

May 28, 1996

BY FAX AND REGISTERED MAIL

Mr. Aage Tottrup, P. Eng.
P.O. Box 11210
Edmonton (Alberta)
Canada T5J 3K5

**Re: Submission on enforcement matters under Articles 14 and 15 of the North
American Agreement on Environmental Cooperation**

Submitter(s): Mr. Aage Tottrup
Party: Canada
Date: March 20, 1996
Submission No.: **SEM-96-002**

Dear Mr. Tottrup:

Please find attached the Secretariat's Article 14(2) Determination in connection with your submission on enforcement matters filed on March 20, 1996 under Article 14 of the North American Agreement on Environmental Cooperation.

Please do not hesitate to call or write us if you have any question.

Yours truly,

Commission for Environmental Cooperation - Secretariat

per: Victor Lichtinger
Executive Director

Commission for Environmental Cooperation - Secretariat

Determination pursuant to Articles 14 & 15 of the North American Agreement on Environmental Cooperation

Submission I.D.: SEM-96-002

Submitter(s) :

Mr. Aage Tottrup, P. Eng.

Concerned Party:

Canada

I- SUMMARY OF THE SUBMISSION

On March 20, 1996, the Submitter filed with the Secretariat of the Commission for Environmental Cooperation ("Secretariat") a submission on enforcement matters pursuant to Article 14 of the North American Agreement on Environmental Cooperation ("NAAEC" or "Agreement").

The submission alleges that the Governments of Canada and Alberta have failed to effectively enforce their environmental law resulting in the pollution of specified wetland areas impacting on the habitat of fish and migratory birds.

II- ARTICLE 14

Article 14 of the Agreement allows the Secretariat to consider a submission from any non-governmental organization or person asserting that a Party to the Agreement is failing to effectively enforce its environmental law. The Secretariat may consider any submission that meets the criteria set out in Article 14(1). Where the Secretariat determines that the Article 14(1) criteria are met, it shall then determine whether the submission merits requesting a response from the Party named in the submission (Article 14(2)). In light of any response provided by that Party, the Secretariat may recommend to the Council that a factual record

be prepared. The Council, comprised of the environment ministers (or their equivalent) of Canada, Mexico and the U.S., may then instruct the Secretariat to prepare a factual record on the submission. Final factual records are made publicly available upon a 2/3 vote of the Council.

III- PROCEDURAL HISTORY

On March 20, 1996, the Submitter filed with the Secretariat submission SEM-96-002 under Article 14 of the NAAEC. On April 17, 1996, the Secretariat determined that the submission met the criteria of Article 14(1). The Secretariat now reviews the submission to determine whether the submission merits requesting a response from the Government of Canada, in accordance with Article 14(2).

IV- ANALYSIS

The submission and Schedule "F" to the submission indicate that the Submitter has initiated a judicial proceeding against Her Majesty the Queen in Right of Alberta and several other defendants based on the same facts as those alleged in the submission (Court of Queen's Bench of Alberta, Judicial District of Edmonton, no. 9503 14035).

The outcome of that pending judicial proceeding is likely to impact directly on the issues raised in the submission and, should the Submitter prevail, may resolve most or all of these issues. Accordingly, in accordance with Article 14(2), the Secretariat will not proceed any further with the submission at this time. The Submitter may wish in the future to request the Secretariat to re-consider the submission following the resolution of the matter currently before the Queen's Bench.

Montreal, this 28th day of May 1996.

Commission for Environmental Cooperation - Secretariat

per: Victor Lichtinger
Executive Director