

SEM Update



Submissions on Enforcement Matters Unit

June 23, 2009

Secretariat of the Commission for Environmental
Cooperation

Overview

- 68 submissions received to date
 - 22 Canada, 36 Mexico, 9 US, 1 both Canada and US
- In review by Secretariat
 - Wetlands in Manzanillo
 - Transgenic Maize in Chihuahua
 - La Ciudadela Project
 - Minera San Xavier
- In Council consideration
 - Ex Hacienda El Hospital
 - Species at Risk
 - Environmental Pollution in Hermosillo
- 3 Factual Records in development
 - Coal-Fired Power Plants
 - Lake Chapala II
 - Quebec Autos

What is the SEM Process

- Fact-finding mechanism
- Consider Assertion by private party that a Party to NAAEC failing to enforce its domestic environmental law
- Recommend (or not) factual record be produced

Article 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:” 6 requirements

Article 14(1) cont'd

- a) language requirement (English, French or Spanish)
- b) identifies the person making the submission
- c) provides sufficient information
- d) appears to be aimed at promoting enforcement
- e) the matter has been communicated to authorities
- f) established in a NAFTA country

Matters of Form

- Example: 2008 Submission on Cancun Jetty
 - Submitter failed to:
 - Clearly identify the law in question
 - Provide sufficient information
 - Did not communicate with authorities
 - Secretariat notified submitter and requested rectification

Article 14(2)

- Where the Secretariat determines that a submission meets the criteria set out in paragraph 1, the Secretariat shall determine whether the submission merits requesting a response from the Party

Article 14(2) cont.

- a. alleges harm
- b. advances the goals of the NAAEC
- c. private remedies have been pursued
- d. not draw exclusively from mass media report

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 provides its reasons”

...should a factual record be developed

- During this phase of the process the Secretariat may assign weight to each factor as it deems appropriate in the context of a particular submission
- If in the Secretariat's view, the response leaves open central questions concerning the effective enforcement of the law in question, it may recommend a FR

a Factual Record

- Contains 4 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 (JPAC)
 4. The Secretariat's findings of facts (not opinions) on matters raised in the Submission

CEC Council vote

- Council votes on:
 - Whether or not to instruct the Secretariat to prepare a Factual Record
 - Whether or not to make public a factual record, normally within 60 days

Continuity

- Learn from successes and difficulties of past
- Ensure continuity with successful practices
 - Follow NAAEC and Guidelines
- Identify areas for administrative improvements
 - Improve SEM outreach as per JPAC and Council advice

Since December '08

- Received two new submissions concerning Mexico
 - Maize and Wetlands
- Issued one determination under Article 14(1) (Jetty in Cancun)
- Issued one determination under Article 14(3) (Cunduacan)

Since December '08 (cont'd)

- Four more determinations prepared for release in coming days and weeks
- Received one pre-submission and responded
- Made significant progress on 3 Factual Records (Quebec Autos, Coal-Fired Power Plants, Lake Chapala II)



Submissions under Articles
14 and 15 review
Transgenic Maize in Chihuahua
Wetlands in Manzanillo
Minera San Xavier
La Ciudadela Project

Transgenic Maize in Chihuahua

- SEM-09-001 (*Transgenic Maize in Chihuahua*)
 - In review under Article 14(1)
 - Filed on January 28, 2009
 - Key Assertions:
 - Failure to adopt measures that ensure an adequate level of protection of native and hybrid maize from genetically modified seeds in Chihuahua, Mexico
 - Alleged evidence of transgenic maize being imported, distributed and grown in the state of Chihuahua, allegedly in contravention of the Mexican laws at issue

Wetlands in Manzanillo

- SEM-09-002 (*Wetlands in Manzanillo*)
 - In review under Article 14(1)
 - Filed on February 4, 2009
 - Key Assertions:
 - Granting favorable environmental impact authorizations to two gas projects, allegedly without having followed a sound review under the applicable environmental laws
 - Modification of environmental zoning programs in the Cuyutlan Lagoon without effectively enforcing the laws in question

Minera San Xavier

- SEM-07-001 (*Minera San Xavier*)
 - In review under Article 15(1)
 - Filed on February 5, 2007
 - Key Assertions:
 - Failure to effectively enforce environmental laws related to the authorization of an open-pit mining project in San Luis Potosi
 - Response:
 - Existence of pending proceedings
 - The project is conditional on the implementation of environmental impact mitigation programs. The project meets restrictions applicable to zoning requirements.
 - Secretariat will release determination in coming days

La Ciudadela Project

- SEM-08-001 (*La Ciudadela Project*)
 - In review under Article 15(1)
 - Filed on February 22, 2008
 - Key Assertions:
 - Failure to effectively enforce environmental law in connection with a contaminated site located in Zapopan, Jalisco, on which construction of the La Ciudadela development is planned
 - Response:
 - Pending proceedings exist
 - The submission does not contain evidence to support the assertions, i.e. no evidence of soil contamination through radioactive materials



Pending votes under Article 15(2)

