

Date : January 11, 2011

Submitter : Bennett Environmental Inc.

Subject : Submission pursuant to Article 14(1) of the North American Agreement on Environmental Cooperation

Party : Canada

PCB TREATMENT

Executive Summary

This is a submission filed with the Secretariat of the Commission for Environmental Cooperation of North America by Bennett Environmental Inc. ("**BEI**") pursuant to Paragraph 1 of Article 14 of the *North American Agreement for Environmental Cooperation* ("**NAAEC**"). BEI alleges that Canada is failing to effectively enforce its environmental law, in this case Section 24 of the *Quebec Environment Quality Act* ("**EQA**"). Section 24 provides, among other things, that the Quebec Minister of Sustainable Development, Environment and Parks (the "**Minister**") shall, before giving his approval to an application for a certificate of authorization, ascertain that the emission, deposit, issuance or discharge of contaminants into the environment will be in accordance with the EQA and regulations. On September 29, 2009, the Minister issued a certificate of authorization allowing the operator of a contaminated soil burial site to use a chemical process to reduce concentrations of PCBs in contaminated soils to legal levels before burying them. A study carried out by an expert from the firm Conestoga-Rovers & Associates ("**CRA**") concludes that no evidence exists that outside a laboratory context, at a commercial scale, chemical oxidation can reduce PCB concentrations in contaminated soils to meet maximum levels set by the *Regulation respecting the burial of contaminated soils* adopted under the EQA. Despite repeated requests from BEI, the Minister and his staff have not explained how chemical oxidation can treat PCB-contaminated soils.

Résumé

Ceci est une communication déposée auprès du Secrétariat de la Commission de coopération environnementale de l'Amérique du Nord par Bennett Environmental inc. (« **BEI** ») en vertu de l'alinéa 1 de l'article 14 de l'*Accord nord américain de coopération dans le domaine de l'environnement* (« **ANACDE** »). BEI allègue que le Canada fait défaut d'appliquer de façon efficace sa loi de l'environnement, en l'occurrence l'article 24 de la *Loi sur la qualité de l'environnement* (« **LQE** ») du Québec. L'article 24 de la LQE prévoit notamment que le ministre du Développement durable, de l'Environnement et des Parcs du Québec (le « **Ministre** ») doit, avant de donner son approbation à une demande de certificat d'autorisation, s'assurer que l'émission, le dépôt, le dégagement ou le rejet de contaminants dans l'environnement sera conforme à la loi et aux règlements. Le 29 septembre 2009, le Ministre a émis un certificat d'autorisation permettant à l'opérateur d'un lieu d'enfouissement de sols contaminés d'employer un procédé chimique pour réduire les concentrations de BPC dans les sols contaminés jusqu'au niveau légal avant de les enfouir. Selon une étude menée par un expert de la firme de Conestoga-Rover & Associates (« **CRA** »), il n'existe aucune preuve que l'oxydation chimique est efficace, à l'échelle commerciale (c'est-à-dire hors laboratoire), pour réduire les concentrations de BPC dans les sols contaminés en deçà de la limite prescrite par le *Règlement sur l'enfouissement des sols contaminés* adopté en vertu de la LQE. Malgré les demandes répétées de BEI, le Ministre et son personnel n'ont pas expliqué comment l'oxydation chimique peut traiter les sols contaminés aux BPC.

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1. Introduction

Quebec has authorized a facility to use a PCB treatment process that experts say doesn't work. Rules for the protection of public health are not being followed. Quebec authorities refuse to explain on what basis they authorized use of a process that experts say doesn't work.

This is a submission filed with the Secretariat of the Commission for Environmental Cooperation of North America by Bennett Environmental Inc. (**BEI**) pursuant to Paragraph 1 of Article 14 of the *North American Agreement for Environmental Cooperation* (**NAAEC**).

BEI is an environmental services company that specializes in the destruction of PCBs. BEI operates a PCB destruction facility in St-Ambroise, Québec. BEI alleges that Canada is failing to effectively enforce its environmental law, in this case, s. 24 of the *Environment Quality Act* (**EQA**) of Québec. Section 24 of the EQA provides, among other things, that the Minister (the "**Minister**") of Sustainable Development, Environment and Parks (**MSDEP**) shall, before giving his approval to an application for a certificate of authorization, ascertain that the emission, deposit, issuance or discharge of contaminants into the environment will be in accordance with the Act and regulations. An expert report obtained by BEI indicates that the MSDEP issued a certificate of authorization for a treatment process whose effectiveness has not been established. The MSDEP refuses to identify the information - or even the type of information - on which it relied for confirmation that the treatment process works before issuing the certificate of authorization.

