Secretariat of the Commission for Environmental Cooperation

Secretariat Determination under Article 24.27(2) and (3) of the *Canada–United States–Mexico Agreement*

Submitter:	William Guindon
Party:	Canada
Date of Original Submission:	4 May 2026
Date of Revised Submission:	16 July 2026
Date of Determination:	17 August 2026
Submission No.:	**SEM-26-003 (*Hazardous Waste Disposal in Blainville*)**

INTRODUCTION

1. The *Canada–United States–Mexico Agreement* (CUSMA) and the *Environmental Cooperation Agreement* (ECA) entered into force on 1 July 2020. Since then, the Submissions on Enforcement Matters (SEM) process, initially provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC), has been governed by CUSMA Articles 24.27 and 24.28. The Secretariat of the Commission for Environmental Cooperation (CEC)[1] remains responsible for implementing the SEM process, as provided by the ECA.[2]

2. The SEM process allows any person of a Party — that is, any national or any entity constituted under the laws of a Party — to file a submission asserting that a Party is failing to effectively enforce its environmental laws. The CEC Secretariat (hereinafter "the Secretariat") conducts an initial review of the submission in accordance with the criteria set out in CUSMA Article 24.27(1) and (2). If it finds that the submission meets those criteria, the Secretariat then determines, under Article 24.27(3), whether to request a response from the Party concerned. In light of the Party's response, the Secretariat decides whether the matter under review warrants the development of a Factual Record and, if so, informs the CEC Council and the Environment Committee,[3] setting out

[1] The CEC was established in 1994 under the *North American Agreement on Environmental Cooperation* (NAAEC), concluded by Canada, Mexico and the United States (the "Parties"). The constitutive bodies of the CEC are the Council, the Secretariat and the Joint Public Advisory Committee (JPAC).

[2] The Secretariat acknowledges the principle that, although the provisions governing the SEM process are set out in Chapter 24 of the CUSMA, certain related procedures have been established under the ECA, namely: the role of the Secretariat in implementing the submissions process, the role of the Council in the exchange of information with the Environment Committee, the development and public release of Factual Records, and the cooperative activities of the Council. The Secretariat is aware of Article 2(3) of the ECA, which provides, inter alia, that "[t]he Commission will continue to operate under the modalities in place as of entry into force of this Agreement, including its rules, policies, guidelines, procedures, and resolutions, to the extent these modalities are consistent with this Agreement."

[3] The Environment Committee is established under CUSMA Article 24.26(2) and is tasked with "overseeing the implementation" of Chapter 24 of that Agreement.

the reasons for its recommendation, in accordance with Article 24.28(1). Otherwise, the Secretariat terminates the review of the submission.[4]

3. On 4 May 2026, the CEC Secretariat received a submission from William Guindon, a Canadian teenager (the "Submitter"),[5] pursuant to CUSMA Article 24.27(1) (the "original submission").[6] In the original submission, the Submitter asserts that Canada is failing to effectively enforce its environmental laws in connection with a hazardous-materials landfill project and, more specifically, in connection with cell 6 of the landfill project carried out by the company Stablex in the Great Bog of Blainville area.[7]

4. On 3 June 2026, the Secretariat determined that submission SEM-26-003 (*Hazardous Waste Disposal in Blainville*) did not meet certain eligibility criteria of Article 24.27(2) and (3) and so informed the Submitter. Specifically, the Secretariat determined that the Submission did not meet the criteria set out in subparagraphs (c) and (e) of Article 24.27(2) and the criterion set out in subparagraph (c) of Article 24.27(3) of the CUSMA. The Secretariat observed that the original submission did not contain sufficient information to allow for the review of the Submission and that it did not indicate whether the matter raised had previously been communicated in writing to the relevant authorities. The Secretariat also noted that the Submission made no mention of the pursuit of a remedy provided under the Party's domestic law or of the impossibility of pursuing such a remedy.

5. In its determination of 3 June 2026, the Secretariat informed the Submitter that additional information relating to the eligibility criteria mentioned in the preceding paragraphs would be necessary in order to continue the eligibility review under the SEM process.

6. On 16 July 2026, the Secretariat received a revised submission containing additional information from the Submitter.[8] Following the filing of the revised submission, the Submitter continued to share additional information with the Secretariat. In the interest of predictability and adherence to the time frames imposed by the CUSMA, any correspondence received after 16 July 2026 and containing new information has not been taken into account in this determination.

7. After reviewing the revised submission, the Secretariat determines that it meets the criteria set out in subparagraphs (c) and (e) of Article 24.27(2) and the criterion set out in subparagraph (c) of Article 24.27(3) of the CUSMA.

8. The Secretariat also determines that the Submission warrants a response from the Party concerned under CUSMA Article 24.27(3), for the reasons set out below. In accordance with Article 24.27(4), the Party may provide a response to the Submission within 60 days of receipt of this

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[4] Detailed information on the various stages of the SEM process, the public registry of submissions, and the Secretariat's determinations and Factual Records is available on the "Submissions on Enforcement Matters" page of the CEC website, at <https://www.cec.org/submissions/>. Certain CEC documents are available only in Spanish and/or English.

[5] Following verification by the Secretariat, the Submitter consented to the public disclosure of his identity.

[6] SEM-26-003 (*Hazardous Waste Disposal in Blainville*), Submission under CUSMA Article 24.27(1) (4 May 2026), at: <https://bit.ly/4dLceHU> [Submission].

[7] Id. Statement of facts, at 1.

[8] SEM-26-003 (*Hazardous Waste Disposal in Blainville*), Revised submission under CUSMA Article 24.27(1), (16 July 2026), at: <https://bit.ly/4wThukY> [Revised Submission].

determination, that is, by **16 October 2026.**[9] The Secretariat supplements as follows the reasoning presented in its determination of 3 June 2026.

I. ANALYSIS

9. The Secretariat is authorized to review any submission asserting that a Party to the CUSMA is failing to effectively enforce its environmental laws. The Secretariat reiterates that the criteria set out in CUSMA Article 24.27(1), (2) and (3) are not intended to be an insurmountable procedural screening device for the submitter[10] and must therefore be interpreted broadly, in accordance with the objectives of Chapter 24 of the CUSMA.[11] It is in this spirit that the Secretariat has reviewed the Submission. The Secretariat also considers it useful to clarify at this stage that the threshold to be met in determining the eligibility of a submission is not that of the existence of a serious question, as the Submitter asserts on various occasions in the documentation presented.[12] The Secretariat must instead assess each criterion of Article 24.27(1), (2) and (3) individually and be guided by practice, the guidelines,[13] and the wording of the provisions. A submission must satisfy all of the criteria listed in paragraphs (1), (2) and (3) of Article 24.27 in order to be eligible and to give rise to a response from the Party concerned.[14]

10. In its determination dated 3 June 2026, the Secretariat found that the original submission met the requirements of subparagraphs (a), (b) and (d) of CUSMA Article 24.27(2). In addition, the Secretariat determined that the original submission met the criteria set out in subparagraphs (a), (b) and (d) of Article 24.27(3), but informed the Submitter that certain additional information would be necessary in order to continue processing the Submission, and that this information

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[9] For clarity purposes, please note that the following principles have been applied to calculate the CUSMA deadlines applicable to the SEM process:
1. Deadlines are counted in calendar days.
2. The deadline begins on a business day and that day is not counted, whereas the day on which the deadline ends is counted.
3. If the last day of a deadline falls on a Saturday, a Sunday or a holiday, the deadline is extended to the next Monday or next business day.
4. If a document is received on a day that is not a business day, its receipt is moved to the next business day.
5. Holidays correspond to those observed at the location of the CEC Secretariat. Where applicable, adjustments are made in accordance with the holidays specific to each Party.

[10] SEM-20-001 (*Loggerhead Turtle*), Determination under CUSMA Articles 24.27(2) and (3) (8 February 2021), § 8, at: <https://bit.ly/4uZDqcy>; SEM-21-001 (*Fairview Terminal*), Determination under CUSMA Articles 24.27(2) and (3) (9 March 2021), § 6, at: <https://bit.ly/4qjCmzo>; SEM-21-002 *(Vaquita Porpoise*), Determination under CUSMA Articles 24.27(2) and (3) (8 September 2021), § 8, at: <https://bit.ly/4fZsKq3>.

[11] *Canada–United States–Mexico Agreement* (2020), c. 24, at Article 24.2, at: <https://bit.ly/48OQUiX> and <https://bit.ly/3PhQBXl> [CUSMA].

[12] *See, for example* Revised Submission, at 2, "the applicable threshold is not the demonstration of a contravention, but the existence of a serious question warranting a response from the Party concerned".

[13] Agreement on Environmental Cooperation (2020), Art. 2(3), at: <https://bit.ly/45osJps> "[t]he Commission will continue to operate under the modalities in place as of entry into force of this Agreement, including its rules, policies, guidelines, procedures and resolutions, to the extent these modalities are consistent with this Agreement."

[14] Commission for Environmental Cooperation, *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, 1 February 2013, at 7, guideline 7.2, at: <https://bit.ly/4qlFCu3> [Guidelines]; the Secretariat must explain "how the submission meets or fails to meet *each* of those criteria" [emphasis added].

could be provided by way of a revised submission in order to satisfy the criteria set out in subparagraphs (c) and (e) of Article 24.27(2), as well as the criterion set out in subparagraph (c) of Article 24.27(3). Given that the Secretariat's analysis of the criteria already satisfied appears in its first determination dated 3 June 2026, only the additional information provided in the revised submission is examined in this determination.

