

11 December 2003

COUNCIL RESOLUTION: 03-16

**Instruction to the Secretariat of the Commission for Environmental Cooperation Regarding the Assertion that Canada is failing to effectively enforce sections 34, 36, 40 78 and 78.1 of the federal *Fisheries Act* and sections 5 and 6 and Schedules I and II of the Pulp and Paper Effluent Regulations (PPER) promulgated in 1992 (SEM-02-003).**

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

CONSIDERING the above noted submission, filed on 8 May 2002 by Friends of the Earth, Union Saint-Laurent, Grands Lacs, Conservation Council of New Brunswick, Ecology Action Centre and Environment North, all represented by the Sierra Legal Defense Fund, and the 6 August 2002 response provided by the Government of Canada;

HAVING REVIEWED the 8 October 2003 notification to Council by the Secretariat recommending the development of a factual record with respect to the submission;

NOTING that the submission and Canada's response address twelve (12) mills of particular concern;

RECOGNIZING that Canada, in its response, informed the Secretariat that investigations were ongoing at five (5) of those twelve (12) mills;

HAVING BEEN INFORMED by the Government of Canada that, at this time, of those twelve (12) mills, there are ongoing investigations regarding the Abitibi-Consolidated Inc. mill at Iroquois Falls and at the Tembec Inc. mill at Témiscaming; and

MINDFUL that, in this instance, it would be inappropriate to direct the preparation of a factual record for matters that are subject to ongoing investigations.

HEREBY UNANIMOUSLY DECIDES TO:

INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters* under Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* for the assertions set forth in Submission SEM-02-003 with regard to alleged failures to effectively enforce section 36(3) of the *Fisheries Act* and alleged effluent test failures and failures to conduct follow-up tests as required under the PPER, with respect to the following mills and time periods identified in the submission:

- Irving Pulp and Paper Ltd. at St. John from 1996 to 2000
- AV Cell Inc. at Atholville for 2000
- Abitibi-Consolidated at Grand Falls for 2000
- Bowater Mersey Paper Company Ltd. at Brooklyn for 2000
- Fjordcell Inc. at Jonquière for 2000
- Interlake Papers at St. Catherines for 2000
- Tembec Inc. at St. Raymond for 2000
- Uniforêt-Pâte Port Cartier Inc. at Port-Cartier for 2000
- F.F. Soucy Inc. at Rivière-du-Loup for 2000
- La Compagnie J. Ford Ltd. at Portneuf for 2000

FURTHER INSTRUCT the Secretariat that the factual record shall describe Canada's consideration of actions taken by the provinces to enforce their legislation, regulations and permit conditions related to pulp and paper mills, specifically the information submitted by the provinces to the federal officials where such provincial enforcement actions were relied upon by those federal officials, with respect to the aforementioned mills; bearing in mind that the submitters do not assert that any of the provinces are failing to effectively enforce provincial environmental law and there is not to be an examination of provincial enforcement of provincial law;

FURTHER INSTRUCT the Secretariat that the factual record shall describe the other facts directly related to Canada's enforcement of section 36(3) of the *Fisheries Act* and of sections 5 and 6 and Schedules I and II of the PPER, with respect to the aforementioned mills;

DIRECT the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and to provide the Parties with the opportunity to comment on that plan; and

TO DIRECT the Secretariat to consider, in developing the factual record, whether the Party concerned “is failing to effectively enforce its environmental law” since the entry into force of the NAAEC on 1 January 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to 1 January 1994, may be included in the factual record.

APPROVED BY THE COUNCIL:

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Judith E. Ayres  
Government of the United States of America

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José Manuel Bulás  
Government of the United Mexican States

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Norine Smith  
Government of Canada