAAEC Article 14–15 process triggered by this submission.

⁶ [Emphasis in original]

⁷ The “conclusion in paragraph [55] (A) above” reads as follows:

The Submitters hereby assert that the Governments of Canada, the United States, and Mexico are not assigning great importance to the delimitation of migratory corridors and breeding, feeding, and resting areas with safety zones, prohibiting all industrial windmills or industrial wind parks and all polluting facilities that may constitute a threat to the survival of the birds using said migration corridors [emphasis in original].

⁸ Main Submission at para 55 C [emphasis in original].

10. Paragraph 55 states that the purpose of the factual record requested by the Submitters **“is the creation of a network of important migratory bird conservation areas,”** and that “the factual record should conclude that there cannot be commercial or industrial windmills along migratory bird corridors [...]”⁹ This paragraph concludes by saying that CEC studies must be characterized by an ecosystem-centred approach, and by proposing the extension of certain protected areas.¹⁰
11. In paragraph 12 of the main Submission, the Submitters allege “[...] **that Canada (Canada-Québec), an NAAEC party, is failing to effectively enforce its environmental law in respect of wind park development.**”¹¹
12. In paragraph 14 of the main Submission, the Submitters again mention the United States *Migratory Bird Treaty Act*,¹² writing that **“Canada’s economic interests do not allow the United States to effectively enforce s. 703 of the Migratory Birds Treaty Act (MBTA) 16 U.S.C., paragr. 703-12, under which it is prohibited to kill migratory birds without the possession of a valid permit.”**¹³
13. Paragraph 15 of the main Submission reads in part: “[...] **Canada, Québec, the MRC (Regional County Municipality) of Rivière-du-Loup, the municipality of L’Isle-Verte, etc., are failing to effectively enforce the discriminatory Species at Risk Act** [...]”¹⁴ Paragraph 52 paraphrases this statement, substituting “the federal, provincial and municipal governments” for the names of the political entities, and cites particular provisions of the federal *Species at Risk Act*,¹⁵ namely “sections 32-6, [...] sections 56-64, [...] and sections 80-82.”
14. In paragraph 41 of the main Submission, the Submitters state that “[...] **the precautionary principle contemplated in the Sustainable Development Act of Quebec** [...] and other laws of Canada and the United States is being circumvented by this project.”¹⁶
15. In paragraph 43, the Submitters allege that **“Canada-Quebec, the MRC of Rivière-du-Loup, and the municipalities** participating in the Viger-Denonville industrial wind park project located in the municipality of Saint-Paul-de-la Croix and Saint-Épiphanie **are failing to enforce several laws and regulations [...].”**¹⁷ Several

⁹ Main Submission at para 55 D [emphasis in original].

¹⁰ Main Submission at para 55 E.

¹¹ [Emphasis in original]

¹² Referred to in para 7, *supra*.

¹³ [Emphasis in original]

¹⁴ [Emphasis in original]

¹⁵ SC 2002, c 29.

¹⁶ [Emphasis in original] *Sustainable Development Act*, RSQ c D-8.1.1, art 6(j) reads:

6. In order to better integrate the pursuit of sustainable development into its areas of intervention, the Administration is to take the following set of principles into account when framing its actions: [...] (j) “Precaution”: When there are threats of serious or irreversible damage, lack of full scientific certainty must not be used as a reason for postponing the adoption of effective measures to prevent environmental degradation; [...].

¹⁷ [Emphasis in original]

Canadian laws, including some Quebec laws are cited, as is the Canada-United States *Migratory Birds Convention*.¹⁸

16. As indicated earlier, in the balance of the Submission including the Annexes, the Submitters make a variety of statements and refer to various documents. These include allegations concerning: a letter requesting a provincial environment minister to order public hearings; a letter requesting a federal environment minister to order a moratorium on wind farm development pending certain studies by the Canadian Wildlife Service of Environment Canada; a letter from the Canadian Wildlife Service to a municipality describing the powers and responsibilities of that Service; a failure on the part of a minister to reply to or acknowledge a letter; and requests to municipal council to pass resolutions involving wind farm development, as well as municipal council resolutions related to such requests.¹⁹
17. The Submitters allege in paragraph 14 Canada's "lack of interest" in enforcing the *United Nations Convention on Biological Diversity*,²⁰ a memorandum of understanding among the three NAAEC Parties involving wildlife and ecosystem conservation and management, and a protocol between Canada and the United States amending the 1916 *Migratory Birds Convention*.²¹