11. As a preliminary matter, and in light of the wording of the revised submission and the findings sought, the Secretariat wishes to recall that its analysis at the stage of a determination based on CUSMA Article 24.27 is limited to identifying the provisions that constitute environmental laws within the meaning of the CUSMA and to assessing the eligibility criteria established by the treaty with a view to requesting a response from the Party concerned. In the present case, the Submitter provides interpretive and complementary normative frameworks that he invites the Secretariat to take into account in its analysis,[15] develops complex and cross-cutting legal reasoning to elaborate the content of the Party's alleged obligations,[16] provides counter-arguments to anticipated defences and reasoning,[17] and asks the Secretariat to rule on specific points regarding Canada's action and to characterize that action in light of the laws invoked.[18]

12. In this regard, it is not for the Secretariat to confirm, to refute, or to offer an interpretation other than the one presented by the Submitter with respect to the failures invoked. Nor is it for the Secretariat to develop an exhaustive interpretation of the Canadian normative framework as a court of competent jurisdiction would, or to issue declaratory findings on the action or inaction of a Party. The Secretariat is not a court or a tribunal, nor can it render binding decisions or decisions accompanied by any order against the Party concerned.[19] The Secretariat does not have a mandate to rule on the enforcement of environmental laws by the Parties to the CUSMA. The record[20] shows instead that the Council of the Commission designed the SEM process as a transparency and public participation mechanism subject to the oversight of the constitutive

[15] Revised Submission, at 3.

[16] Id. at 4. By way of example, the Submitter interprets the *Species at Risk Act* by reference to the *United Nations Declaration on the Rights of Indigenous Peoples Act* and to North American guiding principles on the integration of traditional ecological knowledge adopted by the Commission.

[17] Id. at 4–5. The Submitter characterizes part of his argument as the "articulation of constitutional jurisdictions and pre-emptive refutation of anticipated defences on the division of powers" [translation]. *See also* Revised Submission, *annex l'appui, document l'appui, point* 2.6, at 12.

[18] Id. at 6. The Submitter writes: "Question to the Secretariat: Did Canada inspect the site, verify the existence of a permit or an exception […] or render a reasoned decision?" [translation]. The Submitter indicates in a supporting document that he does not seek final conclusions and acknowledges the "limited procedural purpose" [translation] of the submission, without asking the Secretariat to rule on the Party's liability (*See* Revised Submission, *annex l'appui*, *document l'appui*, p. 5). However, certain requests by the Submitter do appear to seek definitive conclusions as to the Party's failures.

[19] *See* SEM-07-001 (*Minera San Xavier*), Determination under NAAEC Article 15(1) (15 July 2009), § 44, at: <https://bit.ly/4wRlO3Z>.

[20] *See* SEM-25-001 (*Nazas River Lower Basin*), Determination under CUSMA Article 24.28(1) (10 April 2026), § 67, at: <https://bit.ly/4fR1Pg0> [Nazas River Lower Basin].

bodies of the Commission[21] and as a process facilitating the exchange of information on the effective enforcement of environmental laws.[22]

13. Furthermore, the SEM process "was established to provide the North American public with timely and relevant information concerning the enforcement of domestic environmental law".[23] That is why this process provides information on the Parties' obligations under the CUSMA,[24] without passing judgment on the alleged failures in the effective enforcement of the environmental laws in question. If the Submission results in the development of a Factual Record, that record is intended, among other things, to enable the public to draw its own conclusions as to the enforcement of environmental laws and regulations by one of the Parties.[25]

A. Environmental laws in question

14. In the revised Submission, the Submitter makes several corrections, additions and clarifications to the environmental laws invoked since the original submission. The legal instruments cited by the Submitter are listed below in Table 1:

Table 1. Legal instruments and provisions cited in the submission

Name	Acronym	Cited provisions
Migratory Birds Convention Act, 1994 (SC 1994, c 22)	MBCA	Sections 5 and 5.1(1)
Migratory Birds Regulations (SOR/2022-105)	MBR	Section 5(1)(a), (b) and (c)
Species at Risk Act (SC 2002, c 29)	SARA	Preamble (paragraph 13), Sections 10.1, 18.1, 32, 33, 34, 39(1)(c), 58, 73, 79 and 83
Fisheries Act (RSC 1985, c F-14)	FA	Sections 34.4, 35, 36(3), 36(4), 37 and 38
**Canadian Environmental Protection Act, 1999* (SC 1999, c 33)	CEPA	Sections 2(1)(a.2), 2(1)(a.3), 5.1(1), 64, 68, 71, 90, 91 and 93
**Impact Assessment Act* (SC 2019, c 28, s 1)	IAA	Section 2(i)(ii)(iii)
**Physical Activities Regulations* (SOR/2019-285)	PAR	Section 2 (Sections 56 and 57 of the schedule)
**United Nations Declaration on the Rights of Indigenous*	UNDA	Section 5

[21] Council Resolution 00-09 (13 June 2000), at: <https://bit.ly/4x0JGCB>; Council Resolution 12-06 (11 July 2012), at: <https://bit.ly/3SBNWcy> [Council Resolution 12-06].
[22] Council Resolution 12-06.
[23] Guidelines, at 3.
[24] *See* Guidelines, introduction, at 2–3. Although the Guidelines were in force under the NAAEC, they contain interpretive guidance that remains useful to the Secretariat in implementing the SEM process.
[25] *See* SEM-21-002 *(Vaquita Porpoise*), Factual Record under CUSMA Article 24.28 (18 August 2025), at xv, at: <https://bit.ly/4bPEsB5>.

Peoples Act (SC 2021, c 14)		
**Canada–United States–Mexico Agreement*	CUSMA	Article 24.4
** North American Guiding Principles on the Integration of Traditional Ecological Knowledge of the Commission for Environmental Cooperation* (2017)	TEK Principles	
** Constitution Act, 1982, being Schedule B to the Canada Act 1982* (UK 1982, c 11).	CA 1982	Section 35

15. The instruments preceded by an asterisk in the table above are invoked by the Submitter as a "complementary normative framework", as a "higher constitutional framework", or are cited in passing to inform the reading and interpretation of the environmental laws covered by the submission. They are therefore addressed briefly in order to rule on their status as environmental law within the meaning of the CUSMA, but the Secretariat does not request a response from the Party in relation to provisions of these normative instruments. In addition, the Submitter specifies "that all references to provincial orders, statutes […] or notices of non-compliance" issued by the Government of Québec are cited "exclusively as factual background and material evidence", the submission being directed "strictly and solely at the failure of [Canada] to enforce its own federal laws".[26] Given that, by the Submitter's own account, the provincial instruments are excluded from the environmental laws invoked, they are not addressed in this section.

a) ***Migratory Birds Convention Act, 1994***

16. **Section 5** of the **MBCA** provides that it is **(a)** prohibited to have in one's possession a migratory bird or its nest, or **(b)** to buy, sell, exchange or give a migratory bird or its nest, or to traffic in any such bird or nest. As stated in its first determination, the Secretariat considers that section 5 of the MBCA has the protection of the environment as its primary purpose, since it aims to protect migratory birds and their nests, thereby contributing to the conservation of wildlife. However, neither the original submission nor the revised submission addresses any issue related to the possession, sale or trade of migratory birds or their nests. The Secretariat maintains that this provision does not relate to the issues raised by the Submitter and excludes it from its analysis. In the revised submission, the Submitter states that the Secretariat's determination dated 3 June 2026 was "positive for section 5".[27] Although the provision qualified as an environmental law within the meaning of the CUSMA, it was set aside by the Secretariat for lack of connection with the Submitter's assertions.

17. Section **5.1(1)** of the **MBCA** prohibits the deposit and discharge of substances harmful to migratory birds in waters or areas frequented by migratory birds, as well as in any other place from which the substance may enter such waters or areas. The Secretariat determines that section

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[26] Revised Submission, section 2.2, at 2.
[27] Revised Submission, section 3, at 4.

5.1(1) of the MBCA constitutes an environmental law in accordance with CUSMA Article 24.1, in that its primary purpose is the protection of the environment, wildlife and its habitat through the control of harmful substances in areas frequented by birds. The Secretariat retains section 5.1(1) of the MBCA for analysis.

b) *Migratory Birds Regulations*

18. Section **5(1)** of the **MBR** provides that it is prohibited to capture, kill, take, injure or harass a migratory bird, or to attempt to do so (**paragraph (a)**), to destroy, take or disturb an egg (**paragraph (b)**), and to damage, destroy, remove or disturb a nest, nest shelter, eider duck shelter or duck box (**paragraph (c)**), unless the person holds a permit to that effect or is authorized to do so by other provisions of the MBR. The Secretariat considers that this provision has the protection of the environment as its primary purpose, since it aims to protect migratory birds, their eggs, nests and shelters, contributing to the conservation of wildlife. The Secretariat retains section 5(1) of the MBR for analysis.

c) *Species at Risk Act*

19. The **preamble (paragraph 13)** of the **SARA** recognizes that stewardship activities aimed at the conservation of wildlife species and their habitat should be supported in order to prevent species from becoming species at risk. This provision has the protection of the environment as its primary purpose, since it aims at the conservation of wildlife species and their habitats. However, it is invoked by the Submitter for interpretive purposes and does not have content sufficiently concrete to be applied directly, such that it will not be subject to a specific review.

