

The background of the slide is a colorful, abstract map of the Pacific region, rendered in shades of yellow, orange, and red. A semi-transparent white rectangular box is centered over the map, containing the title and date. In the bottom-left corner, there is a small vertical bar with red and green segments.

JPAC SEM Update

7 November 2011

SEM Process (1)

- Non-judicial
 - Not a litigation or curial process
 - » Intended to be non-adversarial
 - Neutrality in implementation of Art 14 & 15
 - Fairness in ensuring that submitters and interested Parties receive procedural fairness
 - Transparency

SEM Process (2)

Art. 14(1) “The Secretariat may consider a submission from any non-governmental organization or person asserting that a *Party is failing to effectively enforce its environmental law*, if the Secretariat finds that the submission:”

meets criteria in 6 sub-paragraphs (a-f), informed by the “Guidelines”

SEM Process (3)

Who can submit?

- any NGO or person established or residing in the territory of a party to the Agreement
 - Often there are multiple submitters with one taking the lead

SEM Process (4)

“Not an insurmountable screening device”

But there can be problems at 14(1) stage

– e.g. Submitter fails to:

- clearly identify the environmental law in question
- provide sufficient information
- communicate with relevant authorities
 - Above example from 2008 *Cancun Jetty* submission

SEM Process (5)

Article 14(2) Factors

- a. alleges harm (explained further in Guidelines)
- b. advances the goals of the NAAEC
- c. private remedies have been pursued
- d. doesn't draw exclusively from mass-media reports

SEM Process (6)

Article 15(1)

“If the Secretariat considers that the submission, in the light of any response provided by the Party, warrants developing a factual record, the Secretariat shall so inform the Council and provide its reasons”

SEM Process (7)

Factual Record

- contains 4 basic types of information
 1. Summary of the initial submission
 2. Summary of the Response from the concerned Party
 3. Summary of other relevant factual information
 4. Information developed by the Secretariat on matters raised in the Submission

SEM Process (8)

- In a Factual Record the Secretariat does not include a determination stating a Party has failed to effectively enforce
- After factual record is published, process with regard to that factual record is terminated

SEM Unit Statistics


- **76** Submissions filed with CEC as of 18 October, 2011
 - **39** Concerning Mexico
 - **27** Concerning Canada
 - **9** Concerning the United States
 - **1** Concerning both the United States and Canada

Since Last Meeting

- 4 Determinations Issued
 - 2 Art. 14(2)
 - 2 Art. 15(1)
- 1 Draft Factual Record sent to Council
 - Final Factual Record in translation/editing
- 2 Draft Factual Records finalized
- 3 Determinations finalized

Pending

- 10 Submissions currently pending
 - Including 2 awaiting Council votes on whether to develop a factual record
 - Including 2 draft and 1 final factual records in final stages of preparation
- Secretariat progress in reducing the “docket” from a high of 16 active submissions in 2010, and in line with historical timeliness averages



Status of
10 Active Submissions

Wetlands in Manzanillo (Mexico)

- **Submitter**

- Bios Iguana and Esperanza Salazar Zenil

- **Key assertions**

- Mexico is failing to effectively enforce its environmental laws with regard to favorable environmental impact authorizations of two gas projects (LNG-LPG) in what was a protected area.

- **Phase**

- The Secretariat received a response from the concerned government Party and is considering the submission to determine whether the development of a factual record is warranted in accordance with Article 15(1).

Lake Chapala II (Mexico)

– Submitters

- Instituto de Derecho Ambiental, *et al.*

– Key Assertions

- Mexico is failing to effectively enforce its environmental law with respect to the Lerma-Chapala basin. This has resulted in serious environmental deterioration to the basin, as well as the risk that Lake Chapala and its migratory birds will eventually disappear.

– Status

- The Secretariat has finalized the draft of a Factual Record in accordance with Council Resolution #08-01 dated May 30, 2008.

Environmental Pollution in Hermosillo II (Mexico)

– **Submitters**

- Academia Sonorense de Derechos Humanos and Domingo Gutiérrez Mendivil

– **Key Assertions**

- Failure to prevent air pollution in areas under state and municipal jurisdiction, and to establish and keep up-to-date a national air quality information system, and moreover to devise state and municipal urban development plans indicating the zones in which polluting industrial facilities may be cited, violates the Mexican Constitution and other Mexican environmental law.

