

## **LESSONS LEARNED**

**Citizen Submissions under Articles 14 and 15 of the  
North American Agreement on Environmental Cooperation**

**Draft Report to the Council of the**

**Commission for Environmental Cooperation**

**Submitted by the Joint Public Advisory Committee**

**April 2001**

## FOREWORD

The Joint Public Advisory Committee (JPAC) is a 15-member, independent, volunteer body that provides advice and public input to Council of the Commission for Environmental Cooperation (CEC) on any matter within the scope of North American Agreement on Environmental Cooperation (NAAEC). The present JPAC members are Cam Avery, Daniel Basurto, Peter Berle, Donna Tingley, Liette Vasseur, Steve Owens, Jonathan Plaut, Raúl Tornel, Blanca Torres, Serena Wilson and John Wirth.

We have been assisted in this study by our Lessons Learned Working Group composed of JPAC members Cam Avery, Stephen Owens and Blanca Torres, and by independent consultants experienced in environmental law and procedures. From October through December 2000, our principal consultant was Wilehaldo Cruz, who was assisted by Stephen Kass. From January 2001, Mr. Kass, assisted by colleagues within his firm, then assumed principal responsibility for preparing this report under the overall direction of the Working Group.

Both the JPAC Working Group and its consultants benefited greatly from the experience and advice of Janine Ferretti, Executive Director of the CEC Secretariat, and the Secretariat staff, as well as the many individuals and representatives of non-governmental organizations (NGOs) from each of NAAEC Parties who attended JPAC's public meeting on the scope of this study in Washington, D.C. on 14 October 2000, who participated in JPAC's day-long Lessons Learned Workshop on 7 December 2000 in Montreal or who submitted written comments for the Working Group's consideration either before or after that Workshop. These comments can be found on the CEC home page at <<http://www.cec.org>>.

The JPAC Working Group also had the opportunity to interview two of the designated Alternates to the Council, William Nitze of the U.S. and Norine Smith of Canada, and hopes to have the opportunity for a similar interview with the remaining Alternate before the final version of this Report is completed.

We are greatly indebted to all those who shared their time and insights during the course of our work, but emphasize that both this Report and the conclusions that follow are the sole responsibility of JPAC.

## **LESSONS LEARNED**

### **Citizen Submissions under Articles 14 and 15 of the North American Agreement on Environmental Cooperation**

#### **INTRODUCTION**

The Joint Public Advisory Committee (JPAC) has been asked by the Council of the Commission for Environmental Cooperation (CEC) to review and report on the lessons learned from the public history of citizen submissions under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC).<sup>1</sup> In preparing this Report, we have been conscious of the importance of the Articles 14 and 15 submission process as a vehicle for public oversight of the enforcement of environmental laws by the Parties to the North American Free Trade Agreement (NAFTA) and as a possible model for similar efforts under other trade agreements within the Americas and the world. We have therefore attempted to identify both the strengths and weaknesses of the Articles 14 and 15 process as revealed in the history of Submissions since 1995 and to suggest, in light of the lessons learned from that experience, practical reforms to make the Articles 14 and 15 process more timely, open, accountable and effective.

We state our principal conclusions at the outset: First, citizen submissions under Articles 14 and 15 of the NAAEC play a unique – and indispensable -- role in fostering the vigorous environmental enforcement that is a necessary component of expanded free trade under NAFTA. Second, an essential component of the Articles 14 and 15 process is an independent, professionally qualified and properly funded Secretariat. Third, the Articles 14 and 15 process can and should be improved through the reforms suggested in Section 5 below in order to make it more timely, open, accountable and effective. The purpose of these reforms should be to strengthen, not dilute, the Articles 14 and 15 process so that citizens in all three of the NAAEC countries can enjoy the twin benefits of expanded trade and healthier environments. Individual citizens, NGOs, the Secretariat, the Council and JPAC all have significant roles to play in carrying out those reforms and in helping to realize the full potential of this unique international procedure.

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<sup>1</sup> See Council Resolution 00-09

## DISCUSSION

This Report is divided into four sections, as follows:

Section 1 provides a brief overview of the Articles 14 and 15 citizen submissions process;

Section 2 describes the two “Factual Records” (“BC Hydro” and “Cozumel Pier”) and that have been completed by the Secretariat and approved for release by the Council;

Section 3 summarizes and evaluates the principal public and other comments and recommendations submitted to JPAC either at the 7 December 2000 “Lessons Learned Workshop” or otherwise during the course of this study; and

Section 4 sets forth JPAC’s recommendations based on the lessons learned from citizen submissions since the inception of the Articles 14 and 15 process.

### 1. Overview of Citizen Submissions Under Articles 14 and 15

Pursuant to Article 14 of the NAAEC, any non-governmental organization or person may file a submission with the Secretariat claiming that a Party to the NAAEC is “failing to effectively enforce its environmental laws.” Article 14(1) imposes certain formal requirements<sup>1</sup>, for such a Submission. The Secretariat, after having received the Submission, reviews whether these requirements have been satisfied. There is no time limit for this review. Pursuant to Section 6 of the Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 (the “Guidelines”), if the Secretariat determines that the formal criteria have not been satisfied, it shall issue a notification to the submitter asking to provide a Submission that conforms to the formal requirements within 30 days. If the Secretariat determines again that the formal requirements of Article 14(1) have still not been satisfied, the Secretariat will terminate the process. However, if the Secretariat determines that the Submission meets the formal requirements, it conducts a second review to determine whether the Submission merits a response (NAAEC, Article 14(2)).

Under Article 14(2), the Secretariat must consider whether (a) the Submission alleges harm to the

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<sup>1</sup> The Submission must

- a) be in writing in a language designated by that Party in a notification to the Secretariat;
- b) clearly identify the person or organization making the Submission;
- c) provide sufficient information to allow the Secretariat to review the Submission;
- d) appear to be aimed at promoting enforcement rather than at harassing industry;
- e) indicate that the matter has been communicated in writing to the relevant authorities of the Party and indicate the Party’s response; and
- f) be filed by a person or organization residing or established in the territory of a Party.

Submitter, (b) the Submission would advance the goals of the NAAEC, (c) private remedies have been pursued, and (d) the Submission is drawn exclusively from mass media reports. Again, there is no time limit for the Secretariat in making this determination. If the Secretariat determines that no response is merited, it may consider or ask for new or supplemental information from the Submitter within 30 days following receipt by the Submitter of the Secretariat's negative determination. If the Submitter does not provide sufficient information during this period, the Secretariat will terminate the process.

