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Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation

1. What is a submission on enforcement matters?
 - 1.1 A "submission on enforcement matters" ("submission") is a documented assertion that a Party to the North American Agreement on Environmental Cooperation ("Agreement") is failing to effectively enforce its environmental law. The relevant Articles of the Agreement are annexed to these guidelines.
 2. Who can make submissions on enforcement matters?
 - 2.1 Any non-governmental organization or person established or residing in the territory of a Party to the Agreement may make a submission on enforcement matters for consideration by the Secretariat of the Commission for Environmental Cooperation ("Secretariat"). The term "non-governmental organization" is defined in Article 45(1) of the Agreement.
 - 2.2 The submission must clearly identify the person(s) or organization(s) making the submission ("Submitter(s)").
 3. How are they to be submitted?
 - 3.1 A written copy of the submission must be received by the Secretariat at the following address:

Commission for Environmental Cooperation
393, rue St-Jacques Ouest, Bureau 200
(Montreal Quebec)
Canada H2Y 1N9
 - 3.2 Submissions may be made in English, French or Spanish, which are the languages currently designated by the Parties for submissions.
 - 3.3 Submissions should not exceed 15 pages of typed, letter-sized paper, excluding
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supporting information. Submissions will not be accepted by fax or any other electronic means. Where possible, a copy of the submission on computer diskette should also be provided.

- 3.4 Submissions must include the complete mailing address of the Submitter.
- 3.5 The Secretariat will promptly acknowledge the receipt of any correspondence or written document(s) relating to the initiation of the submission process.
- 3.6 Any correspondence or written document(s) will be considered a submission by the Secretariat if it contains the supporting information necessary to enable the Secretariat, at the proper time, to assess the submission based on the criteria listed in Article 14(1) of the Agreement.
- 3.7 Formal notifications by the Secretariat to a Submitter will be made in writing and sent by any reliable means of notification which provides a record of the notification having been sent and received.
- 3.8 The Secretariat will inform the Council of the initiation and progress of all submissions.
- 3.9 The Secretariat will inform the Submitter of the progress of its submission, as provided for in these guidelines.
- 3.10 The Secretariat may at any time notify the Submitter of any minor errors of form in the submission in order for the Submitter to rectify them.
- 3.11 The Secretariat will make its best efforts to take all actions necessary to process a submission in a timely manner.

4. What should be included in a submission?

- 4.1 The Secretariat may only consider a submission on enforcement matters if that submission meets the criteria set forth in Article 14(1) of the Agreement, as specified in these guidelines.

INITIAL CONSIDERATION OF A SUBMISSION BY THE SECRETARIAT

5. What criteria must a submission address?

- 5.1 The submission must assert that a Party is failing to effectively enforce its environmental law and should focus on any acts or omissions of the Party asserted to demonstrate such failure. For purposes of determining if a submission meets the criteria of Article 14(1) of the Agreement, the term "environmental law" is defined in Article 45(2) of the Agreement.
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- 5.2 The Submitter must identify the applicable statute or regulation, or provision thereof, as defined in Article 45(2) of the Agreement. In the case of the General Ecological Equilibrium and Environmental Protection Law of Mexico, the Submitter must identify the applicable chapter or provision of the Law.
 - 5.3 Submissions must contain a succinct account of the facts on which such an assertion is based and must provide sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based.
 - 5.4 A submission must appear to be aimed at promoting enforcement rather than at harassing industry. In making that determination, the Secretariat will consider such factors as whether or not:
 - (a) the submission is focused on the acts or omissions of a Party rather than on compliance by a particular company or business; especially if the Submitter is a competitor that may stand to benefit economically from the submission.
 - (b) the submission appears frivolous.
 - 5.5 The submission must indicate that the matter has been communicated in writing to the relevant authorities of the Party in question and indicate the Party's response, if any. The Submitter must include, with the submission, copies of any relevant correspondence with the relevant authorities. The relevant authorities are the agencies of the government responsible under the law of the Party for the enforcement of the environmental law in question.
6. What if the submission does not meet these criteria?
- 6.1 Where the Secretariat determines that a submission does not meet the criteria set out in Article 14(1) of the Agreement or any other requirement set out in these guidelines, with the exception of minor errors of form contemplated in section 3.10 of these guidelines, the Secretariat will promptly notify the Submitter of the reason(s) why it has determined not to consider the submission.
 - 6.2 After receipt of such notification from the Secretariat, the Submitter will have 30 days to provide the Secretariat with a submission that conforms to the criteria of Article 14(1) of the Agreement and to the requirements set out in these guidelines.
 - 6.3 If the Secretariat again determines that the Submitter has not met the criteria of Article 14(1) of the Agreement or the requirements set out in these guidelines, the Secretariat will promptly inform the Submitter of its reason(s), and inform the Submitter that the process is terminated with respect to that submission.