III. ANALYSIS

18. The Secretariat now examines whether Submission SEM-12-002 (*St. Lawrence River Wind Farms*) meets the admissibility criteria of Article 14(1) of the NAAEC. In the following paragraphs, the Secretariat treats each component of Article 14(1) in turn. As the Secretariat has found in previous Article 14(1) determinations,²² 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.

¹⁸ *Convention Between the United Kingdom and the United States for the Protection of Migratory Birds in Canada and the United States*, 16 August 1916; *Protocol between the Government of the United States of America and the Government of Canada amending the 1916 Convention between the United Kingdom and the United States for the protection of migratory birds in Canada and the United States*, 14 December 1995, 2473 UNTS I-44408 (entered into force 7 October 1999).

¹⁹ Main Submission at paras 37-41 and 45; Annex R-14: Gaston Hervieux, "Demande de moratoire pour les projets de parcs éolien[s] sur le territoire de la municipalité de l'Isle Verte" (6 March 2006) at para 55; Annex R-15 : Municipalité de l'Isle Verte, Council Resolution 06.03.8.6.1 (6 March 2006) [Annex R-15]; Annex R-17 Letter from Gaston Hervieux to Hon. Rona Ambrose, Minister of the Environment (Canada) and « Preuve d'envoi et de réception » (14 June 2006); Annex R-1: Gaston Hervieux, Demande [au Ministre Développement Durable (Québec)] d'audience publique—Parc industriel éolien Viger-Denonville (13 July 2012); Annex R-22: Municipalité de l'Isle Verte, Council Resolution 12.04.4.5.2 (published 30 April 2012); and Annex R-23: « Project éolien : Le règlement d'emprunt devrait être sur Internet » (14 mars 2010) Réseau d'information sur les municipalités.

²⁰ *United Nations Convention on Biological Diversity* (5 June 1992, entered into force 29 December 1993) 1760 UNTS 79, reprinted in 31 ILM 818 (1992).

²¹ *Supra* note 18.

²² See, for example, SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998), and SEM-98-003 (*Great Lakes*), Article 14(1)(2) Determination (8 September 1999).

A. Opening Paragraph of Article 14(1)

19. 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).
20. The Submitters are Gérard Michaud and Gaston Hervieux, each of whom is a “person” in accordance with Article 14(1).
21. The Secretariat begins with the analysis of whether the Submission contains any *assertions* that a Party is failing to effectively enforce 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).
22. An assertion should include not only a positive statement that a Party is failing to effectively enforce its environmental law; according to Guideline 5.1 it should also focus on any acts or omissions of the Party asserted to demonstrate such failure. Moreover, the Secretariat has stated in previous determinations that an assertion should be explicit, properly documented, and reasoned.
23. The statement quoted in paragraph 6 above does not mention any laws and is therefore not, in and of itself, an assertion in the sense of Article 14(1).
24. In the statement quoted in paragraph 7 above the Submitters “invoke [...] several laws and regulations”, refer to a law of Canada (the *Migratory Birds Convention Act, 1994*²³) as an agreement between Canada and the United States, and invoke section 703 of the *Migratory Bird Treaty Act*²⁴ of the United States. As mentioned in paragraph 12 above, the Submitters invoke the same United States law in paragraph 14 of the main Submission. The Secretariat determines that nothing in these paragraphs constitutes an “assertion” in the sense of Article 14(1).
25. The statements discussed in paragraphs 8 and 11 above mention Canada, Quebec, the United States and Mexico and alleged failures of those governments to enforce laws, but do not identify any particular laws.
26. As referred to in paragraph 9 above, the Submission makes clear a concern about an alleged “general failure” to enforce as well as a specific case, but the Secretariat finds there is no “assertion” in the sense of Article 14(1).

²³ SC 1994, c 22.

²⁴ USC tit 16 § 703 (1999).