If the Secretariat determines that the requirements of Article 14(2) are met, it forwards to the Party a copy of the Submission and any supporting documents. The Party shall advise the secretariat within 30 days or, in exceptional circumstances within 60 days, (1) whether the matter was previously the subject of a judicial or administrative proceeding, and (2) of any other information the Party wishes to submit, such as whether private remedies in connection with the matter are available to the person or organization making the Submission and whether they have been pursued. (NAAEC, Article 14(3)). If the matter raised is the subject of a pending judicial or administrative proceeding, the Secretariat will terminate the process (Guidelines Section 9.4.)

After the Party has responded (or failed to respond within the 30-day response period), the Secretariat determines whether it will recommend to the Council the development of a Factual Record. (Guidelines Section 9.5.) Again, there is no deadline for this decision. There is no opportunity for the submitter to reply to the Party's response and no formal criteria for the Secretariat's decision, although the Guidelines do require the Secretariat to state the reasons for its decision (Guidelines 10.1). If the Secretariat decides that no development of a Factual Record is warranted, it can terminate the process. However, if the Secretariat recommends the preparation of a Factual Record, it must seek Council approval, which must in turn be by a two-third-majority vote. (NAAEC, Article 15 (1) and (2)).

If the Council approves preparation of a Factual Record, the Secretariat is directed to consider any information that is (a) publicly available; (b) submitted by interested non-governmental organizations or persons; (c) submitted by JPAC, or (d) developed by the Secretariat or by independent experts (NAAEC, Article 15(4)). There is no time limit regarding the preparation of the Factual Record, and no provision specifically allowing the submitter to provide additional information. After the preparation of the Factual Record, the Council may, by a two-third majority vote, make the Factual Record publicly available, normally within 60 days following its Submission to the Council (NAAEC, Article 15(7)). However, if the Council decides not to make the Factual Record available to the public, there is no access to the Factual Record by any member of the public, including the submitter.

Since the establishment of the CEC in 1994, 29 Submissions have been filed with the Secretariat, of which 18 have been terminated and 11 are still pending.<sup>1</sup> Of the 18 terminated cases, the Secretariat terminated six Submissions because they did not satisfy the formal requirements under Article 14(1) and three Submissions under Article 14(2). In five cases the Secretariat did not recommend the preparation of a Factual Record. In two cases, BC Hydro and Cozumel, the Council instructed the Secretariat to prepare a Factual Record, while in one case (Quebec Hog Farms) it refused to do so. Finally, the submitters withdrew their Submission in one case. Of the 11 pending cases, the Secretariat is currently reviewing the Submissions with respect to the Article 14(1) requirements in two cases. In five cases, the Secretariat has not yet decided whether to recommend the preparation of a Factual Record under Article 15(1). The Council is currently reviewing three Submissions in which the Secretariat has recommended preparation of Factual Records. Preparation of one Factual Record by the Secretariat is pending.

## **2. BC Hydro and Cozumel Pier Factual Records**

Two Factual Records have been completed by the Secretariat: *BC Hydro* and *Cozumel Pier*. In both cases, the procedure followed substantially conformed to the Guidelines and the instructions given to the Secretariat by the Council. These procedures are described briefly below in order to provide a sense of the scope of such Records and how they are developed.

### **a) BC Hydro**

We have focused in particular on the BC Hydro Record because it represents the Secretariat's most recent effort to prepare a Factual Record and because it incorporated procedures to improve public participation that were not present in the Cozumel Pier Factual Record.

In April 1997, Sierra Legal Defence Fund and Sierra Club Legal Defense Fund<sup>2</sup> filed a Submission under Article 14(1) alleging that Canada had failed to effectively enforce the Fisheries Act<sup>3</sup> against BC Hydro, a Crown corporation wholly owned by the Province of British Columbia. BC Hydro builds, maintains, and operates a system of hydroelectric dams across the Province. The submitters claimed that BC Hydro did not

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<sup>1</sup> See Appendix for a brief description of and status report on all Submissions to date.

<sup>2</sup> On behalf of the following Canada and US organizations; BC Aboriginal Fisheries Commission, Trial Wildlife Association, Steelhead Society, Trout Unlimited (Spokane Chapter), Sierra Club(U.S.), Pacific Coast Federation of Fisherman's Association, and Institute of Fisheries Resources

<sup>3</sup> Section 35 of the Fisheries Act provides, 'No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat'.

have the required permit<sup>1</sup> to cause the alteration, disruption or destruction of fish habitat and therefore was liable under Section 40 of the Act for an indictable offence or summary conviction. The relevant enforcement authority, the Department of Fisheries and Oceans (“DFO”), had failed to pursue any such measures (except for two minor prosecutions) and had therefore failed, according to the Submission, to enforce the Fisheries Act. The submitters claimed that this has led to the violation of the Constitutional right to fish by the aboriginal communities, to the loss of fish habitat and species, and to reduce recreational fishing opportunities. These impacts were, allegedly, the direct result of reduced water flow, rapid flow fluctuation, altered water quality, fish entrainment, and reservoir draw-down caused by the hydro-electric projects in 33 BC Hydro facilities.

Canada filed a response to the Submission in July 1997, stating that there had been no violation by BC Hydro, whose operations had began in the 1960s and preceded the enactment of the Act in 1994, as well as the NAAEC. Canada also contended that it had not failed to enforce its environmental laws and that appropriate permits and orders had been issued to BC Hydro under the Act, authorizing some loss of fish and required flow control. Canada also outlined the various strategies undertaken to protect habitat and species, such as emergency operations, regional technical committees, and a major Water Use Planning (“WUP”) initiative and water quality guidelines. It also claimed that, since the management of the environment involved complex administrative structures with responsibilities divided between Canada and the Provinces, it was necessary to achieve compliance by using various voluntary compliance mechanisms in conformity with the objectives of NAAEC. Canada stated that some conditions created by the BC Hydro dams were beneficial to species survival.

By April 1998, the Secretariat made a recommendation to the Council that it prepare a Factual Record because “additional information [was] required before an evaluation could be made that Canada [was] effectively enforcing 35(1) of the Fisheries Act.” The Secretariat did not recommend such a Factual Record with respect to other violations claimed by the submitters. The Council, by a unanimous vote (Council Resolution 98-07), directed the Secretariat to prepare the proposed Factual Record. However, the Council asked the Secretariat not to make any finding with respect to matters pending before the Court of Appeal in British Columbia with respect to certain dams and reservoirs.

The Secretariat began its information collection through the methods prescribed under the NAAEC. The submitters, Canada, the Province of British Columbia and BC Hydro were asked to provide information both in writing and through oral testimony. Three months (December 1998 – February 1999) were allotted

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<sup>1</sup> Section 35(2) provides an exception to s 35(1) if authorized by the Minister of Fisheries and Oceans or a regulation made under the Act.

to these stakeholders to make written Submissions. In addition, the Secretariat requested information from JPAC and established an Expert Panel to assist it in the process. The Panel included experts in environmental law and enforcement, the citizen's enforcement process, operation of hydroelectric projects from BC Hydro, and fisheries and habitat protection. The Panel also conferred with the stakeholders before submitting its report.

