

3. The Party shall advise the Joint Submission Committee within 30 days or, in exceptional circumstances and on notification to the Joint Submission Committee, within 60 days of delivery of the request:

- (a) whether the matter is the subject of a pending judicial or administrative proceeding, or whether the matter has previously been or is presently being considered by the Secretariat of the Commission for Environmental Cooperation of the *North American Agreement on Environmental Cooperation*, in which case the Joint Submission Committee shall proceed no further; 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 person or organization making the submission and whether they have been pursued.

Article 15 : Factual Record

1. If the Joint Submission Committee considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the Joint Submission Committee shall so inform the Council and provide its reasons.

2. A factual record shall be prepared if a Party so decides. In cases to which paragraph 2 of Annex 41 applies, a factual record shall be prepared if the Council so agrees. The National Secretariat of the Party which is not the subject of the submission shall then commission an expert in environmental matters, selected from a roster of such experts established by the Parties within 6 months following the entry into force of this Agreement, to prepare a factual record.

3. The preparation of a factual record pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4. In preparing a factual record, the expert in environmental matters shall consider any information furnished by a Party and 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; or
- (d) developed by independent experts.

5. The expert in environmental matters shall submit a draft factual record for consideration by the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.

6. The expert in environmental matters shall incorporate, as appropriate, any such comments in the final factual record and submit it for the consideration of the Council.

7. At the request of either Party, the Council shall make the final factual record publicly available within 60 days following its submission.