The Secretariat must intervene and ask Canada for a response to this submission. Specifically, Canada must respond to the expert report stating that chemical oxidation does not work to treat PCBs in contaminated soils. This is about the rule of law and a government that refuses to respond to evidence that the law is being broken.

2. Section 24 of the *Environment Quality Act*

We append to the submission a copy of the EQA (**Appendix A**). Section 24 of the EQA provides the following:

24. The Minister shall, before giving his approval to an application made under Section 22, ascertain that the emission, deposit, issuance or discharge of contaminants into the environment will be in accordance with the Act and regulations. He may, for that purpose, require any alteration in the plan or project submitted.

A certificate of authorization issued under Section 22 is non-transferable, except where the Minister authorizes the transfer on such conditions as he shall determine.

The Superior Court has rendered a decision interpreting s. 24 of the EQA.¹ It reads in part **[what follows is an office translation]**:

[117] Sections 20, 22 and 24 of the *Environment Quality Act*, already cited, are compulsory. In those sections the legislator sets out, among other things, which documents and information *must* be included in an application for a certificate of authorization (s. 22). Basically, the legislator requires the minister to be satisfied that the project complies with the Act and regulations, especially as regards the release of contaminants into the environment and possible impacts on health, safety or well-being or comfort of human beings or the quality of the environment (ss. 20 and 24).

[...]

[121] The courts have confirmed the Minister's obligations as regards processing an application for a certificate of authorization.

[122] The honourable judge Dufresne, now of the Court of Appeal, states as follows [74]:²

“[133] Even if the Minister enjoys discretion as regards the issuance of a certificate of authorization under the Act, the application for an authorization to receive and store, in a storage facility, animal waste sent by a farmer is subject to the production of certain items of information and supporting documents to inform the Minister's decision.” [underlining added by the Court in the *Town of Chertsey* decision]

[123] The honourable judge Godbout forges further ahead in seeking to determine the intent of the legislator as regards the framework within which the minister must exercise his discretion [75]:³

[110] One is aware of the breadth of the exercise of this discretionary power pursuant to which the Minister must, in accordance with s. 24 of the Act, ensure that the project for which a certificate of authorization is requested complies with the law and the regulations and that, in the absence of such legislation, that it not be “likely to adversely affect the life, health, safety, wellbeing or comfort of human beings, to cause damage to or otherwise impair the quality of the soil, vegetation, fauna or property.”

[111] The first part, that is, the “*regulatory prohibition*” found in the second paragraph of s. 20 and the Minister's “*compliance*

¹ *Chertsey (Town of) v. Québec (Minister of the Environment)*, 2008 QCCS 1361 (CanLII) – 2008-04-02, parag. 114 *et seq.*

² *Chagnon v. Ferme Blanchette et Fils inc.*, J.E. 2003-2034 (C.S.), par. 133.

³ *Dunsmuir v. New Brunswick*, [2008] S.C.C. 9, paras. 110 – 114.

check” provided for in s. 24, are obviously connected and rest upon legislated standards. The second part is more nuanced since the absence of legislated or regulatory standards by necessity calls for the exercise of much larger discretion by the Minister.

[112] Furthermore, the use by the legislator of the verb “to ensure” in s. 24 of the Act points to the framework within which the Minister must exercise this discretion.

[113] Dictionaries define the verb to ensure as follows:

- (Petit Robert) Become certain (of, that);
- (Le Petit Larousse 2001) To look for confirmation of something;
- (Multi dictionnaire de la langue française) To verify; have certainty.

[114] Thus the Minister must have a fairly high level of certainty that the project under study “complies with the law and regulations” or that, in the absence of such legislation, that it is not “likely to adversely affect the life, health, safety, wellbeing or comfort of human beings, to cause damage to or otherwise impair the quality of the soil, vegetation, fauna or property.””
[underlining added by the Court in the Town of Chertsey decision]

[124] The authors Daigneault and Paquin [76]⁴ suggest that judicial review by the Superior Court bears not on the exercise of the minister’s administrative discretion, but on “[...] the step prior to the exercise of discretion, consisting of gathering, analyzing and checking the data submitted by an applicant for a certificate of authorization [...].”