20. Section **10.1** of the **SARA** sets out powers of the Minister of the Environment with respect to stewardship action plans in order to establish incentives and other measures intended to support activities carried out by any government in Canada or by any person or organization. This provision constitutes an environmental law in accordance with CUSMA Article 24.1, given that its primary purpose is the allocation of powers with respect to management measures related to the protection of habitats and species. However, this provision is not cited by the Submitter as a principal law and does not appear in the tables and lists containing the environmental laws covered by the submission. The Secretariat does not retain it for analysis, but takes it into account in its interpretation.

21. The Submitter cites section **18.1** of the **SARA**. This section does not exist in the Act and the Secretariat therefore cannot take it into account.

22. Sections **32** and **33** of the **SARA** were reviewed by the Secretariat in its first determination. Section 32(1) and section 33 were retained for analysis and their status as environmental law within the meaning of the CUSMA was confirmed. The Secretariat refers to these provisions here solely for the purpose of observing that the Submitter has amended and expanded the list of species invoked in connection with these sections.[28] Once again, the Secretariat does not comment on the potential inapplicability of certain SARA provisions to species of special concern. Its analysis is limited to the characterization of the provisions within the meaning of CUSMA Article 24.1 and to their apparent connection with the content of the submission.

[28] Revised Submission, section 4.1, at 4.

23. Section **34** of the **SARA** sets out the cases in which sections 32 and 33 of that same Act apply other than on federal land. This provision provides, among other things, that the limitation to federal land does not apply to aquatic species or to migratory bird species protected by the MBCA **(subsection (1))**. The provision also provides that the application of sections 32 and 33 may be extended by order **(subsections (2), (3)** and **(4))**. The Secretariat considers that this provision has the protection of the environment as its primary purpose, since it aims at the conservation of wildlife species at risk and their habitats. However, this provision is not invoked by the Submitter as a principal law and does not appear in the tables and lists containing the environmental laws covered by the submission. The Secretariat does not retain it for analysis, but takes it into account in its interpretation.

24. Section **39(1)(c)** of the **SARA** provides that, to the extent possible, the competent minister is to prepare a recovery strategy in cooperation with a wildlife management board where the species concerned is found in an area in respect of which that board is authorized to perform functions in respect of wildlife species. This provision constitutes an environmental law in accordance with CUSMA Article 24.1, given that its primary purpose is the protection of the environment through the establishment of arrangements for the management and recovery of wildlife species. However, this provision is not invoked by the Submitter as a principal law and does not appear in the tables and lists containing the environmental laws covered by the submission. The Secretariat does not retain it for analysis, but takes it into account in its interpretation.

25. Section **58** of the **SARA** provides that it is prohibited to destroy any part of the critical habitat of a wildlife species listed as an endangered, threatened or extirpated species if the critical habitat is on federal land or if the species is an aquatic species or a bird species protected by the MBCA (**subsection (1)**). This provision also specifies the obligations of the competent minister with respect to the time frames and arrangements for the publication and description of the critical habitat of a species (**subsection (2)**), the time frame for and scope of application of the first subsection (**subsections (3) and (4)**), and provides that the competent minister is required to make an order or issue a statement where the critical habitat of a species, or a portion of it, is not legally protected (**subsection (5)**). **Subsection (5.1)** of this provision applies specifically to the critical habitat of migratory bird species protected by the MBCA located, among other places, outside federal land or a migratory bird sanctuary, and circumscribes the application of the first subsection of that same provision. **Subsection (5.2)** sets out the obligation of the competent minister to issue a recommendation or a statement concerning the legal protection of a species whose critical habitat falls within the scope of the MBCA. The section also provides for specific consultation arrangements where an order applies to lands not under the authority of the Minister of the Environment or the Parks Canada Agency (**subsection (6)**), to lands situated on a First Nation reserve (**subsection (7)**), or to areas in respect of which a wildlife management board is authorized to perform functions in respect of wildlife species (**subsection (8)**). The Secretariat determines that section 58 of the SARA constitutes an environmental law in accordance with CUSMA Article 24.1, in that its primary purpose is the protection of the environment through the protection of the critical habitat of species at risk. The Secretariat retains this provision for analysis.

26. Section **73** of the **SARA** provides that the competent minister may enter into agreements or issue permits to individuals authorizing them to engage in activities affecting a wildlife species listed under the Act, its habitat or the residences of its individuals (**subsection (1)**). **Subsection (2)**

specifies that, in order to benefit from an agreement or a permit, the activity must be scientific research relating to the conservation of the species, the activity must benefit the species and enhance its chances of survival, or must affect the species only incidentally (**subsection (2)**). **Subsection (3)** provides that an agreement or permit under this provision is to be issued only where all other options have been considered, all measures to minimize the adverse effects on the species will be taken, and the activity will not jeopardize the survival or recovery of the species. **Subsection (3.1)** provides that the minister's decision to issue a permit or enter into an agreement must include reasons and be recorded in the registry. The section sets out the obligation to consult where the species covered by an agreement or a permit is found in areas in respect of which a wildlife management board is authorized to perform functions in respect of wildlife species (**subsection (4)**) or on lands situated on a First Nation reserve (**subsection (5)**). This provision also allows the minister to attach conditions to an agreement or permit (**subsection (6)**), provides that the expiry date must appear in it (**subsection (6.1)**), requires the minister to review the agreement or permit where an emergency order is made (**subsection (7)**), recognizes the minister's power to revoke or amend the agreement or permit (**subsection (8)**) and to make regulations governing agreements and permits (**subsections (10)** and **(11)**). The Secretariat considers that section 73 of the SARA constitutes an environmental law in accordance with CUSMA Article 24.1, in that its primary purpose is the protection of the environment through the regulation of activities liable to have an impact on a species at risk and its critical habitat. The Secretariat retains this provision for analysis.

27. Section **79** of the **SARA** provides that every person who is required to ensure that an assessment of the environmental effects of a project is conducted under a federal Act, as well as every authority that makes a determination under paragraphs 82 (a) and (b) of the IAA, must notify the competent minister where the project is likely to affect a listed wildlife species or its critical habitat (**subsection (1)**). If the project is carried out, the person must ensure that measures consistent with any recovery strategy or action plan are put in place (**subsection (2)**). Finally, the section refers to certain definitions contained in the IAA, in particular to define the terms "project" and "designated project" (**subsection (3)**). The Secretariat considers that section 79 of the SARA constitutes an environmental law in accordance with CUSMA Article 24.1, in that its primary purpose is the protection of the environment through the regulation of activities liable to have an impact on a species at risk and its critical habitat. The Secretariat retains this provision for analysis.

28. Section **83** of the **SARA** provides for the non-application of certain sections, including sections 32 and 33 of the SARA, in the context of activities relating to public safety, public health or national security, or where authorization is granted under sections 73, 74 and 78 of the SARA or under another Act (**subsections (1)** and **(2)**). This provision also addresses specific exceptions and exemptions in connection with land claims agreements, authorized activities and the possession of specimens of species at risk in certain circumstances (**subsections (3), (4)** and **(5)**). This provision constitutes an environmental law in accordance with CUSMA Article 24.1, given that its primary purpose is the protection of the environment through the regulation of activities liable to have an impact on a species at risk and its critical habitat. However, this provision is not invoked by the Submitter as a principal law and does not appear in the tables and lists containing the environmental laws covered by the submission. The Secretariat does not retain this provision for analysis, but takes it into account in its interpretation.

d) *Fisheries Act*

29. Section **34.4** of the **FA** prohibits carrying on any work or undertaking or engaging in any activity that results in the death of fish, other than fishing (**subsection (1)**). It provides for exceptions to the general principle, in particular where the activity is in compliance with the regulations, authorized by the Minister, carried on by a prescribed person or entity or as part of a designated project, or authorized by law (**subsection (2)**). This provision allows conditions to be attached to authorizations (**subsection (3)**), empowers the Minister to make regulations (**subsection (4)**) and allows the Minister, or a prescribed person or entity, to amend, revoke or suspend authorizations (**subsections (5)** and **(6)**). The Secretariat considers that section 34.4 of the FA constitutes an environmental law in accordance with CUSMA Article 24.1, in that its primary purpose is the protection of the environment through the prohibition and regulation of activities that result in the death of fish. The Secretariat retains this provision for analysis.

30. Section **35** of the **FA** essentially reproduces the structure of section 34.4 of that same Act, this time to prohibit carrying on works, undertakings or activities that result in the harmful alteration, disruption or destruction of fish habitat and to provide for the exceptions. The Secretariat considers that section 35 of the FA constitutes an environmental law in accordance with CUSMA Article 24.1, in that its primary purpose is the protection of the environment through the prohibition and regulation of activities that adversely affect fish habitat. The Secretariat retains this provision for analysis.