The Secretariat also prepared a Scope of Inquiry document to ensure that the information collection process was focused. The Scope Document detailed each of the violations alleged and highlighted areas where Canada's response with respect to enforcement measures appeared ambiguous or unsatisfactory. The Secretariat focused especially on avoiding harm to fish species and mitigating and readdressing adverse impacts to fish habitats. The Secretariat also identified six BC Hydro facilities for detailed study, based on the recommendation of the Panel for determining the nature of impact caused by the alleged non-compliance, the enforcement measures taken by Canada and their effectiveness in addressing adverse impacts.

The Secretariat requested information from JPAC in January 1999 and noted an insufficiency of information regarding the WUP developed by Canada to effectively address the problem of habitat destruction. After detailed analysis of the scope, functions and administrative review procedures of the WUP, the Expert Panel concluded that WUP process was insufficient by itself to meet the requirements of the Fisheries Act. Although the WUP process was a step in the right direction, the Act's requirements, said the Panel, could be met only by enforcing the Canadian Environmental Assessment Act.

The Secretariat also included in its Factual Record the history of hydroelectric projects in British Columbia, their methods of operation, their utility in providing electricity and their impact on fish and habitat. The principal issue on which the Secretariat focused was the Harmful Alteration, Disruption or Destruction ("HADD") of fish habitat. Under Canadian law, decision-makers were to be guided by the 1998 HADD Decision Framework, which set forth the authorization process for projects that would result in HADD. The HADD criteria included, among other things adverse impacts to habitats, water quality, spawning grounds, water temperature and toxicity, sedimentation of reservoirs, altered water flows and related environmental impacts, many of which were observed in the BC Hydro project areas.

The Secretariat provided information on the interpretation of the term "failure to enforce environmental laws effectively" by referring to the respective interpretations of that term used by Canada, British Columbia and the independent Expert Panel. The final determination on what constituted "effective enforcement" was, however, left to the reader of the Factual Record.

Despite this limitation, the BC Hydro Factual Record provides comprehensive information on the environmental impact of hydroelectric projects on British Columbia. It also creates a valuable record of expert opinion on such impacts and alternative mitigation methods. The Factual Record clearly explains the Canadian Environmental Assessment Act and the decision-making procedure under the Act. Certain guideline documents (such as the 1998 Decision Framework for the Determination and Authorization of HADD of Fish Habitat) are also clearly explained. The Expert Panel report on the Act and its effectiveness provides a sound basis for assessing that law. Moreover, the process of developing the Factual Record likely encouraged public involvement. In the long term, this process might also have increased the transparency of some governmental decision-making with respect to BC Hydro projects.

#### **b) Cozumel Pier**

This Factual Record resulted from a Submission made by NGOs<sup>1</sup> alleging that Mexico, in approving a port terminal project in *Playa Paraiso*, Cozumel, Quintana Roo (the Cozumel Pier Project), had failed to enforce its environmental law by not requiring a comprehensive Environmental Impact Assessment (EIA) for the entire port project, rather than simply for the single new pier proposed for tourist cruise ships at Cozumel. The submitters also claimed that the authorized activity extended to a protected natural area and would result in the destruction of habitats important for some species, in violation of Mexican environmental and land use laws. In response, Mexico contended that the Submission was improper because, among other things, it challenged actions that took place before the NAAEC had come into force. Mexico also argued that the Submitters had not exhausted the administrative recourse available to them under Mexican law (instead resorting to a method of “popular complaint”) and that the project both conformed to applicable environmental laws and had been the subject of the required EIA.

Based on the Submissions, the Secretariat recommended preparation of a Factual Record. The Council, by a unanimous vote (Resolution 96-08), asked the Secretariat to prepare a Factual Record pursuant to NAAEC Guidelines. It asked the Secretariat to “consider whether the Party concerned [had] failed to enforce effectively its environmental law since the NAAEC’s enactment”. The Council directed that “in considering such an alleged failure to enforce effectively, relevant facts prior to January 1, 1994, may be included in the Factual Record”.

In its Factual Record, the Secretariat focused on extensions of the authorizations that had been based on the initial EIA although the applicable environmental laws had changed. With respect to the environmental

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<sup>1</sup> The Committee for the Protection of Natural Resources A.C., the International Group of One Hundred A.C. and the Mexican Center for Environmental Law A.C.

land use laws, the Secretariat pointed to sections in the EIA indicating potential harm to coral reefs. The Secretariat stated, however, that it would not determine whether in the light of the EIA the construction and operation of the port terminals was in compliance with the environmental laws applicable when the authorization was issued.

Like the BC Hydro project, the Cozumel Pier project involved a complex interplay of facts and law. The Record is a clear summary of the contentions of the parties involved and provides a good basis for the reader to understand the working of Mexico's EIA statute and the respective claims on both sides of the dispute. However, the Record's principal contribution was to assemble the contentions and analyses of the parties. As in the BC Hydro Record, no conclusion is reached as to the effective enforcement of applicable environmental laws.

### **3. Public Comments**

Not surprisingly, the extensive public comments received by JPAC concerning the Articles 14 and 15 citizen submission process focused on the factors and concerns that are evident from even the brief summary included in the preceding Sections 2 and 3. As set forth below, these concerns relate overwhelmingly to the timeliness, transparency, and effectiveness of the Articles 14 and 15 submission process.

#### **a) Timeliness**

For the public, a threshold issue relates to the timeliness of the Articles 14 and 15 process. There is a need, according to many commentators, for clear time limits under which the Secretariat and Council should be required to operate:

As noted by one commentator, "There is no limit on how long the Secretariat may take to review a Submission for compliance with articles 14(1) or 14(2). Similarly, there is no time limit on the Secretariat's internal review of any response received from a Party; nor is there a time limit on preparation of the draft and final Factual Records. The complete lack of time constraints is unreasonable. This is especially true given the relative simplicity of some of the tasks, such as the article 14(1) and 14(2) review". Other commentators pointed out similar concerns and argued that this lack of guidelines for time limits might not satisfy the basic requirements of Article 14.1. Other commentators have noted that over half of the active

Submissions remained pending for approximately two years (or more). It was also observed that one reason for these delays is that the defendant Party is often slow in submitting its Response and that stricter deadlines should therefore be imposed to accelerate that process. Deadlines for the Secretariat to make its determination on whether to request authority to prepare a Factual Report have also been suggested. Others suggest that, once a recommendation has been made, a strict deadline should apply to the Council's decision whether to instruct the Secretariat to prepare the Factual Record. Still other commentators believed that some submissions have effectively amounted to harassment of individual firms or industries, and that the Secretariat should be prepared to exercise its discretion to terminating such Submission promptly.