[125] The court agrees with this statement.

[126] It could be risky for the minister to issue a certificate of authorization without having first ensured that the analysis and verification steps carried out by the project managers or regional directors of his ministry have not [*sic*] been adequately completed.

Pursuant to s. 31 of the EQA:

The Government may make regulations to :
[...]

⁴ Robert DAIGNEAULT and Martin PAQUET [*sic*], *L’environnement au Québec*, Looseleaf Service, CCH Publications Ltd., pp. 9, 101-112.

(f) determine the terms and conditions whereunder an application for a certificate of authorization of plans and specifications or projects must be made to the Minister under Sections 22 and 24, classify for that purpose the structures and industrial processes, industries, works, activities and projects and, as the case may be, withdraw certain classes of them from all or part of this Act.

The *Regulation respecting the application of the Environment Quality Act*⁵ identifies the information that must be included in an application for a certificate of authorization and the MSDEP website contains a form that applicants must fill out.⁶

Given that the obligation here lies upon the Minister, the EQA does not contain sanctions for non-compliance with the first paragraph of s. 24. However, it does provide the following:

122.1. The Government or the Minister may amend or cancel any authorization certificate issued by it or him or issued in its or his name in the cases where

- (a) the authorization certificate has been issued on the basis of erroneous or fraudulent information;
- (b) the holder of the authorization certificate does not comply with the provisions contained in it or uses it for purposes other than those provided for under this Act;
- (c) the holder of the authorization certificate does not comply with this Act or a regulation thereunder;
- (c.1) the holder of the certificate fails to pay the fees prescribed by an order made under Section 31.0.1 ; or
- (d) the holder of the authorization certificate does not avail himself of it within a period of one year from its issue.

[...]

Therefore, should an MSDEP employee inadvertently issue a certificate of authorization on an improper basis, the Minister and the Government have the ability to revoke or amend the certificate of authorization.

Under s. 24 of the EQA, the Minister must, before approving an application made under s. 22, ensure that the emission, deposit, release or discharge of contaminants into the environment will comply with the Act and regulations. In the case before us, he needed to ensure, in advance, that the PCB-contaminated soil treatment process he was being asked

⁵ c. Q-2, r. 1.001.

⁶ Online : MSDEP <http://www.mddep.gouv.qc.ca/Industriel/demande/index.htm> (date accessed: 26 November 2010).

to approve works. In order to be effective, this process must be able to reduce concentrations of PCBs in the soils to the maximum concentration allowed by regulation. Given that under the circumstances, the purpose of the treatment is to allow the soils to be buried in the landfill cells owned by the applicant, the process must bring the soils into compliance with standards set forth by the Minister in the *Regulation respecting the burial of contaminated soils*, that is:

1. This Regulation determines the conditions or prohibitions applicable to the layout, extension and operation of sites used in whole or in part for the burial of contaminated soils as well as the conditions applicable to their closure and their post-closure follow-up.

[...]

3. Storage of contaminated soils with a view to their final disposal is allowed only on the land of origin, in connection with rehabilitation work, or in a burial site authorized under the Act.

4. The following may not be disposed of in contaminated soil burial sites:

[...]

- (2) soils having more than 50 mg of PCB per kg of soil.

We attach a copy of the *Regulation respecting the burial of contaminated soils* (**Appendix B**). To date, BEI has not succeeded in obtaining information confirming compliance with s. 24 of the EQA in connection with authorization of the soil treatment process mentioned above.

3. The Certificate of Authorization

Pursuant to s. 22 of the EQA:

22. No one may erect or alter a structure, undertake to operate an industry, carry on an activity or use an industrial process or increase the production of any goods or services if it seems likely that this will result in an emission, deposit, issuance or discharge of contaminants into the environment or a change in the quality of the environment, unless he first obtains from the Minister a certificate of authorization.

[...]

Application.