Ex Hacienda El Hospital II and III

Species at Risk

Environmental Pollution in Hermosillo

Ex Hacienda El Hospital II and III

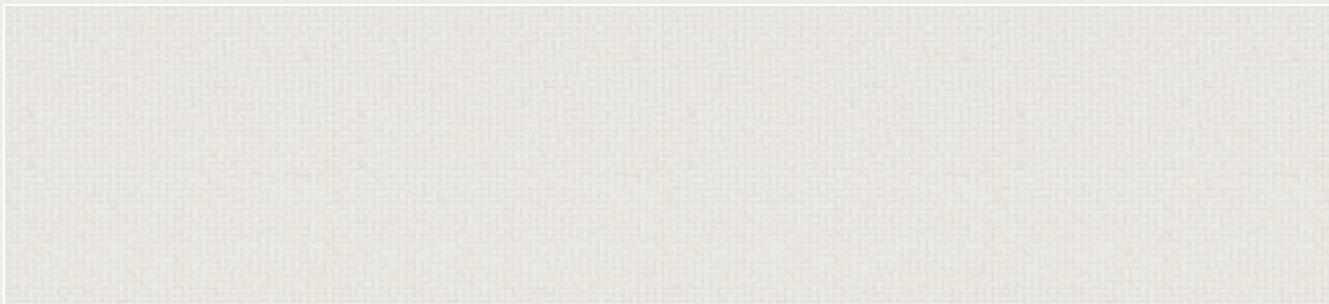
- SEM-06-003 (*Ex Hacienda El Hospital II and III*) (*consolidated*)
 - Filed on July 17, 2006
 - Key Assertions
 - Failure to effectively prosecute BASF during the facility's closing and failure to effectively ensure a full assessment and clean-up of contamination at the facility
 - Notification:
 - Open questions remain in regard to the investigation and prosecution of environmental crimes, illegal burying of waste and illegal deposit of waste from the dismantling of the BASF plant in the Ex Hacienda El Hospital community

Species at Risk

- SEM-06-005 (*Species at Risk*)
 - Filed on October 10, 2006
 - Key Assertions:
 - Failure to effectively enforce the federal Species at Risk Act (SARA) with respect to at least 197 of the 529 species identified as at risk in Canada
 - Notification:
 - Open central questions on alleged delays in posting recovery strategies for 110 species; alleged failure to identify species' critical habitat in recovery strategies that have been posted; failure to implement emergency orders for the protection of two species

Environmental Pollution in Hermosillo

- SEM-05-003 (*Environmental Pollution in Hermosillo II*)
 - Filed on August 30, 2005
 - Key Assertions:
 - Failure to implement the vehicle inspection program in Hermosillo; integrate an air quality monitoring program; and verify air contaminants (CO₂, CO, SO₂, NO₂).
 - Notification
 - Open questions regarding the implementation of the Air Assessment and Monitoring Program; the status of the vehicle inspection program and actions by the Mexican government for controlling particles in Hermosillo



Development of Draft Factual Records

Quebec Automobiles
Coal-fired Power Plants
Lake Chapala II

Quebec Automobiles

- SEM-04-007 (*Quebec Automobiles*)
 - Filed on November 3, 2004
 - Key Assertions:
 - Failure to effectively enforce environmental law in connection with emissions of hydrocarbons, carbon monoxide and nitrogen oxides from post-1985 light vehicle models
 - Status:
 - On 14 June 2006 the Council instructed the Secretariat to develop a factual record. On 19 December 2008 the Secretariat requested additional information to the governments of Canada and Quebec, and is still awaiting it.
 - Draft in final stages, slated for sending to Parties shortly

Coal-fired Power Plants

- SEM-04-005 (*Coal-fired Power Plants*)
 - Filed on September 20, 2004
 - Key Assertions:
 - Failure to effectively enforce environmental law with respect to mercury discharges to air and water from coal-fired power plants by issuing NPDES permits that allow for ongoing point-source discharges of mercury; and failing to use EPA authority to require states to pass TMDLs which would reduce degradation of water bodies
 - Status:
 - On June 23, 2008 the Council instructed the Secretariat the development of a factual record.
 - On September 15, 2008 the Secretariat requested information of the Party in question, the power utilities cited in the submission, the Submitters and the public.
 - Numerous responses received from utilities and the Waterkeeper Alliance. U.S. has yet to respond.
 - Draft being finalized and slated for release to Parties shortly

Lake Chapala II

- SEM-03-003 (*Lake Chapala II*)
 - Filed on May 25, 2003
 - Key Assertions:
 - Failure to effectively enforce environmental law with respect to the Lerma-Chapala-Santiago-Pacífico basin.
 - Status:
 - On May 30 2008 the Council instructed the Secretariat the development of a factual record.
 - On 19 December 2008 Mexico filed a document arguing that the Secretariat may only consider information on water monitoring limited to the area of the Arcediano Dam project, but excluding any information on the Arcediano Dam project itself
 - Draft in progress

Operational Issues

- For over 1 year, SEM unit had only 1 staff lawyer
 - Impacted operations
- Since December 2008 SEM fully staffed
- First priority is to clear docket
 - Progress being made
 - MSX Determination this week
 - Remaining determinations in coming weeks

Thank You!

Any
Questions?