The commentators spoke virtually as one against the requirement that a Secretariat recommendation to the Council (and the information that it is based upon) be withheld from the public for 30 days after its submission to the Council. It was widely agreed that there is "no need" for the requirement, that "it should be eliminated," that it is impractical, and that it does not stand up to serious analysis, and that, in general, it seriously undermines the purpose of the Articles 14 and 15 process.

It was also noted by commentators that the efficiency of the Secretariat is greatly diminished because of a lack of human and financial resources. In the early years of the Articles 14 and 15 process, the Submissions were treated fairly rapidly. However, with the increasing number of Submissions, the time for review and processing became longer, leading this to the current backlog of Submissions. In light of the increasing number of Submissions filed each year since the inception of the Articles 14 and 15 process, "it seems clear that the Secretariat's resources are insufficient. Only two staff members in the Secretariat are assigned to the submissions unit. Two people probably cannot promptly dispose of the stream of Submissions that will be filed in the next few years if the procedure remains fairly popular, much less the number that will be filed if its popularity grows." The number of requests for Factual Records is increasing as well, and the current resources of the Secretariat are insufficient for handling all of them.

#### **b) Transparency**

Public access to the status of the Submissions and transparency of the process were characterized as the "raison d'être" of the Articles 14 and 15 process by many commentators. Most people agreed that the process must be made as transparent as possible. To this end, Factual Records should, in the view of some, be made public and should clearly state conclusions and recommendations. All Secretariat recommendations regarding the preparation of the Factual Record should be made public as soon as the

recommendations are made. Several commentators expressed concern regarding what they perceived as an increase in parties' reliance on the confidentiality provisions of Articles 39 and 42. These articles relate to the confidential or proprietary information or concerns of national security. However, such claims of confidentiality have been asserted in several citizen submission cases, including *BC Hydro*. While Articles 39 and 42 are valid for their intended purpose, "the effectiveness of the citizen submission process demands that parties not abuse the confidentiality provisions and that the Secretariat is given the ability to closely scrutinize claims of confidentiality." Opportunities to assert confidentiality should be clearly and narrowly defined.

Many commentators, understanding the value of confidentiality, criticize it for the deterrent effect it has on public participation and highlight the lack of public access to and transparency of the Articles 14 and 15 process. "Once a Submission is filed, the Submitter(s) has almost no opportunity to participate in the review process. A Submitter is not allowed to see much less reply to, the challenged Party's Response. Therefore, a citizen has no ability to determine if the Response is truthful or accurate. Furthermore, there is no specific provision allowing a Submitter to participate in the development of a draft Factual Record; only Parties may offer comments on the draft Factual Record. The Submitter must rely on the Secretariat to pursue the claim". As one commentator put it, enabling the public to observe the actions of the Parties vis-à-vis their respective environmental laws is the *sine qua non* of the Article 14 and 15 process; the lack of transparency inherent in the current form of the process frustrates that basic principle. "If the procedure is not transparent to the public – that is, if documents and decisions are not publicly available – then the public may lose the knowledge necessary to oversee and support the procedure". It is clearly recognized, in short, that an ineffective Submissions process will discourage public participation and therefore hurt public confidence in the Articles 14 and 15 process.

Some commentators criticized the role of the Council because of its absolute discretion to decide whether or not to instruct the Secretariat to prepare a Factual Record. Others strongly challenged the wisdom and fairness of the current 30-day prohibition on the publication of Secretariat recommendations to the Council concerning proposed Factual Records. This was criticized both for delaying the process and reducing its transparency. In addition, this requirement "places the Secretariat in an awkward position vis-à-vis the public where the Secretariat or a Party is asked about the status of Submissions, because it limits the amount of information that can be disclosed. The Secretariat hopes that the Council will reconsider the guideline in view of its restrictions on transparency".

### c) **Effectiveness**

The Articles 14 and 15 Process does not, of course, provide any enforcement mechanism after the Secretariat has prepared a Factual Record and the Council has authorized its release. However, one commentator noted that the Cozumel Pier Factual Record had led to additional protection of coral reefs in the area, improvements to environmental impact assessment establishment of a trust fund for reef protection and (perhaps as a result of the Factual Record) the reduction in scope of the overall Cozumel Pier project. Notwithstanding these positive remarks regarding the effectiveness of the Articles 14 and 15 process, one commentator expressed strong reservations about the procedure's effectiveness:

“If a Submitter (1) successfully navigates the obstacle course of articles 14(1), 14(2); (2) the Secretariat determines that the Party's response is inadequate; (3) the Council votes to allow the Secretariat to prepare a Factual Record; and (4) the Council votes to make the Factual Record public, nothing will necessarily happen. A citizen Submitter has no direct ability to force a Party to effectively enforce its environmental laws. A citizen Submitter must hope that another Party chooses to act on the Factual Record and pursue the claim under the NAAEC dispute resolution and enforcement provisions. Even though a citizen Submission may prove that a Party is failing to effectively enforce its environmental laws, the violation may never be redressed.”

Other commentators agreed that there was a need for a more adequate remedy plan, and argued that such a plan should be based upon the Factual Record and contain both preventive and corrective programs. One recommendation made in this regard was to link Factual Records with the CEC's cooperation programs, as CEC has done with its Article 13 initiatives, an approach that would not require any amendment to the NAAEC. Another suggestion was that a Party found not to effectively enforce its environmental laws should commit to do so under monetary penalty. It was also suggested that there should be a mechanism to effectively suspend a project when the Council has instructed the Secretariat to prepare the Factual Record. Others believed that a hostile and confrontational process is not desirable. “[T]he threat of Part Five sanctions is not only useless, it may be worse than useless, as a way to support an effective submissions procedure. JPAC should consider and should encourage the Council to consider ways in which an institutionalized system of cooperation, rather than confrontation, could be used to follow up on factual records. The result might be to reduce Parties' concern over the recommendation and preparation of factual record. The Parties have already established extensive institutional cooperation in enforcement matters under CEC auspices (e.g., the Enforcement Working Group) on which such discussions could build.”

Another issue regarding Council accountability was the absence of any appeal when the Secretariat or the Council has decided not to proceed with the preparation of the Factual Record. One commentator recommended providing for such appeals, while others simply proposed that the Secretariat and Council be required to state publicly the reasons for their decisions.

Finally, many commentators believed that Factual Records should be able to reach conclusions, where the facts warrant, as to a Party's "effective enforcement of its environmental law" in the matter under consideration and should also include recommendations for further action by a Party to impose the effectiveness of such enforcement. Others, however, believed that JPAC should not support such an approach since the Parties believe that the purpose of Factual Records is not to reach "conclusions of law" and will resist these proposals.