31. Section **36** of the **FA** prohibits the deposit or discharge of a deleterious substance in waters frequented by fish or in any other place where the substance concerned may enter waters frequented by fish (**subsection (3)**). It provides for the cases in which it is permitted to deposit or discharge designated waste and pollutants or authorized deleterious substances in the quantities and under the conditions specified and in accordance with the arrangements prescribed by regulation (**subsection (4)**). The Secretariat determines that this provision constitutes an environmental law in accordance with CUSMA Article 24.1, in that its primary purpose is the protection of the environment, wildlife and its habitat through the control of the release of deleterious substances into the environment, as well as through the protection of human health. As stated in its first determination, the Secretariat retains section 36(3) of the FA for analysis and adds subsection (4) to it, newly cited in the revised submission.

32. Section **37** of the **FA** provides that the person carrying on an activity that results or is likely to result in the death of fish, the alteration of fish habitat, or the deposit or discharge of a deleterious substance must, in certain cases, provide the Minister with documents allowing the impact on fish and fish habitat to be assessed, and provide information on the releases that the activity will occasion (**subsection (1)**). After reviewing the documents, the Minister may require modifications to the activities, restrict them or require that they cease (**subsection (2)**). The section also provides that the Governor in Council may prescribe the cases in which the provision of documents is mandatory (**subsection (3)**), governs consultations with the provinces and other federal bodies (**subsections (4)** and **(5)**), and specifies the nature of ministerial orders made under this provision (**subsection (6)**). The Secretariat considers that section 37 of the FA constitutes an environmental law in accordance with CUSMA Article 24.1, in that its primary purpose is the protection of the environment through the regulation of activities and releases that threaten fish and fish habitat. The Secretariat retains this provision for analysis.

33. Section **38** of the **FA** empowers the Minister to designate inspectors for the enforcement of the FA (**subsection (1)**),[29] sets out the applicable arrangements (**subsection (2)**), states the powers of inspectors (**subsections (3)** and **(3.1)**), provides for the duty to report the death of fish or the imminent likelihood of such death, as well as the duty to report the destruction or disruption of fish habitat and the discharge of an unauthorized deleterious substance to the competent officers (**subsections (4), (4.1)** and **(5)**). The section also provides that a person must take the measures necessary to prevent the situations described above, or to mitigate them if they occur, and produce a report (**subsections (6)** and **(7)**). The provision also sets out the powers of inspectors with respect to corrective measures and access to places in order to carry out their functions (**subsections (7.1)** and **(8)**), the powers of the Governor in Council to make regulations (**subsection (9)**), and the obligation to provide assistance to inspectors (**subsection (10)**). The Secretariat considers that section 38 of the FA constitutes an environmental law in accordance with CUSMA Article 24.1, in that its primary purpose is the protection of the environment by empowering inspectors and fishery officers to ensure the enforcement of the Act and by providing for the duty to report adverse impacts on fish and fish habitat. The Secretariat retains this provision for analysis.

e) *Canadian Environmental Protection Act, 1999*

34. Section **2** of the **CEPA**, at **subsection (1)**, **paragraphs (a.2)** and **(a.3)**, provides that the federal government is to protect the right of every individual to a healthy environment, subject to reasonable limits, including by upholding the principles of non-regression, intergenerational equity and environmental justice, which includes the prevention of adverse effects that disproportionately affect vulnerable populations. The Secretariat considers that section 2(1)(a.2) and (a.3) constitutes an environmental law within the meaning of the CUSMA, since its primary purpose is the protection of the environment by guaranteeing the right to a healthy environment. Although this provision is characterized as subsidiary by the Submitter, it appears in the list of laws invoked and in the summary of the central elements of the submission. The Secretariat therefore retains this provision for analysis.

35. Section **5.1(1)** of the **CEPA** provides for the development of a framework for the implementation of the right to a healthy environment within two years after the day on which the provision comes into force. The Secretariat considers that this provision constitutes an environmental law within the meaning of the CUSMA, since its primary purpose is the protection of the environment by setting out the arrangements for implementing the right to a healthy environment. Unlike the other CEPA sections invoked by the Submitter, this one does not appear in the summary list or in the list containing the environmental laws at issue. The Secretariat therefore does not retain it for individual analysis, but takes it into account contextually.

36. Section **64** of the **CEPA** defines a toxic substance as any substance that is entering or may enter the environment in a quantity or concentration or under conditions that have or may have an immediate or long-term harmful effect on the environment or its biological diversity, that constitute or may constitute a danger to the environment on which life depends, or that constitute or may constitute a danger in Canada to human life or health. The Secretariat considers that this

[29] *See, for example* Nazas River Lower Basin, on enabling provisions or provisions allocating powers, §§ 57 and 59.

provision constitutes an environmental law within the meaning of the CUSMA, since its primary purpose is the protection of the environment by defining what a toxic substance is. This provision must, however, be attached to another in order to create normative content and cannot be applied directly.[30] The Secretariat therefore does not retain it for individual analysis, but takes it into account in its interpretation.

37. Section **68** of the **CEPA** lists the powers that the Minister may exercise in order to determine whether a substance is toxic or capable of becoming toxic, or in order to determine whether to take control measures in respect of the substance. Those powers include the collection and generation of data, powers of investigation, the analysis and publication of results, the sharing of information and the making of recommendations aimed at limiting the presence of toxic substances in the environment. The Secretariat considers that this provision constitutes an environmental law within the meaning of the CUSMA, since its primary purpose is the protection of the environment by empowering the Minister to take action in relation to toxic substances. Although this provision is characterized as subsidiary by the Submitter, it appears in the list of laws invoked and in the summary of the central elements of the submission. The Secretariat therefore retains this provision for analysis.

38. Section **71** of the **CEPA** sets out the measures that may be taken to determine the effects and the nature of the listed toxic substances, as well as the control measures in respect of those substances, in particular by way of a notice to the persons concerned requiring the provision of samples and of the results of toxicological tests. The Secretariat considers that this provision constitutes an environmental law within the meaning of the CUSMA, since its primary purpose is the protection of the environment by empowering the Minister to require information on toxic substances with a view to adopting control measures. Although this provision is characterized as subsidiary by the Submitter, it appears in the list of laws invoked and in the summary of the central elements of the submission. The Secretariat therefore retains this provision for analysis.

39. Section **90** of the **CEPA** allows the Governor in Council to make an order adding a toxic substance to Parts 1 and 2 of the List of Toxic Substances in Schedule 1 (**subsection (1)**), provides that the Ministers are to give priority to pollution prevention measures and to the prohibition of activities or releases involving toxic substances in the environment (**subsections (1.1) and (1.2)**), allows substances to be deleted from the List in certain cases (**subsection (2)**), and provides that the making of orders is subject to the report of a board of review (**subsection (3)**). The Secretariat considers that this provision constitutes an environmental law within the meaning of the CUSMA, since its primary purpose is the protection of the environment by allowing the regulation of toxic substances. However, the exercise of the discretionary powers of the Governor in Council with respect to the making of an order, and the possibility of listing substances with a view to subjecting them to regulatory control, cannot be the subject of a review under the SEM process.[31]

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[30] *See* SEM-23-007 (*Vessel Pollution in Pacific Canada),* Determination under CUSMA Articles 24.27(2) and (3) (12 February 2024), footnote 28, at 5, at: <https://bit.ly/4gdUCp4> [Vessel Pollution]. "Although the Secretariat determined that these […] provisions could be considered environmental laws under the CUSMA, they are not directly applicable and are therefore not included in the list. These provisions merely inform the Secretariat's understanding of the [Act] and of the measures taken by the Government of Canada to effectively enforce the law".

[31] *See* SEM-98-003 (*Great Lakes*), Determination under NAAEC Article 14(1) (14 December 1998), at 4, at: <https://bit.ly/4zbkhY8>.

Where that discretion is exercised, it must, on the other hand, comply with certain requirements. On that basis, the Secretariat retains only subsections (1.1), (1.2) and (3) for analysis.

40. Section **91** of the **CEPA** provides that, within two years after the publication of a statement concerning the addition of a toxic substance to Parts 1 and 2 of the List of Toxic Substances, the Ministers concerned must publish a proposed instrument respecting preventive or control actions in relation to the substance. The Secretariat considers that this provision constitutes an environmental law within the meaning of the CUSMA, since its primary purpose is the protection of the environment by providing for certain publication obligations upon the listing of toxic substances. Although this provision is characterized as subsidiary by the Submitter, it appears in the list of laws invoked and in the summary of the central elements of the submission. The Secretariat therefore retains this provision for analysis.

