

## CEMDA SEM-96-001 (Cozumel)

Questions:

	Yes	No	I don't know
Did the Citizen Submission procedure seem to be useful?	X		
Were you satisfied with the CEC's handling of your petition?	X		
Did the CEC's resolution of your petition seem technically and legally appropriate?	X		
Did the CEC's resolution seem just?	X		
Did the CEC's response time seem appropriate?	X		
How much time did the procedure take (in months)?			<b>19 months</b>
How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)?			
Did the Citizen Submission procedure seem to be useful?			

1. When and how did you learn about the citizen submission process?

**Since the mechanism was proposed in the negotiation of the North American Agreement on Environmental Cooperation. I learned of it from the Mexican negotiators.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**As it was one of the first cases submitted to the CEC (1995), it was not necessary to collect information on how to use the mechanism. We based it on the NAAEC and the respective guidelines for submitting citizen submissions.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**I knew of them and consulted them. They were useful to show us how to file the submission. I think that the Guidelines should offer simpler language to the North American public to present their cases. It can be quite technical-legalistic which complicates access to the mechanism.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**No. We had contact with the Secretariat once the submission was filed.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**Because the choice was either to file an appeal against a PROFEPA ruling or go to the CEC. We chose to go to the CEC for various reasons, especially: 1) to be one of the first Mexican cases at the CEC, which we were. 2) Given how long it takes and the lack of access to environmental justice in Mexico, we chose to go the CEC. 3) We wanted the case to have an international stage, which we achieved by brining the Cozumel Pier case to the CEC.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**To evidence the lack of effective enforcement of the environmental laws in the Cozumel Pier case, which was achieved with the publication of the CEC's first factual record. This is seen in the reading and linkage of the facts presented in the factual record. No penalties, recommendations or conclusions were expected since they are not contemplated in the NAAEC.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**This question is not very clear to me, but I would say yes because since we submitted the case to the CEC we have achieved several things, as described in detail in the attached file.**

8. ¿Considera Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**No, the relevant environmental law was already well understood. Once the factual record was released, we verified that the government's decisions were outside the environmental law, as we had claimed. We realized that the government wanted to interpret the NAAEC according to its interests and require, for example, that submitters had to prove the damage or exhaust the legal remedies available under domestic law, which the NAAEC at no time requires of submitters.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**Yes, a citizen complaint was filed with PROFEPA. We approached the CEC because PROFEPA decided not to find in our favor on the issue raised and the option was to file an appeal with the same authority or go to the CEC. We decided that the CEC was the option**

**due to the lack of access to environmental justice in Mexico, where economic interests prevail over environmental interests.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**There was a response from the government. The response was useless since the government's arguments were out of context and fully without regard to the applicable environmental law framework. The response did provide the information we were looking for, and once placed in the factual record, it confirmed that there was in fact a failure to effectively enforce the environmental laws in the case in question.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**Yes, there was communication with the government before, during and after the process. The communication was useful because, for example, the case could have been submitted to the CEC a few months earlier, but the government told us that the Mexican tuna embargo was about to be lifted and, if the case were submitted to the CEC, it should have affecting the lifting of the embargo. Therefore, we decided to wait to avoid conflict between the two matters. The communication was also of use to sign an agreement with the federal government in which we agreed to work together in drafting the management plan for Cozumel's protected reef area and in the ecological zoning of the Island.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**19 months from beginning to end (publication of factual record). This was a long, but reasonable, time considering that it was the first factual record.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**In 2001 CEMDA opened an office in Cancun, where ongoing work is done with respect to Cozumel. We monitor Cozumel's protected reef area, which was decreed based on our CEC submission, and have done much work with marine park staff. We monitor the ecological zoning of the Island and have been involved in the updating of the zoning rules. It would be good to have the CEC follow up after the factual record is released, to ensure that the effective enforcement issues are promptly addressed, since the record**

**itself is not binding upon the parties and they may throw the factual record into the trash and nothing will happen.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**It was not costly, just the hours of work spent to prepare, submit and follow up on the submission.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**We did it in-house and with the pro bono assistance of a lawyer from a law firm.**

16. Approximately how much time went into the preparation of your submission?

**Around three months.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**Yes, since with the factual record we were able to demonstrate that there was a lack of effective enforcement of the environmental laws, something that we surely would have been unable to do under domestic law due to the limitations on access to environmental justice. Also, the record was done in a "reasonable time", which in Mexico could have been longer.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**Yes, it is very necessary.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**The attached file contains our reply to this and the preceding question.**