#### **4. Conclusions**

A number of conclusions, or "lessons learned," are evident from our own review of the history of Articles 14 and 15 Submissions since 1995, from the many thoughtful comments received from the public, and from our interviews with Secretariat staff and Council Alternates. In drawing these conclusions, we have also sought to respond to the specific issues referred to us by the Council in its letter of 13 October 2000 to JPAC, the substance of which is similar to the issues raised by our overall study.

In brief, the following lessons and conclusions can be drawn from the public history of citizen Submissions under Articles 14 and 15 of the NAAEC:

- 1. Citizen Submissions Play an Essential Role in Achieving the Goals of the NAAEC.** In studying the Articles 14 and 15 process, it is easy to overlook the contributions that this new procedure has already made to environmental enforcement in North America. NGOs from the NAAEC countries have repeatedly turned to the Articles 14 and 15 process when they believed that domestic environmental remedies were not adequate to address their complaints. Where the Secretariat determined that a Submission merited a response, the Parties have been asked to explain the basis and rationale for their actions and have uniformly sought to do so. Where a Factual Record has been recommended by the Secretariat, an inquiry into the basis for the challenged action (or inaction) provides an additional\_incentive for that Party to set forth a reasoned basis for its conduct under applicable law, a procedure that by itself promotes compliance with law.

Development of a Factual Record has provided an opportunity for both public and impartial expert participation in the assessment of the factual (and, at least in part, the legal) basis for a Party's alleged non-enforcement of its environmental laws. Moreover, the process of developing the Factual Record offers ample opportunities for all participants to identify possible areas of compromise or even settlement of environmental disputes as relevant facts become better understood during the

development of the Factual Record. With increased communications among NGOs through the Internet and media attention to the issues in dispute, development of a Factual Record (or even a carefully prepared Submission) provides a vehicle for focused public attention on a Party's environmental enforcement practices. This not only increases the pressure for meaningful enforcement of existing law, but can also lead to improve environmental legislation or joint public-private action to address underlying environmental problems. The Factual Record recommendations now pending before the Council are likely to reinforce these benefits.

2. **Secretariat Independence and Resources.** The professional independence and competence of the Secretariat is indispensable to a credible and properly functioning Articles 14 and 15 process. The Secretariat must, of course, have adequate resources to attract and retain consistently high-quality staff and, where needed, specialized consultants. However, the Secretariat must also have (and be perceived to have) the independence to exercise its best professional judgment with respect to Submissions, the adequacy of Party responses, recommendations to Council and development of Factual Records.
  
3. **Review of Articles 14 and 15 Submissions Must Be Expedited.** To be credible with the public and to increase its effectiveness, the citizen submission process must also be timely. There is substantial room to reduce the time periods currently required to review, respond to and process Submissions. For the 29 Submissions reviewed in this Report, an average time of over four months was required for the Secretariat (despite the efforts of a highly dedicated staff) to make an Article 14(1) determination with respect to the formal requirements of that provision. More than two months, on average, was required for Article 14(2) determinations. While there were individual Submissions for which extended review periods were clearly required, the Secretariat should be given sufficient resources to handle the Submissions and respond promptly under the criteria set forth in Articles 14(1) and (2).

Lengthy review periods have characterized other steps of the Articles 14 and 15 process as well. While Party responses averaged two months, the time required to review Party responses under Article 15(1) averaged just over nine months. It is important, of course, for the Secretariat to reach reasoned and consistent decisions with respect to Party responses and any recommendation to the Council for the development of a Factual Record. Nevertheless, we believe this period must be substantially shortened, and sufficient resources provided to the Secretariat for this purpose. A portion of the time saved could also be utilized to permit submitters to reply to the Party's response, as discussed below.

In general, the Secretariat should strive to complete its entire Article 14(1) and (2) review process in 60 days and its review of Party responses (and submitter replies) within an additional 60-90 days. Allowing up to 60 days for Party responses, this would permit Secretariat recommendations for Factual Records to reach the Council within six or, at most, seven months, compared to the average of approximately 18 months for the 1995–2000 period.

The Council itself is under no time constraints in its consideration of Secretariat recommendations. However, the Council too should strive to expedite its decision-making with respect to proposed Factual Records, so that the Factual Record, if required, can still be timely. Except in exceptional circumstances, the Council should be able to authorize (or decline to authorize) the development of a Factual Record within 90 days, recognizing that much of the analysis relevant to that decision will already have been completed by the Secretariat.

These suggested deadlines for Council decisions, combined with the time schedule suggested above for the Secretariat's own review, would make it possible for decisions on Factual Records to be made within nine or ten months after filing of a Submission. This would enable the Secretariat to devote approximately 60 days to staffing, scoping and planning the Factual Record itself and the following 12 months to its development. For the reasons noted above, we believe that it is important to attempt to complete Factual Records while the conditions that prompted their development are still current and when the available policy options have not been narrowed by the passage of time. The overall goal, we believe, should be for the entire Articles 14 and 15 process to be completed within two years from the filing of a Submission. While still lengthy, this would be a significant reduction from the approximately 38 months required for the full BC Hydro Submission.

These suggestions for the acceleration of the Articles 14 and 15 process necessarily imply an additional workload for the Secretariat staff. To meet this added burden, the Secretariat will, as noted above, need additional resources to fulfill its mission in a satisfactory and independent manner.

4. **Open, Informed and Reasoned Decision-making.** The Articles 14 and 15 process should also be characterized by decision-making that is open, informed and reasoned. The current Guidelines require the Secretariat staff to indicate its reasons for a decision under Article 15(1) to recommend a Factual Record and at certain other decision-making points within the Article 14(1) and (2) reviews. These

requirements provide the Parties, the Council and the public with the requisite confidence that the review is being conducted both openly and on a reasoned basis. For this reason, similar considerations should govern any Council decision not to accept the Secretariat's recommendation to develop a Factual Record. The obligation to state substantive reasons for important governmental decisions affecting the environment should not be seen as an unreasonable burden, particularly where the Secretariat has, after investigation, indicated its reasons for recommending such a Factual Record.

We also suggest three additional reforms in the current review process, all of which are similarly intended to improve public confidence in the decision-making process. First, where a Party's response includes new information not referred to in the original Submission, the submitter should be provided with that information and a brief opportunity to respond. A time period of up to 30 days should be given to the submitter for this purpose. Second, the Secretariat should inform a submitter when the Secretariat has referred a matter to the Council with a recommendation for a Factual Record. The current 30-day "blackout" period should either be abolished or reduced (in order to permit the responding Party to become aware of the recommendation before press inquiries begin). Third, if a Party chooses to submit additional information directly to the Council in response to such a recommendation from the Secretariat, the submitters should be so advised and, if they request, permitted to make a brief written reply to such information so that the Council can make a more fully informed decision on the Secretariat's recommendation. None of these procedural changes would impose a significant burden on the Secretariat or the Council, and they would go far to alleviate concerns that were widely voiced by the public during our Lessons Learned Workshop.