The application for authorization must include the plans and specifications of the structure or project to use the industrial process, operate the industry or increase production and must contain a description of the apparatus or activity contemplated, indicate its precise location and include a **detailed evaluation** in accordance with the regulations of the Government of the quantity or concentration of contaminants expected to be emitted, deposited, issued or discharged into the environment through the proposed activity [emphasis added].

The Minister may also require from the applicant any supplementary information, research or assessment statement he may consider necessary to understand the impact the project will have on the environment and to decide on its acceptability, unless the project has already been the subject of a certificate of authorization issued under Sections 31.5, 31.6, 134 or 189, of an authorization issued under Section 167 or 203 or of a certificate of exemption from the assessment and review procedure issued under Section 154 or 189.

On September 29, 2009, the Minister issued a certificate of authorization (the “**certificate of authorization**”) allowing the operator of a contaminated soil burial site to use a chemical process to reduce concentrations of PCBs in the soils to the legal level before burying them. A copy of the certificate of authorization is attached (**Appendix C**).

To date, BEI has not succeeded in obtaining evidence that the process authorized under the certificate of authorization was made subject to a detailed evaluation by the MSDEP to confirm that the process can in fact reduce concentrations of PCBs in contaminated soils to the level that makes it legal to bury the soil.

4. The Access to Information Request

BEI filed an access to information request with the MSDEP in order to obtain information that would allow for an understanding of how the MSDEP fulfilled its obligations under s. 24 of the EQA before issuing the certificate of authorization (**Appendix D**). In response, the MSDEP sent BEI a banker’s box full of documents, but no information indicating compliance with s. 24 of the EQA (**Appendix E**).

5. The CRA Report

BEI employees were surprised to learn that the MSDEP had authorized a business to use chemical oxidation to treat PCB-contaminated soils because they had often heard that this process doesn’t work. BEI decided to ask for an expert opinion.

On behalf of BEI, Weirfoulds LLP retained Conestoga-Rovers & Associates (**CRA**) to look into the matter (see the report, **Appendix F**).⁷ CRA’s report is summarized below.

⁷ Report, p. 6.

BEI asked CRA to provide an expert opinion regarding the appropriateness and effectiveness of the treatment of polychlorinated biphenyl (PCB)-contaminated soil using chemical oxidation. The focus of the opinion was on treatment and/or destruction of contaminated soil containing greater than 50 parts per million (ppm) PCBs (the regulatory threshold in Canada). "Treatment" refers to the partial removal of PCBs to reduce their concentration to less than 50 ppm. "Destruction" refers to the elimination of PCBs to a significant degree (normally greater than 99.999%).

CRA completed a scientific literature search, a permits and licensing review (including regulatory research), and a search of treatment and/or destruction facilities in order to answer nine questions.

Information Obtained by CRA

i) Literature Search

CRA consulted journal articles relating to chemical oxidation treatment and/or destruction of PCBs in soil using a comprehensive academic search engine. Of the 244 documents found, the seven scientific papers that were examined in detail described the treatment of PCB-contaminated soils using chemical oxidation. These studies used quantities that were easily handled in a laboratory; they tested the following chemical oxidants: Fenton's Reagent, ozone and catalyzed sodium persulfate.

The literature review showed that PCB treatment in contaminated soil using chemical oxidation has been demonstrated in laboratory settings but that scale-up considerations have not been studied. Therefore, the application of this technology on a commercial or industrial scale cannot be verified by the scientific literature.

CRA concludes, based on its review of the literature, that effective chemical oxidation treatment and/or destruction on an industrial scale is dependent on several factors including: the extent of the contact between the PCB and the oxidant, the grain size and organic content of the soil matrix, the presence of co-contaminants, the reaction time and number of treatment cycles, and the design of the treatment and/or destruction facility. The report provides a discussion of each of these factors.

ii) Permit and Licensing Review

CRA completed a government regulatory search for Canada, the U.S. and the United Kingdom to determine if chemical oxidation has been recognized and permitted as a method for treatment and/or destruction of PCB-contaminated soil through government approvals and permits. CRA searched several governmental websites for any relevant policies, regulations, and documents from these jurisdictions.

CRA did not find evidence of approvals having been issued for the treatment and/or destruction of PCBs in soils by chemical oxidation in Canada, the U.S. or the U.K.

iii) Facility Review

CRA carried out a search to identify facilities that use chemical oxidation as a method for the treatment and/or destruction of PCB-contaminated soil on an industrial or commercial scale in Canada, the U.S. and Europe. To do this it searched online resources, contacted various councils, government offices, companies, hazardous-waste management contractors, chemical manufacturers/distributors and approximately 600 internal project managers.

