

5 October 2023

COUNCIL RESOLUTION: 23-05

Instructions to the Secretariat of the Commission for Environmental Cooperation (CEC) regarding submission SEM-18-003 (*Hydraulic Fracturing in Nuevo Leon*), which asserts that the Mexican environmental authorities are failing to effectively enforce various provision of the General Act on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*), the Federal Environmental Liability Act (*Ley Federal de Responsabilidad Ambiental—LFRA*), the Regulation to the Mexican Waste Prevention and Management Act (*Reglamento de la Ley General de Prevención y Gestión Integral de Residuos—LGPGIR Regulation*), and the Guidelines for the Protection and Conservation of National Waters in Connection with Hydrocarbon Exploration and Extraction in Unconventional Deposits (*Lineamientos para la Protección y Conservación de las Aguas Nacionales en Actividades de Exploración y Extracción de Hidrocarburos en Yacimientos No Convencionales—National Waters Contamination Prevention Guidelines*), with respect to hydraulic fracturing in the Tangram I and Nerita I wells, located in the municipality of Los Ramones, Nuevo León.

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) regarding Submissions on Enforcement Matters (SEM) and the preparation of factual records;

AFFIRMING that the process provided for in Articles 14 and 15 of the NAAEC was established by the Parties of the NAAEC to provide an opportunity for residents of Canada, Mexico, and the United States to present their concerns regarding effective enforcement of environmental law and to bring facts to light regarding those concerns;

NOTING that the United States-Mexico-Canada Trade Agreement (USMCA) entered into force on 1 July 2020 and now governs the SEM process;

FURTHER NOTING that the Environmental Cooperation Agreement (ECA) among the Governments of Canada, the United Mexican States, and the United States of America entered into force on 1 July 2020 and superseded the NAAEC on that date;

RECOGNIZING that Article 2(4) of the ECA provides that any submission made pursuant to the NAAEC and not concluded as of entry into force of the ECA shall continue in accordance with

the procedures established under Articles 14 and 15 of the NAAEC, unless the Council decides otherwise;

AFFIRMING that the SEM process, which may include the preparation of factual records, is designed to increase public participation and promote transparency and openness on issues related to the enforcement of environmental law in the Canada, Mexico and United States;

HAVING CONSIDERED submission SEM-18-003 filed on 3 October 2018 and the revised submission filed on 21 February 2019, as well as the Response submitted by the Government of Mexico on 8 April 2020;

HAVING REVIEWED the 30 September 2020 Notification of the Secretariat recommending the development of a factual record with respect to the effective enforcement of LGEEPA Articles 28 paragraphs I and XIII, 88 paragraph III, and 170;

REAFFIRMING that the purpose of a factual record is to provide an objective presentation of the facts relevant to the assertion set forth in a submission and will generally outline the history of the environmental enforcement issue raised in the submission, the relevant legal obligations of the Party, and the actions of the Party in fulfilling those obligations; and

TAKING INTO ACCOUNT Guideline 10.4 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* in relation to the preparation of a factual record, which states that “The Council will provide its reason(s) for the instructions in writing and they will be posted on the [SEM] public registry;”

HEREBY UNANIMOUSLY DECIDES:

TO INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15(4) of the NAAEC, and consistent with Section 10.4 of the Guidelines, on LGEEPA Article 88 paragraph III and Article 170, taking into account Mexico’s statement that the Tangram I and Nerita I wells are not currently in the operation and extraction phase;

TO DIRECT the Secretariat to conclude the preparation of the draft factual record, as provided in Section 19.5 of the Guidelines, and present it to the Council in accordance with Article 15(5) of the NAAEC; and

TO FURTHER DIRECT the Secretariat to provide the Council with its overall work plan for gathering the relevant facts; to keep the Council informed of any future changes or adjustments to such plan; and to promptly communicate with the Council in connection with any clarification required with respect to the scope of the factual record hereby authorized.

TO FURTHER INSTRUCT the Secretariat to post the Council members’ reasons for their votes on the SEM public registry.

APPROVED BY THE COUNCIL:

Sandra McCardell
Government of Canada

Miguel Ángel Zerón
Government of the United Mexican States

Jane Nishida
Government of the United States of America