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29 February 2008

Dr. Aleksandras Spruogis
Undersecretary
Ministry of Environment
4/9, A. Jaksto Str.
LT-01105 VILNIUS
Lithuania
Fax: +370 5 266 36 63

Dear Dr. Spruogis,

**Re: Communication to the Aarhus Convention Compliance Committee concerning
decision-making on establishment of a landfill in Kazokiskes
(Ref. ACCC/C/2006/16)**

With reference to your letter dated 27 February 2008 No (1-15)-D8-1825, we would like to acknowledge receipt of the Lithuanian Government's comments on the draft findings and recommendations of the Aarhus Convention Compliance Committee with regard to the above communication. The comments have been forwarded to the Committee and have also been forwarded for information to the communicant.

Concerning your offer to send representatives of your Ministry to present explanations to the Committee, we have consulted with the Chair of the Committee, Prof. Veit Koester, on the procedural implications of your offer and he has asked us to convey the following points.

First, he would like to thank you for your detailed comments and to assure you that these will be fully taken into account by the Committee when it finalizes its findings and recommendations.

Second, while the Committee's proceedings are for the most part open to observers, the process of finalizing findings and recommendations concerning compliance by specific Parties takes place in closed session in accordance with paragraph 33 of the annex to decision I/7 as further elaborated through the Committee's modus operandi. In the present case, while it would theoretically be possible (even though it has never happened in previous cases) for the Committee to return to the discussion phase, which would take place in open session in accordance with paragraph 32 of the annex to decision I/7 as further elaborated through the Committee's modus operandi, it is not envisaged that this

will happen at the meeting next week. For one thing, it would be necessary to provide the communicant with the opportunity to participate in any such discussion and even for logistical reasons it is unlikely that this would be possible. If, notwithstanding the fact that your Government's comments appear prima facie to be rather comprehensive, the Committee does reach the conclusion that it is necessary to return to the discussion phase, that decision would be taken in the closed session at the meeting next week, with due notice given to both the Party concerned and the communicant of the possibility to participate.

The secretariat would like to address the concerns expressed in the last paragraph of the comments from your Ministry concerning the manner in which the draft findings were communicated to your Ministry and the use made of them by the communicant.

The secretariat attributes great importance to the transparency and clarity of the procedures it executes on behalf of the Committee. It is indeed very important that both the Party concerned and the communicant in a given compliance review procedure are given proper access to all the information related to it in an equitable manner, including at the stage of circulating draft findings to the Party concerned and the communicant for comments. In this regard, the standard procedure of the secretariat is to send the document to both the Party concerned and the communicant at precisely the same time and to subsequently forward any comments received from one party concerned to the other for information.

This procedure has been followed in the present case. On 12 February 2008, an e-mail containing a cover letter and the draft findings and recommendations was sent by the secretariat to Ms. Lina Ciapaite, designated as the Lithuanian National Focal Point for the Aarhus Convention by letter of October 2006 from the then State Secretary at your Ministry. The message was copied to the Permanent Mission of the Republic of Lithuania to the United Nations Offices in Geneva. It was also copied for information to the communicant. A message containing a similar cover letter and the draft findings was sent at exactly the same time to the communicant with a copy to Ms. Ciapaite and to the Lithuanian Permanent Mission.

As a back-up, the information was also sent to both the Party concerned and the communicant by fax.

The hard copies of the cover letters and the draft findings and recommendations were posted by registered mail on 13 February 2008 to both the Lithuanian Ministry of Environment and to the communicant. According to the postal records, the letter was delivered to the Ministry of Environment on 20 February 2008.

We are somewhat puzzled by your statement that a number of telephone calls were made to the Aarhus Convention, and the implication that the draft findings and recommendations were only sent or re-sent to your Ministry as a result of such prompting. Please note that we have no record of receiving any such telephone calls and that the draft findings and recommendations were sent only on one occasion by three methods of communication, as outlined in the preceding paragraphs. The first contact we had from your Ministry after sending out the draft findings and recommendations on 12 and 13 February 2008 was when we received an e-mail from Mr. Auglys of your Ministry on 26 February 2008 notifying us that due to some delays in receiving the draft findings, the Party concerned would provide its comments slightly later than requested.

On 26 February 2006, the secretariat received comments from the communicant, which were forwarded on the same day to the Lithuanian Ministry of Environment for

information. Similarly, the comments received from you on 27 February 2008 have been forwarded for information to the communicant.

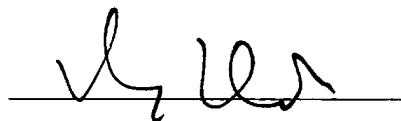
We regret if the draft findings sent out by us on 12 February 2008 to the government of Lithuania reached the relevant experts with some delay. Even modern communication methods are not perfect, and we are always ready to review our procedures to make improvements. We do assure you, however, that all possible efforts were made by the secretariat to ensure that both parties concerned in the matter received the draft at the same time. In doing so we applied the procedure used successfully over the past four years in similar situations that has been developed by the Committee as part of its *modus operandi*.

Regarding your statement that the communicant publicized the draft findings and recommendations through press conferences, we would like to emphasize that we are not in a position to control what happens to the documentation once it has been sent to the Party concerned and the government. We would of course find it regrettable if the work of the Committee or the status of the documentation was in some way misrepresented, for example if the draft findings were presented as if they had been adopted.

We also fully understand that your Ministry would have been put in a difficult position if it first became aware of the content of the draft findings and recommendations as a result of an NGO press conference. Indeed, the procedures that we follow are specifically aimed at preventing such situations. If the procedures mandated by the Committee and followed by the secretariat have contributed to creating such a situation, we would consider it necessary to review them. At the moment, we are not convinced that this is the case.

Should you have any questions, please do not hesitate to contact the secretariat.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Wates', written over a horizontal line.

Jeremy Wates
Secretary

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Cc: Ms. Lina Čiapaitė, Chief Desk Officer, Public Information and Public Relations Division, Ministry of Environment of the Republic of Lithuania
Mr. Ulrich Salburg, acting for the Kazokiskes Community Association
Ms. Ramunė Dulevičienė, acting for the Kazokiskes Community Association