Horizon Environment Inc., located in Quebec, is the only facility in the U.S., Canada and Europe that purports to treat PCB-contaminated soil at concentrations greater than 50 ppm using ex-situ, non-thermal, chemical oxidation. Of the U.S. Environmental Protection Agency's list of Commercially Permitted PCB Disposal Companies (those with a permit to treat/destroy or dispose of PCB-contaminated soil), no facility was identified that treats and/or destroys PCB-contaminated soil with concentrations greater than 50 ppm using chemical oxidation. In Europe, thermal destruction is the standard method for treatment and/or destruction of PCB-contaminated soil.

Conclusions Regarding the Effectiveness of Chemical Oxidation

The following summarizes the answers CRA provided to the nine questions asked by BEI with respect to the appropriateness and effectiveness of using chemical oxidation to treat PCB-contaminated soil:

- Chemical oxidation is not a recognized and accepted method for destruction or treatment on a commercial or industrial scale.
- Chemical oxidation has not been used on an industrial or commercial scale in North America or Europe to destroy or treat PCB-contaminated soil.
- Chemical oxidation has not been recognized or formally approved by environmental regulators in North America or Europe as an acceptable treatment methodology for the destruction or treatment of PCBs in soil.
- CRA concluded that chemical oxidation would not be a recognized or accepted method for destruction or treatment of PCB-contaminated soil even if specific measures were implemented (for example: would the situation be different if treatment were to take place in a closed building equipped with filters, or if the soil were stored in certain ways, for extended periods of time, etc.).
- CRA affirmed that the storage of PCB-contaminated soil plays no role in the effectiveness of chemical oxidation as a method for destruction or treatment of PCB-contaminated soil.

CRA therefore believes that the process is unreasonable, impractical and not economically feasible due to practical requirements for industrial-scale implementation and the effect of all the variables on the efficacy of the process.

6. Communication with the MSDEP

Despite BEI's repeated requests, the Minister and his staff have not explained how the requirements of s. 24 of the EQA are met, in this case (**Appendix G**). BEI has engaged in months of exchanges, beginning with the MSDEP regional office in the Saguenay. When no response to the CRA report was forthcoming, BEI turned to the Assistant Deputy Minister responsible for the regions and environmental law enforcement and copied the letter to deputy ministers at Environment Canada and Public Works and Government Services Canada. BEI paid to have the CRA report translated into French. Still, the Ministry failed to respond to the substantive issue raised by the CRA report. BEI turned to the MSDEP Deputy Minister's office. Instead of responding to the CRA report, the Deputy Minister referred the matter back to the Mauricie regional office, which had nothing to say except that soils would be tested after treatment to check for PCB concentration. BEI finally appealed to the Minister himself for an answer. The Minister's office did not even acknowledge receipt of the CRA report and BEI's letter.

As appears from the exchanges with Ministry staff, they are satisfied with the explanation that post-treatment, soils will be sampled to check for compliance with the *Regulation respecting the burial of contaminated soils*. That does not answer the question. The question is not what happens post-treatment. The certificate of authorization was issued for a treatment process, not a sampling process. It is the treatment process which must meet the test of EQA s. 24.

The real question is the following: what did the Minister do to meet his obligation under s. 24 of the EQA *before* authorizing the chemical oxidation process for which the applicant requested an authorization?

The question remains unanswered.

7. Satisfaction of the Requirements Set Forth in the NAAEC

The 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:

- a. Is written in a language designated by that Party in a notification to the Secretariat
The submission is written in French, a language designated by Canada.

- b. Clearly identifies the person or organization making the submission

The submission is made by BEI, 1540 Cornwall Road, Suite 208, Oakville, ON, L6J 7W5, tel: 1-800-386-1388, www.bennettenv.com; it is signed by Jack Shaw, the President.

- c. Provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based

The submission explains the law and the facts and it identifies open questions regarding whether Canada is failing to effectively enforce s. 24 of the EQA in connection with the certificate of authorization.