DETERMINING WHETHER A SUBMISSION ON ENFORCEMENT MATTERS WARRANTS PREPARATION OF A FACTUAL RECORD

7. When is a response from the Party to the submission merited?

7.1 Where the Secretariat determines that the submission meets the criteria set out in Article 14(1) of the Agreement, the Secretariat will determine whether the submission merits requesting a response from the Party concerned.

7.2 As set forth in Article 14(2) of the Agreement, the Secretariat will, in making that determination, be guided by whether:

- (a) the submission alleges harm to the person or organization making the submission;
- (b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of the Agreement;
- (c) private remedies available under the Party's law have been pursued; and
- (d) the submission is drawn exclusively from mass media reports.

7.3 In considering whether the submission alleges harm to the person or organization making the submission, the Secretariat will consider such factors as whether:

- (a) the alleged harm is due to the asserted failure to effectively enforce environmental law; and
- (b) the alleged harm relates to the protection of the environment or the prevention of danger to human life or health (but not directly related to worker safety or health), as stated in Article 45(2) of the Agreement.

7.4 In considering whether a response from the Party concerned should be requested when the submission is drawn exclusively from mass media reports, the Secretariat will determine if other sources of information relevant to the assertion in the submission were reasonably available to the Submitter.

8. What if it is determined that no response from the Party is merited?

8.1 Where the Secretariat determines that no response from the Party is merited, the Secretariat will notify the Submitter of the reason(s). The Secretariat may consider new or supplemental information from the Submitter within 30 days following receipt by the Submitter of such notification. If no new or supplemental information is received by the Secretariat within this time period, or if the Secretariat determines that no response from the Party is merited in light of the new or supplemental information provided by the Submitter, the process will be terminated with respect to that submission, and the Secretariat will so notify the Submitter.

9. How is a response from the Party requested?

- 9.1 Where the Secretariat determines that a submission merits a response from the Party concerned, the Secretariat will forward to the Party a copy of the submission and any supporting information provided by the Submitter. The Secretariat will translate the submission and supporting information into the official language(s) of the Party from which a response is requested, unless that Party directs otherwise.
 - 9.2 The Party will advise the Secretariat within 30 days, or in exceptional circumstances and on notification to the Secretariat, within 60 days of delivery of the request for a response:
 - (a) whether the matter is the subject of a pending judicial or administrative proceeding, and
 - (b) of any other information that the Party wishes to submit, such as
 - (i) whether the matter was previously the subject of a judicial or administrative proceeding, and
 - (ii) whether private remedies in connection with the matter are available to the Submitter, and whether such remedies have been pursued.
 - 9.3 The Party may include in its response whether environmental policies have been defined or actions have been taken in connection with the matter in question.
 - 9.4 If the Party informs the Secretariat that the matter raised in the submission is the subject of a pending judicial or administrative proceeding, as defined in Article 45(3) of the Agreement, the Secretariat will proceed no further with the submission, and will notify the Submitter of its reason(s) and that the submission process is terminated.
 - 9.5 Upon receipt of a response from the Party or following the expiration of the response period, the Secretariat may begin its consideration of whether it will inform the Council that the submission warrants developing a factual record.
 - 9.6 If the Secretariat considers that the submission, in light of any response provided by the Party, does not warrant developing a factual record, the Secretariat will notify the Submitter of its reason(s) and that the submission process is terminated.
10. How is a decision on whether or not to prepare a factual record taken?
- 10.1 If the Secretariat considers that the submission, in light of any response provided by the Party or after the response period has expired, warrants developing a factual record, the Secretariat will so inform the Council and provide the Council with its reason(s), a copy of the submission, the supporting information provided with the submission, and any other relevant information, to the extent these have not already been provided to the Council.
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10.2 The Secretariat may consolidate two or more submissions that relate to the same facts and the same asserted failure to effectively enforce an environmental law. In other situations where two or more submissions relate essentially to the same facts and enforcement matter and the Secretariat considers that it would be more efficient or cost-effective to consolidate them, it may so propose to the Council.