41. Section **93** of the **CEPA** provides that the Governor in Council may make regulations respecting a substance included on the List of Toxic Substances in Schedule 1, in particular with respect to the areas and manner of release, the manufacture, processing, use and offering for sale, the quantities or concentrations permitted, the manner of import and export, their total or partial prohibition, the conditions of storage and labelling, the methods of disposal of the substance, the keeping of records, sampling, and laboratory practices. The Secretariat considers that this provision constitutes an environmental law within the meaning of the CUSMA, since its primary purpose is the protection of the environment by empowering the Governor in Council to regulate toxic substances. However, the exercise of the discretionary powers of the Governor in Council cannot be the subject of a review under the SEM process, given that the mechanism focuses on the failure to effectively enforce environmental laws and not on the advisability of regulating in that area.[32] The Secretariat does not retain this provision for analysis.

f) *Impact Assessment Act*

42. Section **2(a)(i), (ii)** and **(iii)** of the **IAA** defines effects within federal jurisdiction as any physical activity or designated project that causes non-negligible adverse changes to fish and fish habitat, to aquatic species and to migratory birds. The Secretariat considers that this provision constitutes an environmental law within the meaning of the CUSMA, since its primary purpose is the protection of the environment by defining what constitutes an adverse effect within the meaning of the Act and its scope of application. The Submitter states that this provision is "invoked as a normative framework confirming federal jurisdiction, not as a standalone basis for a failure to enforce".[33] The Secretariat therefore does not retain it for individual analysis but takes it into account in its interpretation.

g) *Physical Activities Regulations*

43. Section **2** of the **PAR** refers to the physical activities listed in the schedule to those same Regulations and specifies that the activities set out there meet the definition of "designated project" within the meaning of the IAA. Sections **56** and **57** of the **schedule** to the **PAR** list as physical activities in the hazardous waste category: "[t]he construction, operation, decommissioning and abandonment of a new facility that is not more than 500 m from a natural water body and is used exclusively for the treatment, incineration, disposal or recycling of

[32] Id.
[33] Revised Submission, section 3.5, at 3.

hazardous waste" (**section 56**), as well as as "[t]he expansion of an existing facility that is not more than 500 m from a natural water body and is used exclusively for the treatment, incineration, disposal or recycling of hazardous waste, if the expansion would result in an increase in hazardous waste input capacity of 50% or more" (**section 57**). The Secretariat considers that these provisions constitute environmental laws within the meaning of the CUSMA since, read as a whole, they aim at the protection of the environment by defining the category of projects subject to certain impact assessment obligations under the IAA. The Submitter states that these provisions are invoked "as an interpretive normative framework confirming federal jurisdiction".[34] The Secretariat therefore does not retain them for individual analysis, but takes them into account in its interpretation.

h) *United Nations Declaration on the Rights of Indigenous Peoples Act*

44. Section **5** of the **UNDA** provides that the Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples. The Secretariat considers that this provision does not constitute an environmental law within the meaning of the CUSMA, since its primary purpose is not the protection of the environment. This provision instead sets out a general principle of consistency between Canadian laws and the Declaration. The Secretariat is therefore not empowered to take it into account in its analysis.

i) *North American Guiding Principles on the Integration of Traditional Ecological Knowledge*

45. The Submitter invokes the **TEK Principles** proclaimed by the Traditional Ecological Knowledge Expert Group (TEKEG) and approved by the CEC Council in January 2025. The Secretariat recalls that, in order to qualify as a statute or regulation within the meaning of the CUSMA, the normative instrument in question must emanate from the Parliament of Canada or be made under an Act of the Parliament of Canada and be enforceable by action of the central government. In the present case, the TEK Principles were proclaimed by a working group created by the CEC and, although they were approved by its Council, they do not emanate from the Parliament of Canada. Nothing in the revised submission refers to a Canadian law incorporating the TEK Principles or their implementation by the Canadian government.

j) *Constitution Act, 1982*

46. Section **35** of the **CA 1982** recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada, specifies that those rights include rights that now exist by way of land claims agreements or may be so acquired, and provides that those rights are guaranteed equally to male and female persons. In connection with section 35 of the CA 1982, the Submitter invokes the Two Row Wampum which, according to the Submitter, "has historical precedence and imposes on Canada a supreme fiduciary obligation of environmental preservation".[35] The Secretariat confines itself to observing, in this particular case, that the primary purpose of section 35 is not the protection of the environment or the prevention of a danger to human life or health. Section 35 of the CA 1982 does not qualify as an environmental law within the meaning of the CUSMA.

[34] Revised Submission, at 4.
[35] Revised Submission, section 2.4, at 3.

k) *Canada–United States–Mexico Agreement*

47. The Submitter devotes an entire section of the revised submission to the effect on trade and investment, relying on **Article 24.4** of the **CUSMA**.[36] The Submitter addresses, among other things, the transboundary aspect of the hazardous-materials landfill project and the international corporate structure of the company Stablex, and describes a situation that he characterizes as an undue competitive advantage. The Submitter also refers to the allegedly sustained and recurring nature of the failures invoked in the submission, which would apparently satisfy the requirement of Article 24.4.[37] In this regard, the Secretariat considers it useful to recall, as it has done in recent determinations,[38] that the resolution of trade and/or investment disputes does not fall within the functions of the Secretariat under the SEM process:

> [T]he SEM process and the dispute resolution mechanisms established under the USMCA/CUSMA serve different functions. The procedures aimed at resolving commerce-related disputes between States under the treaty do indeed involve issues of trade and/or investment. However, the SEM process and the admissibility and review procedures established under it were not intended or designed to solve trade and/or investment-related disputes. Instead, SEM submissions and their treatment by the Secretariat are aimed at promoting transparency, accountability, and public participation in the enforcement of environmental law. Any other interpretation would necessarily change the essence of the treaty, with regard to the SEM process.[39]

48. CUSMA Article 24.4 does not qualify as an environmental law within the meaning of the treaty[40] and its enforcement mechanism operates through a panel established in accordance with Chapter 31 of the CUSMA.[41] Performance of the obligations arising from international treaties, which includes the CUSMA, may be required only as between the Parties, through the consultation and dispute resolution mechanisms.[42] Moreover, the CEC Secretariat must not interpret the Party's

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[36] Revised Submission, at 2.

[37] Revised Submission, at 2 and 14.

[38] *See* Nazas River Lower Basin, § 18; SEM-26-007 (*Hydrocarbon Contamination in Salina Cruz*), Determination under CUSMA Articles 24.27(2) and (3) (22 July 2026), § 55, at: <https://bit.ly/4wEWvl7>.

[39] *See* Nazas River Lower Basin, at 2.

[40] *See* SEM-23-007 (*Vessel Pollution in Pacific Canada*), Determination under CUSMA Articles 24.27(2) and 23.27(3), (4 December 2023), § 24, at: <https://bit.ly/4slthG6>.

[41] J. H. Knox (2004), "The Judicial Resolution of Conflicts between Trade and the Environment", *Harvard Environmental Law Review*, 28:1, at 43-44 and footnotes 90 and 180, at: <https://bit.ly/4rYdQUc>. On NAFTA/GATT burden allocation: "[…] the party seeking to show that a measure is inconsistent with the agreement has the burden to establish the inconsistency." On SPS disputes (rejecting a panel's burden-shift to the respondent): "[…] even if a domestic measure is not based on an international standard, the burden of proof remains on the complaining party to show that the measure is inconsistent with the Agreement." On "necessity/less trade-restrictive" type arguments (again placing the burden on the challenger): "the burden of proof is on the party challenging a measure to show that there is another measure that is significantly less trade restrictive […]" Knox notes an exception-like contrast (Article XX defenses): "[…] the burden of proof […] is on the challenging party under the SPS Agreement, but on the party defending the measure under Article XX."

[42] *See* SEM-98-003 (*Great Lakes*), Determination under NAAEC Articles 14(1) and (2) (8 September 1999), at: <https://bit.ly/47cH1dZ> [Great Lakes, Determination 1999]; SEM-98-001 (*Guadalajara*), Determination under NAAEC Article 14(1) (13 September 1999), at 7, at: <https://bit.ly/4xzKVbt> ("The submitters also

international obligations as though they were, in themselves, "environmental laws" for the purposes of the SEM process.

49. Consequently, CUSMA Article 24.4 does not qualify as an environmental law within the meaning of the CUSMA and the Secretariat is not empowered to take it into account.

B. Article 24.27(2)(c) and (e)

The CEC Secretariat may consider submissions filed pursuant to this Article if it finds that the submissions:

(c) provide sufficient information to allow for the review of the submissions, including any documentary evidence on which the submissions may be based and identification of the environmental law of which the failure to enforce is asserted;

Preliminary remarks

50. The Secretariat observes at the outset that the Submitter filed more than 200 documents in support of the revised submission, including several technical studies of considerable length. The Secretariat has grouped them into ten categories: 1. Documents presenting a correspondence with the structure of the revised submission, including instructions, navigation tools, or documents compiled by the Submitter; 2. Impact assessments, environmental characterizations and reports of organizations; 3. Alleged environmental damage; 4. Access to information requests, public consultations, and exchanges with the relevant authorities; 5. Responses from agencies and public authorities; 6. Press, news releases and documentaries; 7. Bills, court decisions and legislative framework; 10. Financial information and history of the landfill site. The classification system proposed by the Secretariat is intended solely to facilitate the review of the documents in light of the criteria of CUSMA Article 24.27 and the assertions contained in the submission.

51. The Secretariat's categories differ appreciably from those proposed by the Submitter, namely: A. Assessments and expert reports; B. Environmental characterizations; C. Official correspondence and follow-ups; D. Requests for investigations and acknowledgments of receipt; E. Access to information requests; F. Citizen reports and sampling; G. Protection of threatened species and wildlife; H. Leaks, incidents and media coverage. A good number of the documents transmitted are, however, not indexed or described by the Submitter,[43] represent partial data without context,[44]

invoke NAAEC Articles 5(1)(j)(l), 6 and 7 […]. The Secretariat's view on this question generally is that, to the extent that these provisions create obligations for the Parties (Canada, the United States and Mexico), the recourse provided by the Agreement in the event of an alleged breach of obligations by a Party lies with the other Parties […]). Footnotes omitted.