27. As noted in paragraph 13 above, the Submission refers both to particular sections of Canada's *Species at Risk Act* and to that Act as a whole; however, the Submission does not provide details of any acts or omissions of the Party in order to demonstrate a failure to enforce, let alone provide sufficient information concerning particular species that may be listed as "at risk" pursuant to the *Species at Risk Act*, to allow the Secretariat to review such details.
28. With reference to paragraph 15 above, the Submission does not specify or explain how the various governments "are failing to enforce several laws and regulations," including those provisions of Canadian and Quebec laws that are listed by the Submitters.
29. In relation to the matters outlined in paragraphs 15 and 16 above, there is insufficient information that such matters relate to any "environmental law" as defined in Article 45(2)²⁵ and if so, how; nor is there sufficient information that such matters constitute or are related to any assertion in the sense of Article 14(1).
30. With reference to all of the Submitters' purported assertions, the Secretariat observes that while the Submission includes several positive statements that a Party is failing to effectively enforce its environmental law, the Submission does not adequately explain how any acts or omissions alleged in the Submission serve to demonstrate such failure in accordance with Guideline 5.1. In its Article 14(1) Determination concerning the *Biodiversity* submission (SEM-97-005), the Secretariat observed: "While recognizing that the language of an "assertion" supports a relatively low threshold under Article 14(1), a certain amount of substantive analysis is nonetheless required at this initial stage. Otherwise, the Secretariat would be forced to consider all submissions that merely 'assert' a failure to effectively enforce environmental law."²⁶

²⁵ Article 45(2) reads:

For purposes of Article 14(1) and Part Five:

(a) "**environmental law**" means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through

(i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,

(ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or

(iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party's territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(b) For greater certainty, the term "**environmental law**" does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

(c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part" [emphasis in NAAEC].

²⁶ SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998) at 3 [Biodiversity] online: <
http://www.cec.org/Storage/67/6133_97-5-DET-E.pdf>.

31. The Secretariat also determines that the balance of the Submission as a whole, including the information provided in the Annexes, does not allege particular acts or omissions, nor does it provide sufficient information about the purported assertions, allowing the Secretariat to review the Submission, as noted below.
32. The alleged facts mentioned in paragraph 15 above and related footnotes, involving municipal council resolutions, and citizens' correspondence to governments urging particular action, are not clearly connected to any of the purported assertions. As the Secretariat noted in its 20 October 2009 Article 14(1) Determination in *Quebec Mining*, "mere recollection or citation of a report is not a positive assertion of a failure to effectively enforce environmental law in accordance with Article 14(1) and Guideline 5.1."²⁷ Mere citation of a municipal council resolution or correspondence (and including such documents as annexes to the Submission), without a clear connection to an assertion and the alleged acts or omissions of a Party in failing to effectively enforce an environmental law, also does not meet the criteria of Article 14(1).
33. The same is true for mere recollection or citation of international agreements, treaties or conventions (see for example, paragraph 17 above). Moreover, the Secretariat has long held that in the context of Canada's adherence to international environmental agreements, that an obligation in such an agreement does not qualify as "environmental law" unless and until such obligation has been imported into domestic law by way of statute or regulation.²⁸ The Submission does not adequately explain how any failure to enforce "any statute or regulation of a Party"²⁹ is occurring, let alone how such a law constitutes an international obligation of Canada.
34. The Secretariat noted in the *Biodiversity* Determination that it was not excluding the possibility that a future submission may raise issues concerning a Party's international obligations that would meet the criteria of Article 14(1).³⁰ In the Submission under consideration here, the alleged facts concerning an assertion that Canada is failing to enforce an environmental law are simply not present, whether concerning international law or a domestic law.
35. With reference to paragraph 14 above, the Submission does not provide details explaining how "the precautionary principle contemplated in the Sustainable Development Act of Quebec [...] and other laws of Canada and the United States is being circumvented."³¹ The Supreme Court of Canada has acknowledged that the precautionary principle or approach may be considered a principle of customary

²⁷ SEM-09-004 (*Quebec Mining*), Article 14(1) Determination (20 October 2009) at 7, online: <
http://www.cec.org/Storage/96/9339_09-4-DETN_14_1_en.pdf>.