Appendices to the submission contain copies of the EQA, the *Regulation respecting the burial of contaminated soil*, the access to information request and the answer received from the MSDEP, the CRA Report, and copies of e-mail and letter exchanges with government authorities.

- d. Appears to be aimed at promoting enforcement rather than at harassing industry

BEI asks Canada to honour its obligation under s. 5(1) of the NAAEC, that is to say enforce s. 24 of the EQA. The purpose of s. 24 is the protection of human health, the environment, and property. A failure to enforce an environmental law is an omission attributable to the government. It is the government's job to maintain a level playing field for industry by consistently and effectively enforcing the laws that serve to protect the health and wellbeing of the population and the quality of the environment. It is the government's job to respond to the CRA report.

- e. Indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any

Communications with the Party and responses received are provided in an appendix.

- f. Is filed by a person or organization residing or established in the territory of a Party

The head office of BEI is located in Oakville, in the Canadian province of Ontario.

Where the Secretariat determines that a submission meets this criteria, the Secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the Secretariat shall be guided by whether:

1. The submission alleges harm to the person or organization making the submission

BEI is an environmental services provider. By definition, environmental services exist in order to make it possible for buyers of those services to comply with environmental laws. PCB treatment and destruction are difficult and expensive. Buyers of PCB treatment and destruction services and BEI proceed on the basis that the law will be enforced. Here, the government has flouted the law by refusing to respond to the CRA report.

2. The submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of NAAEC

The submission raises matters whose further study in this process would advance the goals of NAAEC (Article 1):

- (a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;

The safe and legal management of hazardous waste is a crucial matter in North America and a fundamental objective of the NAAEC.

[...]

- (e) avoid creating trade distortions or new trade barriers;

Companies in the environmental services industry must play on a level playing field, including by using processes the feasibility of which has been verified and is verifiable, or trade and the environment will suffer.

[...]

- (g) enhance compliance with, and enforcement of, environmental laws and regulations;

Law enforcement is not just applying penalties after the fact. It also means fulfilling the requirements set by legislator prior to issuing an authorization.⁸

[...]

- (j) promote pollution prevention policies and practices.

Section 24 of the EQA is aimed at pollution prevention. Its enforcement (with everything that that entails) is the means for putting pollution prevention into practice.

3. Private remedies available under the Party's law have been pursued

BEI filed an access to information request with the MSDEP in order to find out how the Minister evaluated the feasibility of the chemical oxidation process put forward by Horizon. The response (attached hereto) does not provide any information on this subject.

4. The submission is drawn exclusively from mass media reports

The facts alleged in the submission are not drawn exclusively from mass media reports. In the absence of a response from the MSDEP, BEI relies on the CRA report to call into question the enforcement of s. 24 of the EQA in the case of the issuance of the certificate of authorization.

⁸ See SEM 98-003 (Great Lakes), Decision pursuant to Article 14(1) & (2) (8 September 1999), p. 7, footnote 16.

8. Relief Sought

In the famous story *The Little Prince*, by Antoine de Saint-Exupéry, the boy asks the author to draw a lamb. Exasperated, the man draws a box with three air holes. He hands the drawing to the child. "Where is my lamb?" asks the child. "In the box," answers Saint-Exupéry.

In this file, the MSDEP refuses to respond to the CRA report. The MSDEP is happy to tell us that what is going on "inside the box," that is to say, at the treatment center covered by the certificate of authorization, complies with the law in all respects. The problem is, that is not the answer.

Section 24 of the EQA creates an obligation that must be met *before* the issuance of a certificate of authorization, that is to say *before* the treatment center operator starts using the new process. The sought-after information is not to be found at the treatment center, but rather in the MSDEP's files.

BEI therefore finds itself in a somewhat distressing situation. On one hand, a CRA report says that chemical oxidation is not recognized in scientific journals as being feasible, at a commercial scale, and that except for the MSDEP, no other government authority has issued an authorization for the use of this process to treat PCB-contaminated soil at a commercial scale. On the other hand there is the MSDEP, which refuses to explain itself.

In light of the foregoing, it behooves the Secretariat of the Commission for Environmental Cooperation to ask Canada to respond to this submission and, failing receipt of an answer to the question "How was s. 24 of the EQA complied with before the certificate of authorization was issued?", recommend to the Council preparation of a factual record.