[43] The index provided by the Submitter in an Excel spreadsheet lists some fifty items, whereas he transmitted more than 200. A second index, this time in the document entitled "supporting document" [translation], refers to items that the Secretariat was unable to locate, at least according to the nomenclature and classification indicated (for example, items LP-1 to LP-12). *See* Revised Submission, *annex l'appui, document l'appui*, at 102-103.

[44] *For example*, dozens of screenshots showing partial information without context, apparently extracted from newspapers or government websites.

or do not correspond to the nomenclature indicated.[45] It was therefore not possible for the Secretariat to determine the nature and role of certain supporting materials.

52. The Secretariat notes that the Submitter asks it to answer various questions and to rule on the actions taken by Canada.[46] The Secretariat recalls that, at this stage of the process, the documentary evidence provided is not subject to an in-depth review as it would be at the stage of the development of a Factual Record. At the stage of a determination based on Article 24.27(2) and, more particularly, an eligibility analysis under the criterion of subparagraph (c) as in the present case, the Secretariat confines itself to establishing the sufficiency of the information to allow for a review of the assertions in light of the provisions invoked.[47] Moreover, the analysis of data in the context of a possible Factual Record would serve to communicate information to the public in a clear and synthesized manner, without issuing conclusions as to the enforcement or non-enforcement of the provisions by the Party concerned.

53. In addition, the Submitter identifies a "principal axis"[48] in the submission, which is based on the protections accorded to migratory birds, fish, and species at risk, as well as to their habitats, in connection with the alleged destruction and degradation of environmental components by hazardous-materials landfill activities. The Secretariat focuses more on the elements that bear a direct connection to that principal axis than on the elements designated as subsidiary, contextual or interpretive by the Submitter.

54. The Secretariat also notes that several analyses, reports and items of correspondence appended to the revised submission originate from the Government of Québec. These documents are useful in understanding the environmental characteristics of the site and certain effects of the project as well as its evolution, but they provide no indication as to the enforcement of federal environmental laws by the Party. However, given that the submission asserts "the apparent absence of any identifiable federal decision, inspection, investigation, or authorization"[49] and that an access to information request revealed "no documentary trace of an exemption permit under […] the SARA, of wildlife studies or of environmental monitoring emanating from federal bodies

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[45] *For example*, the proponent's impact assessment report appears twice, the first time catalogued as A01 Impact study [translation], and the second as C08 MELCCFP Ministerial Directive [translation].

[46] Revised Submission, at 5, 6 and 10. For example, the Submitter asks the Secretariat whether Canada verified the need for a permit, required avoidance measures, or rendered a reasoned decision (at 5); inspected the landfill site (at 6); or verified the need for an authorization and conducted an investigation into the documented incidents (at 10).

[47] Advice to Council No. 03-05 (17 December 2003), at 2–3, at: <https://bit.ly/3TYWr1O>. JPAC commissioned the Environmental Law Institute (ELI) to produce a report on, among other things, what is considered "sufficient information" to support an alleged failure to effectively enforce environmental law. *See* JPAC Advice to Council 03-05: "While it is necessary to set the level of proof in order to prevent submitters from making frivolous or hypothetical assertions, the Secretariat, under subparagraph 14(1)(c), has the mandate, the authority and the requisite competence to determine that level. By setting the bar too high as regards the completeness of the information to be provided, the Council risks simply preventing citizens from participating in the process".

[48] Revised Submission, section 6, at 6.

[49] Id. section 9, *Argumentaire*, § 6, at 12.

for [the] [landfill] site",[50] it is reasonable to have to refer to the provincial documents in the absence of documentation emanating from the Party.

55. The considerations, parameters and factual elements described above have guided the assessment of the eligibility of the submission under the present criterion.

Analysis

1) Species at risk, migratory birds and nesting sites

56. The Submitter provides several documents containing characterizations of the natural environments covered by the Stablex project, including the environmental impact study produced by Englobe in November 2020.[51] This technical report includes information on species with a designated status and is based, among other things, on inventories carried out in 2015 and 2016. Among the birds potentially present in the region, the report counts about ten species with a status under the SARA.[52] These include the Eastern Whip-poor-will (*Antrostomus vociferus*) which, according to the report, was observed during inventories that "made it possible to establish that the Eastern Whip-poor-will makes extensive use of the study area for feeding and potentially for nesting".[53] The report adds that "[t]he mosaic of habitats present in the study area corresponds well to what is required by this species" and that "the observation of several males emitting territorial songs during the inventories may be an indication that they were defending their nesting site".[54] Another characterization of the natural environment produced by the firm Englobe in October 2023 is also appended to the documentation.[55] That study includes little information on wildlife species, since "no specific wildlife inventory was carried out as part of [this] mandate".[56]

57. An environmental analysis report produced by the Québec Ministry of the Environment, the Fight against Climate Change, Wildlife and Parks (*Ministère de l'environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs*, MELCCFP) in 2025 nevertheless provides relevant wildlife data on bird species with a status under federal regulations, as well as on migratory and nesting species.[57] By way of example, the report indicates that "of the 132 bird species recorded on the site [in 2015], 66% of the species were nesting and 34% were considered

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[50] Id. § 1.

[51] Englobe and Stablex Canada (2020), *Réaménagement de la cellule n° 6 au centre de traitement Stablex, ville de Blainville*, Environmental impact study, volume 2, part 1, final version, Québec, Canada, annex 3, at 177, at: <https://bit.ly/4hz6Bjz> [Englobe and Stablex Canada (2020)] [*See* Revised Submission, annex A01].

[52] Id. annex 3, section 3.8.2, table 3-10, at 49 [at 237].

[53] Id. at 52 [at 240].

[54] Id.

[55] Englobe and Stablex Canada (2023), *Projet de réaménagement de la cellule n° 6 au centre de traitement de Stablex à Blainville*, Natural environment characterization study, final report, Québec, Canada, at: <https://bit.ly/4hueFC8> [Englobe and Stablex Canada (2023)] [*See* Revised Submission, annex B03].

[56] Id. point 3.3.6, at 8.

[57] MELCCFP (2025), *Rapport d'analyse environnementale pour le projet de réaménagement de la cellule nº 6 à son centre de traitement situé sur le territoire de la ville de Blainville par Stablex Canada Inc.*, file 3211-21-014, Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs du Québec, at 69, at: <https://bit.ly/3S3R0hu> [Environmental analysis report MELCCFP] [*See* Revised Submission, annex G07].

probable or possible nesters”.[58] That report also indicates that the habitat would be favourable to meeting the needs of species with a status such as the Common Nighthawk (*Chordeiles minor*), the Canada Warbler (*Cardellina canadensis*), and the Eastern Wood-Pewee (*Contopus virens*).[59]

58. The Secretariat also notes that a request for undertakings and additional information from the environmental assessment directorate of the MELCCFP, appended to the record, raises several elements in connection with the federal regulations concerning the protection of migratory birds.[60] The requests set out in that document take into account the nesting periods of these birds and refer specifically to the tools made available by Environment and Climate Change Canada (ECCC) in order to avoid harming migratory birds, specifying that Stablex “must take into consideration the reference sources mentioned concerning the means of avoiding adverse impacts on migratory birds and present the measures selected”.[61] That document also provides a good deal of data on migratory birds and threatened species in connection with the MBCA, the MBR and the SARA, the laws on which the submission is based.

59. The MELCCFP request for undertakings confirms that species such as the Pileated Woodpecker (*Dryocopus pileatus*), the Great Blue Heron (*Ardea herodias*), and the Green Heron (*Butorides virescens*) were observed during inventories and emphasizes that the project’s impact study “does not specify the potential for use of the study area for reproduction and the presence of occupied nests”.[62] Finally, the document indicates that the proponent must familiarize itself with the MBR and its information sheet on nest protection, and consider the waiting period before a migratory bird nest may be disturbed or destroyed, asking the proponent to “present measures to be put in place to protect the nests of these three species before the end of the waiting period as mentioned in the MBR”.[63]

60. Other species such as the Little Brown Myotis (*Myotis lucifugus*), the Northern Myotis (*Myotis septentrionalis*) and the Tri-colored Bat (*Perimyotis subflavus*), endangered species under the SARA, are potentially present according to the environmental impact study placed in the record.[64] The Milksnake (*Lampropeltis triangulum*) as well as the Painted Turtle (*Chrysemys picta*), “found in abundance”, are also among the species with a federal status that were recorded in the context of that study.[65] In addition, the MELCCFP request for undertakings refers to these species in connection with Stablex’s obligations under the applicable federal protection framework, requesting, among other things, information on the mitigation and species relocation measures put in place.[66]

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58 Id.
59 Id.
60 MELCCFP (2024), *Demande d’engagements et d’informations complémentaires pour le projet de réaménagement de la cellule 6 au centre de traitement de Stablex sur le territoire de la ville de Blainville par Stablex Canada inc.*, file 3211-21-014, Ministère de l’Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs du Québec, at 1, at: <https://bit.ly/3RHCtrK> [Request for Undertakings] [*See* Revised Submission, annex C02].
61 Id.
62 Id.
63 Id.
64 Englobe and Stablex Canada (2020), annex 3, section 3.9.1, table 3-13, at 53 [at 241].
65 Id. at 46 and 49.
66 Request for Undertakings, at 2 and 15.