10.3 The Secretariat will prepare a factual record if the Council, by a two-thirds vote, instructs it to do so. If the Council votes to instruct the Secretariat not to prepare a factual record, the Secretariat will so inform the Submitter and will inform the Submitter that the submission process is terminated. Unless the Council decides otherwise, any such decision will be noted in the registry and in the public file described in these guidelines.

11. How is a factual record prepared?

11.1 In preparing draft and final factual records, the Secretariat will consider any information furnished by a Party. The Secretariat may consider any relevant technical, scientific or other information:

- (a) that is publicly available;
- (b) submitted by interested non-governmental organizations or persons;
- (c) submitted by the Joint Public Advisory Committee (JPAC); or
- (d) developed by the Secretariat or by independent experts.

11.2 If the JPAC provides relevant technical, scientific or other information to the Secretariat relating to the development of a factual record, the Secretariat will forward copies of the information to the Council.

11.3 All contributors to the factual record process are encouraged to submit only relevant information, reducing wherever possible the volume of material submitted.

11.4 The Secretariat will submit the draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days. The Secretariat will then prepare the final factual record for the Council, incorporating any such comments as appropriate.

12. What is included in a factual record?

12.1 Draft and final factual records prepared by the Secretariat will contain:

- (a) a summary of the submission that initiated the process;
 - (b) a summary of the response, if any, provided by the concerned Party;
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(c) a summary of any other relevant factual information; and

(d) the facts presented by the Secretariat with respect to the matters raised in the submission.

12.2 The final factual record will incorporate, as appropriate, the comments of any Party.

13. Will the final factual record be made public?

13.1 After receiving the final factual record, the Council may decide, by a two-thirds vote, to make it public. If it so decides, the final factual record will be made public as soon as it is available in the three official languages of the Commission and a copy will be provided to the Submitter. This should normally be within 60 days of the submission of the final factual record to the Council.

13.2 If the Council decides not to make a factual record available to the public, the Secretariat will inform the Submitter that the factual record will not be made public.

13.3 Independent of any Council decision with respect to the public availability of a factual record, the Council may, by a two-thirds vote, make a factual record available to the JPAC for their information in accordance with Article 16(7) of the Agreement and the JPAC Rules of Procedure.

14. Can a submission under consideration be withdrawn?

14.1 If a Submitter informs the Secretariat in writing that it no longer wishes to have the submission process continue with respect to its submission, the Secretariat will proceed no further with the submission and so inform the Council. If two or more submitters have made a joint submission, all of the Submitters must inform the Secretariat in writing that they no longer wish to have the submission process continue, before the submission may be withdrawn.

14.2 Where the Secretariat has been instructed by the Council to prepare a factual record on a submission, the withdrawal of the submission will be communicated to the Council, and the preparation of the factual record will proceed no further, pending guidance from the Council.