– **Status**

- Secretariat is awaiting Council vote on whether to develop a Factual Record.

Ex Hacienda El Hospital II-III (Mexico)

– **Submitters**

- Members of the community of Ex Hacienda El Hospital, Myredd Mariscal and Roberto Abe Almada

– **Key assertions**

- Profepa failed to sanction BASF for having permitted, during the facility's closing, contaminated soil and other material to be taken from the site by community inhabitants for their use; and that Profepa has failed to act despite evidence revealing contaminated soil allegedly attributable to BASF.

– **Status**

- Secretariat is awaiting Council vote on whether to develop a Factual Record.

Quebec Automobiles (Canada)

– **Submitter**

- The Québec Association Against Air Pollution

– **Key Assertions**

- Canada (Province of Quebec) is failing to effectively enforce: articles 96.1 and 96.2 of *Quebec's Regulation respecting the Quality of the Atmosphere* and articles 19.1, 20 and 51 of the *Quebec Environment Quality Act* in connection with emissions from post-1985 light vehicle models.

– **Status**

- The Secretariat finalized a Factual Record in accordance with Council Resolution #06-07 dated June 14, 2006. Will be transmitted shortly to Council for vote on publication.

Alberta Tailings Ponds (Canada)

–Submitter

- Environmental Defence Canada, Natural Resources Defense Council (U.S.), John Rigney, Don Deranger, and Daniel T' seleie

–Key Assertions

- *Inter alia*, Canada is failing to enforce its environmental law by abdicating responsibility to monitor, investigate and enforce ss. 36(3) of the Fisheries Act, which prohibits leakages of the sort alleged as well as the “indirect deposition of deleterious substances” in “any place under any conditions where the deleterious substance may enter into such waters.”

–Status

- The Secretariat has received and is reviewing a revised submission to determine whether it meets the criteria of Article 14(1) and if so, whether it merits requesting a response from the concerned Party under Article 14(2).

Iona Wastewater Treatment (Canada)

– **Submitter**

- Fraser Riverkeeper Society, et al.

– **Key Assertions**

- Canada is failing to effectively enforce the pollution prevention provision of s. 36(3) of the federal *Fisheries Act* because, despite knowledge of deleterious substance discharges, the Canadian government has failed to take action to prevent such discharges. Submitters claim that the beneficial uses of natural resources have been and continue to be degraded as a result of the alleged discharges.

– **Status**

- The Secretariat requested a response from the Party under Article 14(2).

PCB Treatment in Grandes Piles (Canada)

– **Submitter**

- Bennett Environmental, Inc.

– **Key Assertions**

- Canada, by way of Quebec, is failing to enforce its Environmental Quality Act and the Regulations Respecting the Burial of Contaminated Soils by issuing a permit for the use of chemical oxidation to treat PCB-contaminated soils without evidence that the process works.

– **Status**

- Secretariat is reviewing the submission to determine whether it meets the criteria of Article 14(1) and if so, whether it merits a response from the concerned Party under Article 14(2).

Coal Fired Power Plants (USA)

- **Submitter**

- Waterkeeper Alliance, et al.

- **Key Assertions**

- The United States, through the USEPA, is failing to enforce the federal Clean Water Act against coal-fired power plants by allowing mercury discharges that contribute to the degradation of the waters of the US.

- **Status**

- The Secretariat has finalized a draft factual record in accordance with Council Resolution # 08-03 dated June 23, 2008, and

The background of the slide is a topographic map of the United States, color-coded by elevation. The colors range from light yellow for low elevations to dark red and purple for high elevations. A semi-transparent white rectangular box is centered over the map, containing the text "SEM Unit Processing Statistics".

SEM Unit Processing Statistics

Efforts at Timely Processing

- Art 14(1) Determination
 - *Jetty in Cancún*: 21 days
 - *Quebec Mining*: 47 days
 - *PCBs in Quebec*: 26 days
 - *Bicentennial Bridge*: 8 days
 - **Historic Average**: **92 days**
- Art 15(1) Determination
 - Transgenic Maize: 7 months
 - **Historic Average**: **1 year**

Internal Timeliness Guidelines

- 14(1) – 30-45 days
- 14(1)(2) – 60 days
- 15(1) – 180 days
- Draft Factual Record – ca. 1 year (Council Res. - 2 yrs. max)
 - Above depends on complexity of submission and response, workload, staff capacity, etc.
 - Internal work scheduling system is helping meet deadlines

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CITIZEN SUBMISSIONS ON ENFORCEMENT MATTERS

SEM Portal Homepage

An error occurred while processing this page.