61. The Submitter identifies environmental control inspection report number 402462402 issued by the MELCCFP[67] as a central item in support of the factual elements recounted in the submission, of the failures to enforce the law and of the project's non-compliance.[68] The Secretariat recalls that this is a documentary item emanating from the provincial government and that, although it falls within a context of law enforcement and of the project's compliance with the conditions established, the frame of reference is that of a provincial order and of an environmental authorization issued by Québec, which are not within the scope of this submission. However, this item provides a good deal of factual information as well as photographs documenting the company Stablex's clearing operations, in terms of their timing, their scale, and the processes used.

2) Toxic substances, waters, fish habitat

62. As regards water quality, the toxicity of the substances discharged into the environment and their impact on fish habitat, a series of documents supplements the report of the organization Eau Secours placed in the record at the time of the filing of the original submission. That report already pointed to significant cadmium contamination of the water near the Stablex site.[69] In the revised submission, the Submitter includes the report of WaterShed Monitoring, which presents the results of a sampling campaign carried out around and downstream of the Stablex site.[70] The report provides, among other things, data on metal concentrations at the sampling sites, comparing them to the thresholds of the aquatic life protection criterion, of the probable effect concentration criterion and of the rare effect concentration criterion for cadmium, lead, arsenic, cobalt, copper and zinc. The report identifies one sampling station as being of particular concern on account of the elevated concentrations of several of the contaminants listed. The report also records visual observations of leaching from the Stablex site during rain events, resulting in high turbidity of the effluents.

63. The Submitter also includes a good number of photographs, several of which show the water turbidity referred to in the WaterShed Monitoring report and significant quantities of dead fish near the banks. Several articles documenting spill incidents apparently caused in the course of activities carried out by Stablex are also appended. The Secretariat observes that the characterization of the natural environment carried out by the project proponent confirms the presence of fish and indicates that "[f]ish habitat is considered potential along the entire length of the watercourse studied".[71] Moreover, according to the MELCCFP environmental analysis report, "[f]ish habitat in the study area is favourable to species that favour muddy substrates and calm, warm waters. Among the species inventoried are the fathead minnow, the central mudminnow

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67 MELCCFP (2025), *Rapport d'inspection*, intervention report no. 402462402, Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs du Québec [*See* Revised Submission, annex E, file (IMPORTANT…)].

68 Revised Submission, at 3.

69 Eau Secours! (2024), "Contamination de l'eau au cadmium 320 fois au-dessus de la norme a un site près de Stablex à Blainville", 27 February 2024, at: <https://bit.ly/4i58btr>

70 WaterShed Monitoring (2026), *Résultats de la campagne d'échantillonnage effectuée sur des effluents du site de Stablex*, at 15–28, at: <https://bit.ly/4q8QPhm> [*See* Revised Submission, annex F01].

71 Englobe and Stablex Canada (2023), at 22.

and the brook stickleback".[72] The Englobe report records nine fish species in 2016.[73] Finally, a press article reports that Canada, through its Department of Fisheries and Oceans, apparently asked Stablex to file a request for review of the impacts of its project on fish habitat with a view to determining the need for a federal authorization for habitat destruction under the FA.[74]

3) Conclusion

64. Although selective at the stage of the eligibility analysis under the criterion of CUSMA Article 24.27(2)(c), a review of the information provided makes it possible to appreciate the natural characteristics of the site, the relevance of the federal provisions invoked in light of the wildlife inventories and species present, the allegedly limited role of the relevant authorities of the Party with respect to control and monitoring, as well as the absence of data on the enforcement of the federal normative framework as regards migratory species, species at risk, or the protection of fish habitat. The documentation provided by the Submitter supports the Submitter's assertions and allows the Secretariat to review the submission taking into account the provisions invoked.

65. The Secretariat therefore finds that the additional information provided by the Submitter is sufficient to continue the review of the submission and considers that the criterion set out in Article 24.27(2)(c) is satisfied.

(e) indicate whether the matter has been communicated in writing to the relevant authorities of the Party and, if so, the Party's response.

66. Pursuant to CUSMA Article 24.27(2)(e), the Submitter must demonstrate that the matter raised in the submission has been communicated in writing to the relevant authorities of the Party, so as to enable them to become aware of the situation,[75] of the potential failure to effectively enforce environmental laws, and to take action within the scope of their respective mandates.[76] The requirement set out in Article 24.27(2)(e) therefore has the purpose of ensuring that the relevant authorities are aware of the matter raised and have had the opportunity to act on it.[77] Communication of the matter in writing required by Article 24.27(2)(e) is generally made by means of a letter or an email addressed directly to the relevant authorities,[78] clearly setting out the concerns relating to the assertions raised in the SEM submission.[79]

67. In the present case, the Submitter states that he informed the Party in writing and sets out a clear and concise chronology of his communications with the relevant authorities.[80] The Submitter

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72 Environmental analysis report MELCCFP, at 67.
73 Englobe and Stablex Canada (2020), annex 4, section 3.7.2, table 3-8, at 54 [at 358].
74 A. Shields, "Des poissons protégés et des espèces menacées sur le futur site de Stablex ", *Le Devoir*, (19 March 2025), at: <https://bit.ly/4hwDRYz> [*See* Revised Submission, annex G09, at 2.].
75 *See* SEM-26-002 (*Tijuana Wastewater Management*), Determination under CUSMA Articles 24.27(2) and (3) (25 February 2026), § 91, at: <https://bit.ly/3Sgt4HD> [Tijuana Wastewater].
76 *See* SEM-24-002 (*Cadereyta Refinery)*, Determination under CUSMA Articles 24.27(2) and (3) (6 June 2024), § 26, at: <https://bit.ly/4v2mCBU>.
77 *See* Tijuana Wastewater, § 91.
78 *See* SEM-25-001 (*Nazas River Lower Basin*), Determination under CUSMA Articles 24.27(2) and (3) (2 October 2025), § 59, at: <https://bit.ly/3RoAXdy>.
79 Id.
80 Revised Submission, section 9, at 11–12.

explains that he reached ECCC, Fisheries and Oceans Canada, and Natural Resources Canada, as well as ministers of those government agencies, "on five separate occasions between 3 June and 28 June 2026, that is, 19 to 44 days before the filing [of the revised submission]".[81]

68. In support of these assertions, the Submitter appends two automated acknowledgments of receipt from the email address of the Minister of the Environment, dated 3 June 2026 and following on an email from the Submitter whose subject line reads as follows: "Formal request for an investigation – Alleged violations of the Migratory Birds Convention Act, 1994 and of the Fisheries Act at the Stablex site, Blainville (Québec)".[82] Although the message that gave rise to that automated reply is not visible, the Submitter appends another email dated 10 June 2026,[83] in which he follows up with the Minister and requests a file number as well as information on the ECCC team reviewing the documents sent.

69. The Submitter also appends his correspondence with Stablex dated 16 June 2026, in which he copies ECCC's Enforcement Branch as well as the Québec regional office of Fisheries and Oceans Canada.[84] In that email, the Submitter asks the company Stablex to answer questions relating to the subject matter of the submission, including the measures taken to comply with the provisions of the environmental laws cited. It must be observed that, by means of that email, the ECCC entity responsible for enforcing the SARA, the CEPA, the FA, the MBCA and the MBR was informed of the issues raised in the submission.

70. An email of 19 June 2026, which the Submitter characterizes as an "Official prior notification", addressed to several public servants, ministers, wildlife protection divisions, and general email boxes within ECCC, Fisheries and Oceans Canada and Natural Resources Canada, is also appended to the revised submission.[85] In that email, the Submitter reports the facts and the alleged violations of federal laws and maintains that the objective of the email is "to secure compliance with the provisions of the [FA], the SARA and the MBCA". The acknowledgments of receipt from ECCC (general email box), from the Minister of the Environment, from the office of the Minister of Energy and Natural Resources and from the Minister of Fisheries are placed in the record.[86]

71. Finally, the Submitter appends an email dated 28 June 2026 sent to ECCC and to Fisheries and Oceans Canada requesting a meeting or a written response "in order to obtain factual clarifications on the measures possibly taken by [ECCC] in relation to the elements raised in [the submission], in particular in connection with the releases or risks of releases of deleterious substances liable to reach waters frequented by fish".[87] The email includes what the Submitter characterizes as "10 specific factual questions"[88] in order to "understand what federal steps, verifications or measures

[81] Id. at 11.
[82] Revised Submission, Annexes D01 and D03.
[83] Revised Submission, Annex D02.
[84] Revised Submission, Annex D04.
[85] Revised Submission, Annex D05
[86] Revised Submission, Annexes D06, D07 and D09.
[87] Revised Submission, Annex D11 [pdf].
[88] Id; Revised submission, section 9, table and *Argumentaire*, § 2, at 12.

have been undertaken". The Submitter approached ECCC through its LinkedIn account in order to ensure that his request was directed to the right place.[89] The Secretariat considers that this step is more akin to an access to information request, which is not generally considered to be a communication to the relevant authorities.[90] However, in light of the other items of evidence addressed in the preceding paragraphs, which amply satisfy the requirement of CUSMA Article 24.27(3)(e), this finding has no bearing on the Secretariat's conclusion.