15. How will information on the status of submissions and factual records be made publicly available?

15.1 The Secretariat will establish a registry to provide summary information so that any interested non-governmental organization or person, as well as the JPAC, may follow the status of any given submission during the submission process envisaged under Articles 14 and 15 of the Agreement. The registry will be accessible to the public. The Secretariat will provide periodically a copy of the registry to the Council. Subject to the confidentiality provisions of the Agreement

and of these guidelines, the registry will include the following information unless decided otherwise by the Council:

- (a) a list of all the submissions including:
 - (i) the name of the Submitter and the name of the Party addressed in each submission;
 - (ii) a summary of the matter addressed in the submission that initiated the process, including a brief description of the asserted failure(s) to effectively enforce environmental law;
 - (iii) the name and citation of the environmental law in question;
- (b) a summary of the response provided by the Party, if any;
- (c) a summary of the notifications to the Submitter, including notification that:
 - (i) a given submission does not meet the criteria set forth in Article 14(1) of the Agreement;
 - (ii) a response is requested from the Party concerned;
 - (iii) the Secretariat has determined that no response from the Party concerned is merited;
 - (iv) the Council has instructed the Secretariat not to prepare a factual record;
 - (v) the final factual record has been provided to the Council;
 - (vi) the Council has decided not to make the factual record available to the public;
- (d) the Council's decision on the preparation of a factual record; and
- (e) the Council's decision regarding whether the factual record will be made publicly available.

15.2 Any summary will contain information sufficient to enable interested non-governmental organizations or persons or the JPAC to provide relevant information to the Secretariat for the development of a factual record.

16. Does the public have access to documents relating to individual submissions?

16.1 The Secretariat will maintain a file on each submission at its headquarters in a manner suitable for public access, inspection and photocopying. A reasonable

cost may be requested for photocopying. Photocopies may also be obtained by mail at a reasonable cost to the public. Subject to confidentiality provisions of the Agreement and of these guidelines, the file will contain:

- (a) the submission and supporting information, including any documentary evidence on which the submission may be based;
- (b) any response by a Party, developed under article 14(2) of the Agreement;
- (c) any notifications made to the Submitter by the Secretariat; and
- (d) the final factual record, where the Council has decided to make it publicly available pursuant to Article 15(7) of the Agreement and, any other information considered by the Secretariat under Article 15(4) of the Agreement.

16.2 These documents will be placed in the public file in a timely manner.

16.3 When a submission received by the Secretariat names an individual or entity, the Party concerned may notify that individual or entity of the existence of that submission.

17. How will privacy and confidentiality be safeguarded?

17.1 In accordance with Article 11(8)(a) of the Agreement, the Secretariat will safeguard from disclosure any information it receives that could identify a Submitter if the Submitter so requests, or the Secretariat otherwise considers it appropriate. In accordance with Article 11(8)(b) of the Agreement, the Secretariat will safeguard from disclosure to the public any information received from a non-governmental organization or person where the information is designated by that non-governmental organization or person as confidential or proprietary. The Parties will have access to this confidential or proprietary information, except information that could identify the Submitter pursuant to Article 11(8)(a) of the Agreement.

17.2 The Secretariat will safeguard from disclosure any information provided by the Council or a Party and designated as confidential.

17.3 Given the fact that confidential or proprietary information provided by a Party, a non-governmental organization or a person may substantially contribute to the opinion of the Secretariat that a factual record is not warranted, contributors are encouraged to furnish a summary of such information or a general explanation of why the information is considered confidential or proprietary.

17.4 If a Party provides information relating to a submission on enforcement matters to the Secretariat, the Council, the JPAC or another Party, that is confidential or proprietary, the recipient will treat the information on the same basis as the Party providing the information.

18. What is the relationship between these guidelines and the Agreement?

18.1 These guidelines are not intended to modify the Agreement. If there is a conflict between any provision of these guidelines and any provision of the Agreement, the provision of the Agreement will prevail to the extent of the inconsistency.

19. When will these guidelines be reviewed?

19.1 The Council will initiate a review process of the operation of these guidelines no later than 18 months following their adoption.
