

Secretariat of the Commission for Environmental Cooperation

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

Submitters:	The Saint-Adolphe-D'Howard Citizens Advisory Committee, Sarah Perreault, Denise Payette, Lisette Lapointe, Guy St-Jacques, Martial Fortin, Georges Jardon, Nicole Chouinard, Pierre Dubé, and Alain Thiffault
Represented by:	Felipe Morales, Semperlex Avocats
Party:	Canada
Original Submission:	7 December 2018
Revised Submission:	11 April 2019
Date of the determination:	24 May 2019
Submission No.:	SEM-18-005 (<i>Grand-Brûlé—Saint Sauveur Power Line</i>)

I. INTRODUCTION

1. Articles 14 and 15 of the North American Agreement on Environmental Cooperation (the “NAAEC” or the “Agreement”) provide for a process allowing any person residing in or nongovernmental organization established in North America to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. The Secretariat of the Commission for Environmental Cooperation (the “Secretariat” or the “CEC”)¹ initially considers submissions to determine whether they meet the criteria contained in NAAEC Article 14(1). If the Secretariat determines that a submission does not meet all of the Article 14(1) criteria, it requests that the Submitters file a revised submission within 30 days. When the Secretariat finds that a submission does meet these criteria, it then determines, pursuant to the provisions of NAAEC Article 14(2), whether the submission merits a response from the concerned Party. In light of any response from the concerned Party, and in accordance with NAAEC, 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 certain circumstances exist, it then proceeds no further with the submission. The Secretariat prepares a factual record only when the Council decides, by a two-thirds vote, to instruct the Secretariat to do so.²

¹ The Commission for Environmental Cooperation (CEC) was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC or Agreement) signed by Canada, Mexico, and the United States (the “Parties”). The bodies which comprise the CEC are the Council, the Secretariat, and the Joint Public Advisory Committee (JPAC). The NAAEC remains in effective despite the Parties recent renegotiations concerning NAFTA resulting in a revised trade agreement and a new Environmental Cooperation Agreement, neither of which has yet to be implemented.

² Full details regarding the various stages of the process as well as previous Secretariat determinations and factual records can be found on the CEC website at www.cec.org/submissions.

2. On 7 December 2018, the Saint-Adolphe-D'Howard Citizens Advisory Committee (“Committee”) and the above-named individuals (collectively, the “Submitters”), filed a NAAEC Article 14(1) submission (the “original submission”) with the Secretariat asserting that the Province of Quebec in Canada³ is failing to effectively enforce its environmental law because Quebec’s law does not fulfill the commitments Quebec made as a signatory to the NAAEC. In other words, the Submitters asserted that the environmental law not being enforced was the NAAEC itself. The Submitters made this assertion with respect to the environmental documentation and approval for a specific project owned and operated by Quebec’s electric utility, Hydro Quebec: a 120 kV double circuit transmission line from the Grand-Brûlé substation to the Saint-Sauveur substation in the Laurentian mountains of Quebec.⁴
3. On 17 January 2019, the Secretariat determined that the original submission did not meet all of the requirements of Article 14(1) because the Secretariat confirmed its previous decisions⁵ that the NAAEC does not qualify as an environmental law under Articles 14 and 15.⁶ In its determination, the Secretariat noted that it would terminate the process unless a revised submission was submitted in 60 days, or by 11 April 2019. The Secretariat also noted the following:

The Secretariat notes that although the submission’s assertions regarding failure to effectively enforce are based on the NAAEC, the submission does imply that there may be specific provisions of the Quebec Environmental Quality Act or Sustainability Act which are applicable to this project and which were not allegedly enforced by the Government of Quebec. A revised submission would need to address these provisions in particular and how Quebec did not specifically abide by them. The Secretariat notes that its review of assertions made by a Submitter of failure to effectively enforce a particular provision of environmental law does not take into account the effectiveness of a law as written [citations omitted].⁷
4. On 11 April 2019, the Submitters timely filed a revised submission (the “revised submission”) with the Secretariat.⁸ For the reasons stated below, the Secretariat has determined that the revised submission does not meet all of the requirements of Article 14(1). Therefore, the Article 14 process with respect to submission SEM-18-005 is terminated.

³ Although Canada is the Party which signed the NAAEC, three Canadian provinces, including Quebec, ratified the NAAEC under Canadian and provincial law. See. SEM-18-005 (*Grand-Brûlé—Saint Sauveur Power Line*), Determination under Article 14(1) (17 January 2019), p.4.

⁴ SEM-18-005 (*Grand-Brûlé—Saint Sauveur Power Line*), Submission under Article 14(1) (7 December 2018) [Submission], at 2-4.

⁵ See SEM-98-001 (*Guadalajara*), Article 14(1) Determination (13 September 1999); SEM-09-001 (*Transgenic Maize in Chihuahua*), Article 14(1) Determination (6 January 2010), §12; SEM-18-002 (*Metrobús Reforma*), Article 14(1)(2) Determination (1 May 2018), §32 See also *infra* note 13.

⁶ SEM-18-005 (*Grand-Brûlé—Saint Sauveur Power Line*), Determination under Article 14(1) (17 January 2019), p.4-5.

⁷ *Id.*, at paragraph 15.

⁸ SEM-18-005 (*Grand-Brûlé—Saint Sauveur Power Line*), Revised Submission under Article 14(1) (11 April 2019) [Revised Submission].