72. The Secretariat emphasizes that, on 29 June 2026, the Submitter received an acknowledgment of receipt of his emails sent to ECCC. That reply, which does not appear to be automated, indicates that the Submitter's emails "have been forwarded to the office of Minister Julie Dabrusin as well as to ECCC program experts", adding that "[a]ny response is at their discretion".[91]

73. In light of the items of evidence provided, the Secretariat considers that the relevant authorities of the Party were informed of the situation prior to the filing of the revised submission and that a reasonable period of time was given to them to respond.[92] The criterion of Article 24.27(3)(e) is therefore satisfied.

C. Article 24.27(3)(b)

b) whether private remedies available under the Party's law have been pursued;

74. In accordance with established practice, the Secretariat considers that the pursuit of private remedies may be interpreted broadly and that this criterion may be satisfied by filing a complaint or by referring to a complaint filed by another person, organization or entity.[93] This criterion is assessed under a reasonableness standard, keeping in mind that in some cases barriers exist to pursuing such remedies.[94]

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[89] Revised Submission, Annex D11 [png].

[90] *See* Tijuana Wastewater, § 105.

[91] Revised Submission, Annex D12.

[92] *See* Nazas River Lower Basin, § 73.

[93] SEM-21-001 (*Fairview Terminal*), Determination under CUSMA/ Articles 24.27(2) and (3) (27 April 2021), §§ 30 and 31, at: <https://bit.ly/4y4nlUT> (where the Secretariat concludes that the filing of a complaint with the Canadian Transportation Agency satisfies the criterion of CUSMA subparagraph 24.27(3)(c)); Vessel Pollution, §§ 8–15.

[94] *See* SEM-18-001 (*Transboundary Agricultural Burning*), Determination under NAAEC Articles 14(1) and (2) (19 February 2018), §§ 27–28, at: <https://bit.ly/3PSFpAI>. The Secretariat considered whether reasonable steps had been taken before the filing of a submission. It also took into account that in some cases, the lack of resources may limit a submitter's ability to undertake private remedies before filing a submission. The Secretariat considers that a barrier to a private remedy may include economic and social factors; SEM-23-002 (*Avocado Production in Michoacán*), Determination under CUSMA Articles 24.27(2) and (3) (6 March 2023), §§ 74–77, at: <https://bit.ly/3PejgwA> (where the Secretariat concludes that the submission satisfies the criterion of subparagraph 24.27(3)(c) because the submitter provided a reasonable explanation regarding the impossibility of pursuing remedies in connection with the submission under Mexican law);Vessel Pollution, §§ 8–15.

75. In this regard, the Secretariat considers that it is sometimes impossible to initiate judicial or administrative proceedings against a multiplicity of violators,[95] and that litigation may not be a suitable strategy to deal with certain alleged violations;[96] that seeking specific remedies available to an individual may prove difficult;[97] that, in cases where the alleged failure to effectively enforce a law is of a widespread nature, the burden placed on the submitter by pursuing remedies for all violations is an important element in determining whether "reasonable steps" have been taken,[98] and that an explanation may be offered in that regard.

76. In the present case, the Submitter states that, on account of his status as a minor, he "does not have the capacity to sue independently, which constitutes an absolute legal barrier".[99] The Submitter explains that representation by his legal guardians would impose a disproportionate technical and economic burden on them. On the economic argument, the Submitter maintains that a judicial remedy "would require financial resources beyond reach in order to conduct a complex action" and adds that, as a minor, he "has no financial resources of his own to retain the services of a lawyer, engage experts or bear the costs of litigation against a proponent supported by two multinationals".[100] As to the practical difficulty of a judicial remedy, the Submitter notes that "the subject matter of the […] submission is not to challenge a decision […] but precisely the apparent absence of any identifiable federal decision, inspection, investigation or authorization. That absence of a decision makes an application for judicial review difficult to circumscribe".[101]

77. Notwithstanding the arguments advanced to explain the impossibility of pursuing a remedy provided under the Party's domestic law, the Secretariat notes that the Submitter nevertheless filed an environmental petition with the Office of the Auditor General of Canada on 29 June 2026.[102] According to the website of the Office of the Auditor General, the environmental petitions process is "a unique way for residents of Canada to bring their questions and concerns, individually or on behalf of an organization, about environmental issues related to sustainable development to the attention of the federal ministers concerned and to obtain responses from them".[103] This mechanism is distinguishable from an access to information request in that it creates a direct line of communication between the public and ministers and allows concerns, and not simply requests for documents, to be conveyed to the most senior representatives of the federal departments.

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95 *See* SEM-97-003 (*Québec Hog Farms*), Notification under NAAEC Article 15(1) (29 October 1999), at 7-8, at: <https://bit.ly/3U1pvpn>.
96 *See* Great Lakes, Determination 1999, at 10.
97 *See* SEM-98-004 (*BC Mining*), Notification under NAAEC Article 15(1) (11 May 2001), at 16, at: <https://bit.ly/4ggvNc2>.
98 *See* SEM-09-005 (*Skeena River Fishery*), Determination under NAAEC Articles 14(1) and (2) (18 May 2010), § 44, at: <https://bit.ly/4x4AiO6>; SEM-04-005 (*Coal-fired Power Plants*), Determination under NAAEC Articles 14(1) and (2) (24 February 2005), at 12, at: <https://bit.ly/4v2PkTh>.
99 Revised submission, section 9, *Argumentaire*, § 5, at 12.
100 Id.; Revised submission, section 10.2, at 12-13.
101 Revised submission, section 9, Argumentaire, § 6, at 12.
102 Revised submission, Annex D014.
103 Office of the Auditor General of Canada, "Environmental Petitions", at: <https://bit.ly/4cIOPH2>.

78. In the past, the Secretariat has determined that, in circumstances that make the pursuit of a traditional judicial remedy difficult, the totality of the evidence demonstrating the constraints, coupled with a communication to the minister ultimately aimed at the enforcement of environmental laws, constitutes an adequate means of satisfying the criterion of CUSMA Article 24.27(3)(b).[104] In the present case, it is clear, from the very title of the petition, that it was directed at the "[e]nforcement of environmental laws at the Stablex site in Blainville: Fisheries Act, aquatic habitats, migratory birds and species liable to be affected".

79. The Secretariat therefore finds that the revised submission meets the criterion of CUSMA Article 24.27(3)(c).

II. DETERMINATION

80. For the foregoing reasons, the Secretariat determines that submission SEM-26-003 (*Hazardous Waste Disposal in Blainville*) meets all the eligibility criteria set out in Article 24.27(1), (2) and (3) of the CUSMA. Specifically, the revised submission meets the criteria set out in subparagraphs (c) and (e) of Article 24.27(2) and the criterion set out in subparagraph (c) of Article 24.27(3) of the CUSMA and warrants a response from the Party in accordance with that same provision as regards the effective enforcement of the environmental laws listed below.

    i. *Migratory Birds Convention Act, 1994*
    1. Section 5.1(1)

    ii. *Migratory Birds Regulations*, 2022
    1. Section 5(1)

    iii. *Species at Risk Act*, 2002
    1. Section 32(1)
    2. Section 33
    3. Section 58
    4. Section 73
    5. Section 79

    iv. *Fisheries Act*, 1985
    1. Section 34.4
    2. Section 35
    3. Section 36(3) and (4)
    4. Section 37
    5. Section 38

[104] *See* Vessel Pollution, §14.

v. *Canadian Environmental Protection Act, 1999*

1. Section 2(1)(a.2) and (a.3)
2. Section 68
3. Section 71
4. Section 90(1.1), (1.2) and (3)
5. Section 91

81. In accordance with CUSMA Article 24.27(4), the Party may provide a response to the submission within 60 days of receipt of this determination, that is, by **16 October 2026**.

82. The Secretariat will make the Party's response public. If the Party includes in it information that it considers confidential, it must clearly identify that information and indicate the applicable basis in accordance with ECA Article 16(1)(d), namely that disclosure would impede enforcement of the law, invade personal privacy, reveal confidential business information or proprietary information, or compromise the confidentiality of government decision-making. The Party must, where applicable, indicate the level of protection it affords to that information, so that the Secretariat may apply the same level of protection in accordance with ECA Article 16(3).[105]

Respectfully submitted for your consideration.

Secretariat of the Commission for Environmental Cooperation

[*original signed*]
By: Paolo Solano, Director, Legal Affairs and Submissions on Enforcement Matters

cc: Michael Bonser, Alternate Representative of Canada
Camila Isabel Zepeda Lizama, Alternate Representative of Mexico
Usha-Maria Turner, Alternate Representative of the United States
Environment Committee Points of Contact
Daniel Taillant, Executive Director
Submitter

The Secretariat wishes to acknowledge the contribution of Mr. Esteban Salcedo, former Legal Officer of the CEC, to the analysis of this determination.

[105] The Secretariat cannot presume the confidential nature of the information contained in the Party's response. In the absence of a clear, specific and reasoned designation on the grounds indicated, the Secretariat will not be able to infer the confidentiality of the information and will treat it in accordance with the principle of transparency that guides the SEM submissions process.