²⁸ Biodiversity, *supra* note 26 at 4.

²⁹ See the complete NAAEC definition of "environmental law:" *supra* note 25.

³⁰ Biodiversity, *supra* note 26 at 5; see also SEM-98-003 (*Great Lakes*), Article 14(1)(2) Determination (8 September 1999) at 5 and SEM-06-002 (*Devils Lake*) Article 14(1) Determination (21 August 2006) at 4-7.

³¹ See also references to the precautionary principle in paragraphs 54 and 55 D of the main Submission.

international law, and that it is referred to in several domestic laws in Canada,³² including Quebec laws. However, mere mention of precaution in the “principles and strategy” portion of a statute such as the one identified by the Submitters, does not assist the Secretariat in determining how the Party is allegedly failing to effectively enforce the precautionary principle as environmental law in the sense of NAAEC Article 45(2); nor does it assist in showing what acts or omissions of the Party demonstrate a failure to enforce environmental law.

36. It is not clear that the Submitters intend to allege that the 2006 municipal council resolution found in Annex R-15 (referred to in footnote 19, above) is legally binding on any other person or body. There is no information in the Submission suggesting that the 2006 resolution found in Annex R-15 is enforceable. Indeed, the relevant portion of that resolution reads:

the municipality of L'Isle-Verte [unanimously] ask[s] the authorities concerned to suspend the issuance of approvals for the installation of wind parks on the territory of the municipality of L'Isle-Verte as long as appropriate scientific studies, carried out by the Canadian Wildlife Service, have not dispelled our concerns about local wildlife.³³

The Secretariat notes that the municipal council resolution “ask[s]” rather than requires any particular action. A municipal council resolution in such terms does not appear to be “environmental law” capable of enforcement.

37. Having concluded that the Submission contains no assertions that Canada is failing to effectively enforce its environmental law, it is not necessary to consider further whether the laws mentioned in the Submission constitute “environmental law” for the purposes of Article 14(1).
38. Because the Secretariat must be able to identify the environmental law(s) in a submission in order for it to proceed, it should also be noted that an “environmental law” cited in a Submission must be capable of enforcement. Article 5 of the NAAEC, as well as past Determinations of the Secretariat³⁴ on this point, provide some examples—although not necessarily comprehensive or exhaustive—of applicable government enforcement actions.
39. A submission should make it as clear as possible how an “environmental law” ought to be enforced. To give one example: in paragraph 20 of the main Submission, the Submitters state that a certain component of Quebec Bill 21³⁵ “must be taken into account,” in order to consider its repercussions for democratic rights. This Quebec statute comprises 166 clauses and is 55 pages long. The Secretariat was unable to

³² 114957 *Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 (CanLII), [2001] 2 SCR 241, < <http://canlii.ca/t/51zx> > retrieved on 6 February 2013, at paras 31-32.

³³ See concluding para of Annex R-15, *supra* note 19.

³⁴ See note 3, *supra*.

³⁵ *An Act to amend various legislative provisions concerning municipal affairs*, SQ 2006, c 31.

identify the part(s) of the bill meeting the description given by the Submitters. The Submitters make no further assertion relating to the legislation.

40. The Submission includes several statements suggesting or implying deficiencies in various laws; for example:

- in paragraph 3 of the Preamble and Summary, “The Submitters denounce the environmental impact assessment criteria as being without scientific basis and lacking legal validity;”³⁶
- in paragraph 9 of the Preamble and Summary, the Submitters make reference to “deregulation and legislative amendment;”
- in paragraph 24 of the main Submission, the Submitters quote from a report of a commission or panel of the Quebec Bureau d’audiences publiques sur l’environnement (the BAPE): “[...] the Commission is of the view that appropriate observations and studies should be undertaken without delay in order to delimit the bird migration corridors;”
- the Submitters conclude paragraph 28 of the main Submission by saying, “There is nothing in the RCI [Règlement de contrôle intérimaire of the municipality of Rivière-du-Loup] to ensure or guide the protection of ‘migratory bird corridors’ (R-32);”
- in paragraph 46 of the main Submission, without specifying any environmental law the Submitters refer to “sustainable development principles” that “developers are not bound to observe.”