Welcome to the online portal for Citizen Submission on Enforcement Matters, a secure website where citizens and non-governmental organizations from Canada, Mexico and the United States can prepare and make Submissions on Enforcement Matters to the Secretariat of the Commission for Environmental Cooperation.

Welcome:

Dane Ratliff

[edit my profile](#)

- [Learn how to use this portal, submit and manage a submission](#)
- View and manage the submissions you've created in this portal (see My Submissions list below)
- [Click to Start a New Submission](#)
- [Update your information in My Profile](#)

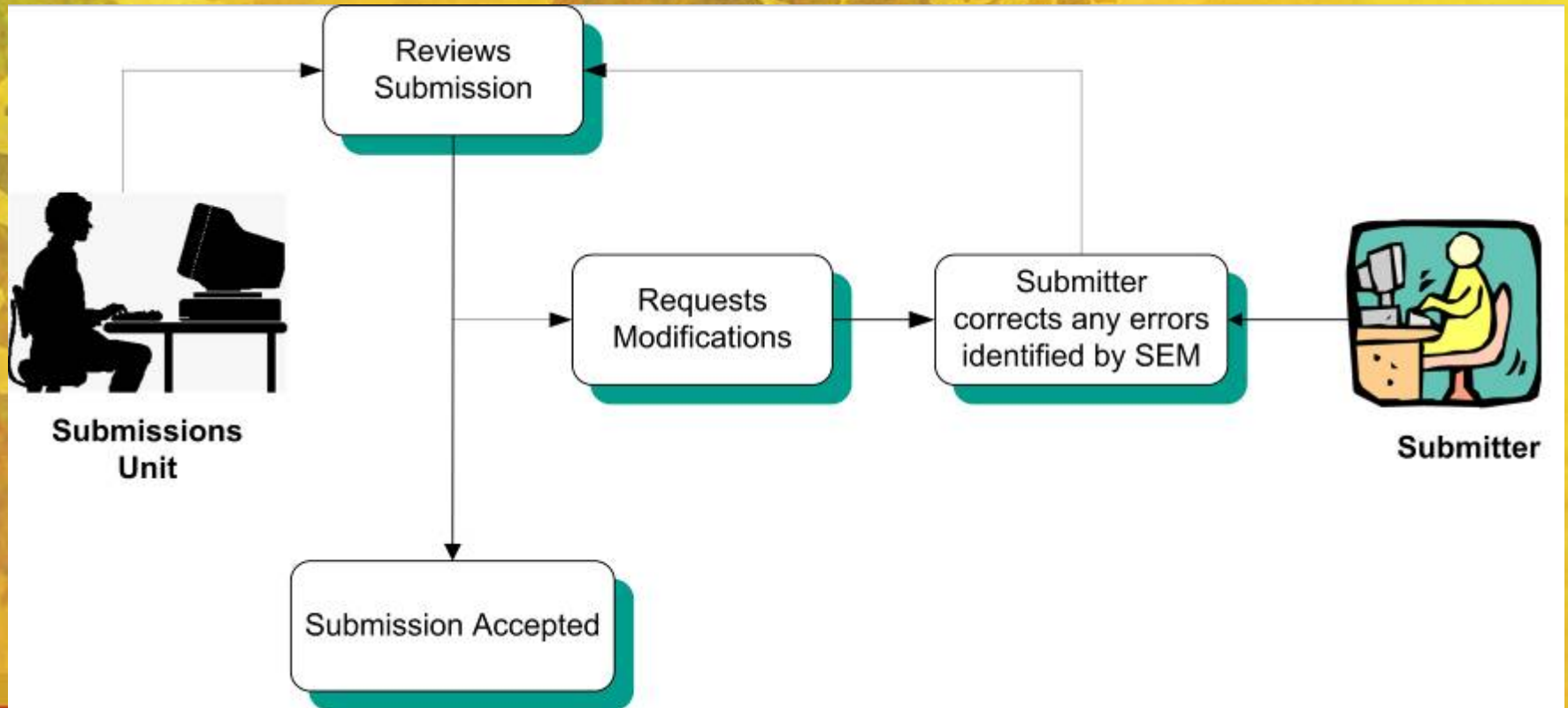
My Submissions

submission id	title	country	status	deadline	state	flag
No data to display						

Submitter Resources

- [Read about the North American Agreement on Environmental Cooperation \(NAAEC\)](#)
- [Download the booklet "Bringing the Facts to Light" - a guide to Article 14 and 15 of the NAAEC](#)
- [Read an online version of the Guidelines for Submissions on Enforcement Matters](#)
- [View and print a checklist of required items for making a submission](#)
- [Link to the Registry of Citizen Submissions on the CEC website](#)