- 5. Factual Record Follow-up.** The Articles 14 and 15 process does not currently include provisions for enforcement or follow-up of a completed Factual Record, even when a Party's failure to enforce its environmental laws is clearly established by the Factual Record. While we received a number of comments addressed to this issue, many of the suggestions went beyond the scope of our study or suggested significant amendments to the NAAEC itself. We believe that the present Articles 14 and 15 procedure can comfortably lend itself to increased oversight, by both the public and the CEC, of the steps that a Party takes (or fails to take) to remedy any enforcement failures identified in a Factual Record.

The initial, and in many ways the most important, role in monitoring post-Factual Record conduct is that played by the submitters and by those NGOs most interested in the controversy giving rise to the Factual Record. Presumably, this on-going monitoring role of citizens will continue, as it did prior to

and during the Articles 14 and 15 review process. If, following a Factual Record showing a serious failure of enforcement, a Party were to repeat that pattern, presumably a subsequent Submission could be brought to the Secretariat's attention with a reasonable expectation for prompt review by the staff.

**6. Council Referral Items.** The Council in its Resolution 00-09, dated 13 June 2000, has asked JPAC to review the history of the Articles 14 and 15 process and to identify lessons learned related to the following issues:

- a) Sufficiency of information to allow the Secretariat to review a Submission under Article 14(1)(c).
- b) Processes followed by the Secretariat in gathering information for the preparation of a Factual Record.
- c) Timing of the public release of non-confidential information.
- d) Designation of confidential or proprietary information in connection with the Articles 14 and 15 process.

The first three of these issues have been addressed implicitly in the preceding recommendations with respect to the Articles 14 and 15 process. In particular, the Secretariat has ample authority to request any additional information it requires to review Submissions under Article 14(1). The Secretariat must be given sufficient resources to conduct such reviews in a timely manner. With respect to the timing of the release of non-confidential information, we have suggested increased disclosure of Party responses to submitters and repeal (or substantial reduction) of the 30-day "blackout" period for Secretariat disclosures of its recommendations to the Council with respect to the development of Factual Records.

With respect to the fourth issue (confidential information), we believe that a Party's right to invoke that defense against disclosure should be narrowly construed and should be limited to those circumstances in which it is expressly authorized by Art. 39 of the NAAEC (i.e., where personal privacy, national security decisions or trade secrets are at stake). Anything broader than that, we believe, will serve principally to dilute the effectiveness of a procedure that relies on public disclosure and scrutiny for its credibility and acceptance. If a Party invokes the privacy defense, it should state the reasons and the provisions it relies on.

JPAC and its members appreciate the opportunity to share these recommendations and lessons learned with the Council, the Secretariat and the public and hope that they will contribute to the strengthening of both the NAAEC and the unique citizen submission process that the people of North America have created for the purpose of protecting their shared and glorious environment.

Respectfully submitted,

**ARTICLE 14  
SUBMISSIONS ON  
ENFORCEMENT MATTERS**

This brief description provides an update on the status and background of submissions filed with the Commission for Environmental Cooperation (CEC) as of **20 March 2001**.

**I Status of Pending Submissions as of 20 March 2001**

The status of the **eleven submissions currently under review** is as follows:

- **Determining whether the Cytrar II submission meets the criteria of Article 14(1):** On 14 February 2001, the Secretariat received the first 2001 submission, SEM-01-001 / *Academia Sonorense de Derechos Humanos, A.C. et al.* (concerning Mexico), and is currently reviewing this submission to determine whether it meets the criteria of Article 14(1).
- **Developing the *Metales y Derivados* factual record:** The Secretariat is currently developing a factual record on SEM-98-007 / Environmental Health Coalition, et al (concerning Mexico).
- **Awaiting Council's decision on the development of two factual records: *Aquanova* and *Migratory Birds*:** On 4 August 2000, the Secretariat informed Council that SEM-98-006 / *Grupo Ecológico Manglar A.C.* (concerning Mexico) warrants developing a factual record. Likewise, on 15 December 2000, the Secretariat notified Council that submission SEM-99-002 / Alliance for the Wild Rockies, et al. (concerning the US) warrants developing a factual record. Regarding both cases, Council may, upon a two-thirds vote, instruct the Secretariat to prepare a factual record.
- **Determining whether development of a factual record is warranted for five submissions:**
  - Río Magdalena-** SEM-97-002 / *Comité Pro Limpieza del Río Magdalena* (concerning Mexico)
  - Great Lakes-** SEM-98-003 / Department of the Planet Earth et al. (concerning the US)
  - BC Mining-** SEM-98-004 / Sierra Club of British Columbia, et al. (concerning Canada)
  - BC Logging-** SEM-00-004 / David Suzuki Foundation et al. (concerning Canada)
  - Molmex II-** SEM-00-005 / *Academia Sonorense de Derechos Humanos et al.* (concerning Mexico)

These submissions are being reviewed by the Secretariat in light of the Party's response to determine whether development of a factual record is warranted. On 13 September 1999, the Secretariat requested additional information from Mexico under Article 21(1)(b) concerning SEM-97-002 / *Comité Pro Limpieza del Río Magdalena* (concerning Mexico). No response to this request has been received.

- **Awaiting minor correction of the Tarahumara submission.** The Secretariat is awaiting the correction by the Submitters of a minor error of form under section 3.10 of the Guidelines, to begin the Article 14(1) review of submission SEM-00-006 / *Comisión de Solidaridad y Defensa de los Derechos Humanos, A.C*
- **Deferred decision on Oldman River factual record.** The Council has deferred consideration of the Secretariat's notification that a factual record is warranted with respect to SEM-97-006 / The Friends of the Oldman River (concerning Canada).