The Secretariat has consistently interpreted Article 14(1) to exclude assertions, such as the above examples, that allege a deficiency in the law itself.³⁷

41. As noted in paragraphs 8, 9 and 10 above, the Submitters request the Secretariat to prepare a factual record reaching certain particular conclusions; they urge “the Commission for Environmental Cooperation” to “act quickly to put an end to the non-enforcement of and non-compliance with [...] laws, regulations and agreements [...]”; and they suggest that “the factual record should conclude that there cannot be commercial or industrial windmills along migratory bird corridors.”

42. The public Submissions on Enforcement Matters (SEM) process is not a mechanism or forum for dispute resolution. Nothing in the SEM process, nor its outcome, directly requires a Party, the CEC Council, or any other person or body to take any specific action. Even where a submission reaches the stage of preparation of a factual record, NAAEC Article 15(3) provides that “The preparation of a factual record by the

³⁶ See also para 44 of the main Submission. The Secretariat has considered assertions involving environmental assessment legislation in the past; see for example SEM-97-004 (*CEDF*) Article 14(1) Determination (25 August 1997); see also SEM-96-003 *Oldman River I* and SEM-97-006 *Oldman River II*.

³⁷ See for example SEM-10-003 (*Iona Wastewater Treatment*), Article 14(1)(2) Determination (16 December 2011), and further examples cited there.

Secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.”

43. The Submitters have asked governments to take certain actions, such as to declare a moratorium on wind farms;³⁸ they suggest that governments’ alleged action or inaction amounts to “circumventing” the law.³⁹ However, it is not clear which particular “environmental laws” are asserted as not being effectively enforced.

Article 14(1) (a) – (f) Criteria

44. As noted in paragraph 20 above, each of the two Submitters is a person as required by the opening paragraph of Article 14(1). The Secretariat also notes that the Submission clearly identifies the two Submitters, both of whom reside in Quebec, Canada, and thus the Submission meets the criteria in Article 14(1)(b) and (f). In addition, the Submission is in writing and in French, a language designated by Canada in accordance with Article 14(1)(a). In the absence of clear assertions, it is not possible for the Secretariat to: determine whether the Submission “provides sufficient information to allow the Secretariat to review the submission” as required by Article 14(1)(c); determine whether the Submission “appears to be aimed at promoting enforcement rather than at harassing industry” in accordance with Article 14(1)(d); and to determine whether the subject-matter of any assertions “has been communicated in writing to the relevant authorities of the Party and indicates the Party’s response, if any” (Article 14(1)(e)).

IV. DETERMINATION

45. In light of the foregoing, and having considered the Submission and its documentation, the Secretariat determines that Submission SEM 12-002 (*St. Lawrence River Wind Farms*) does not meet the admissibility requirements of Article 14(1) of the Agreement.
46. In accordance with Guideline 6.2, the Submitters have sixty working days from the date of issuance of this Determination (3 April 2013) to provide a submission that conforms to the requirements of Article 14(1), failing which the Secretariat will terminate the process with respect to this submission. Any revised submission must therefore be received on or before **27 June 2013**.
47. Any revised Submission should contain assertions that a Party is failing to effectively enforce its environmental law(s) as defined by NAAEC Article 45(2). In accordance with Article 14(1)(c), any revised Submission should include sufficient information allowing the Secretariat to review any such assertions. Precedents of Submissions that have met all the admissibility criteria of Article 14(1) are available on the

³⁸ See para 16, *supra*.

³⁹ See paras 9 and 14, *supra*.

Submissions on Enforcement Matters Registry.⁴⁰ Any revised Submission must likewise conform to the all the admissibility criteria in Article 14(1)(a) - (f).

Respectfully submitted,

Secretariat of the Commission for Environmental Cooperation

(original signed)
per: Dane Ratliff
Director, Submissions on Enforcement Matters Unit

(original signed)
per: Hugh Benevides
Legal Officer, Submissions on Enforcement Matters Unit

cc: Mr. Dan McDougall, Canada Alternate Representative
Ms. Michelle DePass, US Alternate Representative
Mr. Enrique Lendo, Mexico Alternate Representative
Submitters

⁴⁰ *Supra* note 3.