SEM Online Application will facilitate submission process



SEM Analytical Index

- Research tool
- Article 14 & 15 & Guideline Database
- Key words
- Key phrases
- Organize searches of determinations
- Ensure predictability and fairness in future determinations
- Possibly available online

Analytical Index

The image displays a Microsoft Excel spreadsheet titled 'INDEX-MasterDocument-Feb_13.xls [Shared]'. The spreadsheet is organized into columns labeled B through F. The rows contain numerical identifiers (6, 7, 8) and corresponding text entries in Spanish and English. The text entries describe legal or administrative processes, such as 'The Secretariat may consider a submission' and 'from any non-governmental organization or person'. The spreadsheet is overlaid with several other Excel windows, including one titled 'Oldman River III' and another showing a detailed table with columns B, C, D, E, and F, containing dense text in Spanish and English. The Windows taskbar at the bottom shows the 'start' button and several open applications like 'Inbo...', 'CEC...', 'STA...', 'PETL...', and 'Res...'. The system clock in the bottom right corner indicates the time as 2:16 PM.

	B	C	D	E	F
6	2010	"The Secretariat may consider a submission"	"pourra examiner toute communication"	"podrá examinar"	Initial review of a submission--
7	2030	"from any non-governmental organization or person"	"par une organisation non gouvernementale ou une personne"		
8	2040	"asserting"	"alléguant"		
	2050	"that a Party"	"qu'une Partie"		



quotes for issues outline : Table

Quote F	Quote S	headingsort#
On its face, there is little to support the notion in Article 14:1 that the word Party is restrictive of the powers of the Secretariat. The powers of the Secretariat are not limited to those of the agencies or departments of the Government, but extend to all branches of the Government. However, the provisions of the Agreement do not prohibit the Secretariat from enforcing environmental law and regulations. The Secretariat is charged with implementing the provisions of the Agreement.	On its face, there is little to support the notion in Article 14:1 that the Secretariat should exercise the executive functions of the Secretariat, including its separate powers. The Secretariat's powers should be read in conjunction with other provisions of the Agreement. The Secretariat's powers suggest that a failure to enforce environmental law and regulations by administrative agencies or officials is not a failure to enforce regulations.	2050
While not conclusive, the Secretariat's actions are triggered when a failure to enforce environmental law is a shortcoming rather than a failure to enforce environmental law.		
The Secretariat therefore cannot characterize the applicable legal regime as a failure to enforce an old one. While the Secretariat may contend that such legislative action amounts to a failure to enforce an old one, the obligation to maintain high levels of protection, Article 14:1 does not repose in the Secretariat the power to explore as a failure to enforce environmental law arising from a failure to enforce environmental law.		
Article 14:1 empowers the Secretariat to consider and enforce "environmental law" as that term is defined in the Agreement.		

issues2004 : Database (Access 2002 - 2003 file format)

Open Design New

Objects

- Tables
- Queries
- Forms
- Reports
- Pages
- Macros
- Modules

Groups

- Favori...

Create table in Design view

Create table by using wizard

Create table by entering data

council resolutions

determinations and notifications

issue headings

quotes for issues outline

NAAEC text F	NAAEC text S	Theme	
identifie lairement la personne ou organisation ont elle émane" offre uffisamment l'information our permettre au Secrétariat	"identifica claramente a la persona u organización que presenta la "proporciona información suficiente que permita al Secretariado	Initial review of a submission	"...it (a) i that (b) mak
13	2120 "appears to be aimed at promoting enforcement"	Initial review of a submission	"...it (a) i that (b) mak
14	2130 "communicated in writing to the relevant authorities"	Initial review of a submission	"...it (a) i that (b) mak
16	2150 "is filed by a person or organization residing or established in"	Initial review of a submission	"...it (a) i that (b) mak



**The Commission for
Environmental
Cooperation**