II. ANALYSIS

5. The revised submission is similar to the original submission initially filed, particularly with respect to the facts of the project, but differs in some significant ways with the assertions put forth. Most importantly, most of section IV of the revised submission (entitled “Failure to meet the general commitment to assess environmental impacts and provide for high levels of environmental protection”) is deleted and replaced with the following language:

It is submitted that the citizens have suffered harm through the clear-cutting of a significant number of trees to clear a path for the pylons, through the construction of temporary forest roads to access the sites, and through the erection of metal pylons and high-voltage lines that will soon be electrified and emit electromagnetic radiation [*this paragraph is carried over from the original submission*].

The Committee noted that following the project’s expeditious approval, its execution caused damage to plant life and water resources.

In particular, the logging and installations caused releases into lakes and streams. Black water is now found in a number of lakes and streams in the region. While Committee members and municipal officials had warned Hydro-Québec about the inadequacy of the means used to prevent such releases and sediment accumulations in lakes, the waters continue to blacken.

Hydro-Québec did not adhere to the mitigation and monitoring measures that would prevent such releases. The sediments continue to accumulate in the lakes and streams.

The MDDELCC issued a preliminary notice on 6 December 2018, followed by a report on 12 February 2019 in which Hydro-Québec was ordered to cease activities causing sediments to be released into the lakes, with which Hydro-Québec did not comply.

The orders from the MDDELCC appear to be insufficient and incomplete in terms of compliance with environmental law.

The MDDELCC has not issued meaningful sanctions or ordered meaningful reparations or mitigation measures for the project.⁹

6. Aside from the title of this section and a general assertion, the revised submission fails to correct the identified deficiency in the original submission, namely it still does not make specific assertions with references to specific environmental laws with which the Submitters contend Quebec has failed to comply. Rather, the revised submission focuses on harm and asserts generally that the Quebec Ministry of the Environment and the Fight against Climate Change (“MDDELCC”) order¹⁰ fails to comply with “environmental law.” In section V of the revised submission (entitled “Requirements under Article 14 of the NAAEC”), the Submitters only assert that they have suffered harm because of the “[f]ailure to enforce the criteria set out

⁹ Revised Submission, p.5.

¹⁰ See discussion, below, paragraph 9.

in the Sustainable Development Act in approving a project, with no reasoning or explanation from the authorities.”¹¹

7. The Submitters, however, do not enumerate in their revised submission the particular environmental law provisions that they contend have not been complied with, contrary to the requirements of Article 14(1) and the Secretariat’s determination of 19 January 2019. General assertions, such as those included in the revised submission, are not enough to meet the requirements of Article 14(1).¹²
8. In addition, the revised submission continues to make some of the same types of assertions that the original submission did. Submitters continue to be concerned about the process by which this project was approved by Quebec and about their inability to challenge such process. These arguments focus on a frustration with the laws that the Submitters assert Quebec has enacted for the environmental review and approval process for electric utility projects. The Article 14 process, however, is not the appropriate forum in which to pursue an argument of this type. Rather, the process was created to focus on whether a signatory to the NAAEC is *effectively enforcing* the laws it has enacted, not on whether those laws are adequate. The revised submission does not mention any specific environmental provision nor does it provide details of alleged acts or omissions on the part of Quebec that would illustrate any alleged failure to enforce any such laws.¹³
9. The Secretariat appreciates that there may, in fact, be environmental impacts resulting from this project. Much of the Submitter’s revised submission focuses on such impacts. In fact, included in the revised submission is a copy of the MDDELCC’s administrative order of 12 February 2019 against Hydro Quebec, for its failure to meet certain requirements included in the MDDELCC’s certificate of project authorization. The Submitter asserts this order is “insufficient and incomplete in terms of compliance with environmental law [and that the Ministry] has not issued meaningful sanctions or ordered meaningful reparations or mitigation measures for the project.” But because the Submitter has not identified specific environmental law provisions, as discussed above, the Secretariat cannot assess the assertion regarding the adequacy of the Ministry’s administrative order.
10. Thus the Secretariat finds that the revised submission, like the original submission itself, lacks citation of the environmental law(s) in question. Without clear assertions to these specific laws, it is not possible for the Secretariat to make determinations with respect to the opening paragraph of Article 14(1).

III. DETERMINATION

11. 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

¹¹ Revised submission, p. 14.

¹² The revised submission continues to argue that Quebec’s granting of immunity to Hydro Quebec, including an inability to challenge the Quebec Ministry’s administrative authorities to enforce its project authorization, violate the NAAEC. As previously determined by the Secretariat in reviewing the original submission, assertions such as these cannot be maintained in the Article 14 submissions process.

¹³ See, SEM-12-002 (*St. Lawrence River Wind Farms*), Determination under Article 14(1) (8 July 2013), paragraph 14.

6.3¹⁴, the Secretariat hereby informs the Submitters that the process is terminated with respect to Submission SEM-18-005 (*Grand-Brûlé—Saint Sauveur Power Line*).

Respectfully submitted,



Robert Moyer
Head, Submissions on Enforcement Matters Unit

cc: Ms. Isabelle Bérard, Alternate Representative, Canada
Ms. Norma Munguía Aldaraca, Alternate Representative, Mexico
Mr. Chad McIntosh, Alternate Representative, United States
Ms. Jane Nishida, Principal Deputy Assistant Administrator, United States
Mr. César Rafael Chávez, Executive Director, CEC Secretariat
Submitters

¹⁴ *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC.*