## II. Historical Background of Submissions:

The **eighteen** submissions that are no longer pending were addressed as follows:

- Nine submissions have been dismissed on the grounds that they did not warrant further consideration based on Article 14(1) or (2):

**Spotted Owl**- SEM-95-001 / Biodiversity Legal Foundation et al.

**Logging Rider**- SEM-95-002 / Sierra Club et al.

**Tottrup**- SEM-96-002 / Aage Tottrup

**CEDF**- SEM-97-004 / Canadian Environmental Defence Fund

**Biodiversity**- SEM-97-005 / Animal Alliance of Canada et al.

**Guadalajara**- SEM-98-001 / *Instituto de Derecho Ambiental, A.C., et al.*

**Ortiz Martínez**- SEM-98-002 / Ortiz Martínez

**Molymex I**- SEM-00-001 / Rosa María Escalante de Fernández

**Jamaica Bay**- SEM-00-003 / Hudson River Audubon Society of Westchester, Inc., et al.

- Two submissions have been terminated under Article 14(3)(a)

**Methanex**- SEM-99-001 / Methanex Corporation

**Neste**- SEM- 00-002 / Neste Canada Inc.

- Three submissions have been terminated under Article 15(1)

**Oldman River I**- SEM-96-003 / The Friends of the Oldman River

**Lake Chapala**- SEM-97-007 / *Instituto de Derecho Ambiental*

**Cytrar**- SEM-98-005 / *Academia Sonorense de Derechos Humanos*

- One submission has been withdrawn by the Submitters

**Fort Huachuca**- SEM-96-004 / The Southwest Center for Biological Diversity et al.

- Two factual records have been prepared and made public

**Cozumel**- SEM-96-001 / *Comité para la Protección de los Recursos Naturales, A.C. et al.*

**BC Hydro**- SEM-97-001 / B.C. Aboriginal Fisheries Commission et al.

- The Council has dismissed one submission under Article 15(2) following notification from the Secretariat that preparation of a factual record was warranted

**Quebec Hog Farms**- SEM-97-003 / *Centre québécois du droit de l'environnement. et al.*

The attached chart provides a summary and a status update on each submission.

**ARTICLE 14  
SUBMISSIONS ON  
ENFORCEMENT MATTERS  
(Process status as of 20 March 2001)**

<b>SEM I.D. No./ SUBMITTER</b>	<b>MATTER ADDRESSED IN THE SUBMISSION</b>	<b>DATE FILED</b>	<b>PARTY</b>	<b>PROCESS STATUS</b>
SEM-95-001 / Biodiversity Legal Foundation et al.	Submitters alleged that provisions of the "Rescissions Act" have resulted in a failure to enforce effectively selected provisions of the Endangered Species Act.	30 June 1995	United States	Process terminated under Article 14(2) on 11 December 1995.
SEM-95-002 / Sierra Club et al.	Submitters alleged that provisions of the Fiscal Year 1995 Supplemental Appropriations, Disaster Assistance and Rescissions Act result in a failure to enforce effectively all applicable Federal environmental laws by eliminating private remedies for salvage timber sales.	30 August 1995	United States	Process terminated under Article 14(2) on 8 December 1995.
SEM-96-001 / <i>Comité para la Protección de los Recursos Naturales, A.C.</i> et al.	The Submitters alleged that the appropriate authorities failed to effectively enforce environmental laws during the evaluation process of the project "Construction and Operation of a Public Harbor Terminal for Tourist Cruises on the Island of Cozumel, State of Quintana Roo."	18 January 1996	Mexico	Process terminated. Factual Record released on 24 October 1997.
SEM-96-002 / Aage Tottrup	The Submitter asserted that the governments of Canada and Alberta have failed to effectively enforce their environmental laws resulting in the pollution of specified wetland areas which impacts on the habitat of fish and migratory birds.	20 March 1996	Canada	Process terminated under Article 14(2) on 28 May 1996.
SEM-96-003 / The Friends of the Oldman River	The Submitter alleged that the Government of Canada is failing to apply, comply with and enforce the habitat protection sections of the Fisheries Act and the CEAA (Canadian Environmental Assessment) Act).	9 September 1996	Canada	Process terminated under Article 15(1) on 2 April 1997.
SEM-96-004 / The Southwest Center for Biological Diversity et al.	The Submitters alleged that the United States is failing to effectively enforce its environmental law, namely the National Environmental Policy Act (NEPA), with respect to the United States Army's operation of Fort Huachuca, Arizona.	14 November 1996	United States	Process terminated by submitters' withdrawal on 5 June 1997.

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SEM-97-001 / B.C. Aboriginal Fisheries Commission et al.	The Submitters allege that the Canadian Government is failing to «enforce s. 35(1) of the Fisheries Act, and to utilize its powers pursuant to s. 119.06 of the National Energy Board Act, to ensure the protection of fish and fish habitat in British Columbia's rivers from ongoing and repeated environmental damage caused by hydro-electric dams.	2 April 1997	Canada	Process terminated. Factual record released on 11 June 2000.
SEM-97-002 / <i>Comité pro Limpieza del Río Magdalena</i>	The Submitters allege that wastewater originating in the municipalities of Imuris, Magdalena de Kino, and Santa Ana, located in the Mexican state of Sonora, is being discharged into the Magdalena River without prior treatment, in violation of Mexican environmental legislation governing the disposal of wastewater.	15 March 1997	Mexico	Secretariat awaiting additional information from the Party under Article 21(1)(b), requested on 13 September 1999, to determine whether a factual record is warranted.
SEM-97-003 / <i>Centre québécois du droit de l'environnement</i>	The Submitters allege a failure to enforce several environmental standards related to agriculture on the territory of the Province of Quebec.	9 April 1997	Canada	Process terminated under Article 15(2) on 16 May 2000.
SEM-97-004 / Canadian Environmental Defence Fund	The Submitter alleged that Canada has failed to enforce its law requiring environmental assessment of federal initiatives, policies and programs.	26 May 1997	Canada	Process terminated under Article 14(1) on 25 August 1997.
SEM-97-005 / Animal Alliance of Canada et al.	The Submitters alleged that Canada is failing to enforce its regulation ratifying the Convention on Biological Diversity signed at the Rio Earth Summit on 11 June 1992, and subsequently ratified pursuant to an Order-in-Council on 4 December 1992.	21 July 1997	Canada	Process terminated under Article 14(1) on 26 May 1998.
SEM-97-006 / The Friends of the Oldman River	The Submitter alleges that Canada is failing to apply, comply with and enforce the habitat protection sections of the Fisheries Act and the CEAA (Canadian Environmental Assessment Act).	4 October 1997	Canada	On 16 May 2000, the Council decided to defer consideration of the Secretariat's notification that a factual record was warranted.

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SEM-97-007 / <i>Instituto de Derecho Ambiental</i>	The Submitters allege that Mexico is failing to enforce environmental law, in connection with the citizen complaint filed on 23 September 1996, concerning the degradation of the Lerma Santiago River– Lake Chapala Basin.	10 October 1997	Mexico	Process terminated under Article 15(1) on 14 July 2000.
SEM-98-001 / <i>Instituto de Derecho Ambiental</i> , with citizens affected by the 22 April 1992 explosions	The Submitters allege that Mexican Federal Attorney General and the Federal Judiciary did not duly enforce the General Law on Ecological Balance and Environmental Protection (LGEEPA) in relation to the explosions in the Reforma area of the city of Guadalajara, State of Jalisco.	9 January 1998	Mexico	Process terminated under Article 14(1) on 11 January 2000.
SEM-98-002 / Hector Gregorio Ortiz Martínez	The submission alleged “improper administrative processing, omission and persistent failure to effectively enforce” environmental law in connection to a citizen complaint filed by the Submitter.	14 October 1997	Mexico	Process terminated under Article 14(1) on 18 March 1999.
SEM-98-003 / Department of the Planet Earth et al.	The Submitters assert that the US Environmental Protection Agency’s regulations drafted and programs adopted to control airborne emissions of dioxins/furans, mercury and other persistent toxic substances from solid waste and medical waste incinerators violate and fail to enforce both: 1) US domestic laws, and; 2) the ratified US-Canadian treaties designed to protect the Great Lakes that are partly referenced in the US Clean Air Act.	27 May 1998	United States	Review of the submission in progress to determine whether development of a factual record is warranted, in light of the response received from the Party on 15 November 2000.
SEM-98-004 / Sierra Club of British Columbia, et al.	The submission alleges a systemic failure of Canada to enforce section 36(3) of the Fisheries Act to protect fish and fish habitat from the destructive environmental impacts of the mining industry in British Columbia.	29 June 1998	Canada	Review of the submission in progress to determine whether development of a factual record is warranted, in light of the response received from the Party on 9 September 1999.

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SEM-98-005 / <i>Academia Sonorense de Derechos Humanos</i> et al.	The Submitters allege that Mexico has failed to effectively enforce environmental law by having authorized the operation of a hazardous waste landfill (CYTRAR) less than six kilometers away from Hermosillo, Sonora.	23 July 1998	Mexico	Process terminated in accordance with Article 15(1) on 26 October 2000.
SEM-98-006 / <i>Grupo Ecológico Manglar A.C.</i>	The submission alleges that Mexico is failing to effectively enforce its environmental laws with respect to the establishment and operation of <i>Granjas Aquanova S.A.</i> , a shrimp farm in Isla del Conde, San Blas, Nayarit, Mexico.	20 October 1998	Mexico	On 4 August 2000, the Secretariat informed the Council that this submission warrants developing a factual record. The Council's decision is pending.
SEM-98-007/ Environmental Health Coalition, et al.	The Submitters allege that Mexico has failed to effectively enforce its environmental law in connection with an abandoned lead smelter in Tijuana, Baja California, Mexico, that poses serious threats to the health of the neighboring community, and to the environment.	23 October 1998	Mexico	On 16 May 2000, the Council unanimously decided to instruct the Secretariat to prepare a factual record. The Secretariat is preparing a factual record.
SEM-99-001 / Methanex Corporation (consol idated with SEM- 00-002)	The Submitters allege that the United States of America has failed to enforce California's environmental laws and regulations related to water resource protection and to the regulation of underground storage tanks (USTs).	18 October 1999	United States	Process terminated under Article 14(3)(a) on 30 June 2000.
SEM-99-002 / Alliance for the Wild Rockies, et al.	The Submitters allege that the United States Government is failing to effectively enforce Section 703 of the Migratory Bird Treaty Act (MBTA), 16 U.S.C. §§703-712, which prohibits the killing of migratory birds without a permit.	19 November 1999	United States	On 15 December 2000, the Secretariat informed the Council that this submission warrants developing a factual record. The Council's decision is pending.

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SEM-00-001 / Rosa María Escalante de Fernández	The Submitter asserts that health and crops in the town of Cumpas, Sonora, Mexico, have been affected by air pollution from the Molymex, S.A. de C.V. plant which allegedly operates in violation of LGEEPA air quality provisions and Official Mexican Standards for environmental health that establish limits for sulfur dioxide and particulate matter of ten microns or less (PM <sub>10</sub> ).	27 January 2000	Mexico	Process terminated under Article 14 (1) on 25 April 2000.
SEM-00-002 / Neste/Canada Inc. (consolidated with SEM-99-001)	The Submitter believes that applicable regulatory agencies in California are not enforcing environmental laws, as defined in the NAAEC, relating to underground storage tanks (USTs) with the result that significant volumes of gasoline continue to leak into and contaminate soil, water and air in that State.	21 January 2000	United States	Process terminated under Article 14(3)(a) on 30 June 2000.
SEM-00-003 / Hudson River Audubon Society of Westchester, Inc., et al.	The Submitters allege that the United States Department of Interior – National Park Service, is failing to enforce and proposing to violate: (i) Section 703 of the Migratory Bird Treaty Act (MTBA) 16 U.S.C. 703-712, which prohibits the killing of migratory birds without a permit from the U.S. Fish and Wildlife Service; and (ii) Sections 4 through 10 of the Endangered Species Act of 1973 (ESA), which prohibits the taking of endangered and threatened species and requires the protection of such species “whether by protection of habitat and food supply” and requires the designation of “critical habitat.”	2 March 2000	United States	Process terminated under Article 14 (1) on 12 April 2000.
SEM-00-004 / David Suzuki Foundation et al.	The Submitters allege that the Government of Canada “is in breach of its commitments under NAAEC to effectively enforce its environmental laws and to provide high levels of environmental protection.” They allege that the Fisheries Act is violated by logging activities undertaken by British Columbia.	15 March 2000	Canada	Review of the submission in progress to determine whether development of a factual record is warranted, in light of the response received from the Party on 6 July 2000.

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SEM-00-005 / <i>Academia Sonorense de Derechos Humanos</i> et al.	The Submitters allege that Mexico has failed to effectively enforce the LGEEPA in relation to the operation of the company Molymex, S.A. de C.V. in the town of Cumpas, Sonora, Mexico. The company processes residues generated in the smelting of copper by national and foreign companies to produce molybdenum trioxide, presumably causing damage and loss to human health and the environment.	6 April 2000	Mexico	Review of the submission in progress to determine whether development of a factual record is warranted, in light of the response received from the Party on 18 January 2001.
SEM-00-006 / <i>Comisión de Solidaridad y Defensa de los Derechos Humanos, A. C.</i>	The Submitters allege a failure by Mexico to effectively enforce its environmental law by denying access to environmental justice to Indigenous communities in the Sierra Tarahumara in the state of Chihuahua.	9 June 2000	Mexico	The Secretariat is awaiting a correction by the Submitter of a minor error of form, to proceed with the review under Article 14(1).
SEM-01-001 / <i>Academia Sonorense de Derechos Humanos</i> A.C. et al.	The Submitters allege that Mexico has failed to effectively enforce environmental law by having authorized the operation of the hazardous waste landfill (CYTRAR) located near the city of Hermosillo, Sonora.	14 February 2001	Mexico	Review of submission in progress to determine whether it meets the criteria of Article 14(1).

**Note:** For further information (summaries of the submissions and responses, list of communications with the Submitter, documents available in electronic format, etc.) "Click" on the submission identification number in the Registry of Citizen Submissions in the CEC home page at <<http://www.cec.org>>.