

Secretariat of the Commission for Environmental Cooperation

REQUEST FOR INFORMATION for Preparation of a Factual Record Submission SEM-00-005 (Molymex II) 20 June 2002

I. The factual record process

The Commission for Environmental Cooperation (CEC) of North America is an international organization created under the North American Agreement on Environmental Cooperation (NAAEC) by Canada, Mexico and the United States. The CEC operates through three organs: a Council, made up of the highest-level environmental official in each member country; a Joint Public Advisory Committee (JPAC), composed of five citizens from each country; and a Secretariat located in Montreal.

Article 14 of the NAAEC allows residents in North America to inform the Secretariat, in a submission, that any member country (hereinafter, a Party) is failing to effectively enforce its environmental law. This initiates a process of review of the submission, after which the Council may instruct the Secretariat to prepare a factual record in connection with the submission. A factual record seeks to provide all relevant information on the effectiveness with which the Party has enforced its environmental law with respect to the matter raised in the submission.

Under Articles 15(4) and 21(1)(a) of the NAAEC, in developing a factual record, the Secretariat shall consider any information furnished by a Party, and may ask a Party to provide additional information. The Secretariat also may consider any information that is publicly available; provided by the JPAC, the Submitters or other interested persons or nongovernmental organizations; or developed by the Secretariat or independent experts.

On 17 May 2002, the Council decided unanimously to instruct the Secretariat to develop a factual record, in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC (Guidelines)*, regarding the assertions made in submission SEM-00-005 that Mexico is failing to effectively enforce Articles 28 paragraph III, 29 paragraphs IV and V, 32, and 112 of the General Law on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*),¹ with regard to environmental impact and the definition of zones in which polluting facilities may be sited, and Mexican Official Standard (*Norma Oficial Mexicana—NOM*) NOM-022-SSA1/1993² with regard to SO₂ concentration in ambient air, in relation to the molybdenum plant operated by Molymex, S.A. de C.V., in the municipality of Cumpas, Sonora, Mexico (“Molymex”). The Council directed the Secretariat, in developing the factual record, to consider whether the Party concerned “is failing to effectively enforce its environmental law”

¹ The transcriptions contained in the submission correspond to the text of the LGEEPA that was in force prior to the reforms published in the Official Gazette of the Federation (*Diario Oficial de la Federación—DOF*) of 13 December 1996. This, however, does not substantially alter the sense of the Submitters’ arguments, due both to the nature of the arguments and to the fact that the content of the former Articles 28, 29 and 32 has been incorporated into Articles 29 and 30 of the current text of the LGEEPA. See also, in this regard, SEM-00-005 (Molymex II), Article 15(1) Notification to Council (20 December 2001), p. 7.

² *NOM-022-SSA1/1993 – Environmental Health. Criterion for assessing ambient air quality with respect to sulfur dioxide (SO₂). Standard value for sulfur dioxide (SO₂) concentration in ambient air, as a public health protection measure.* Published in the DOF of 23 December 1994.

since the entry into force of the NAAEC on 1 January 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to 1 January 1994 may be included in the factual record.

By means of this document, the Secretariat seeks information relevant to matters to be addressed in the factual record for the Molymex II submission, SEM-00-005. The following sections provide background on the submission and describe the type of information sought.

II. Molymex II submission

On 6 April 2000, Academia Sonorense de Derechos Humanos, A.C., and Domingo Gutiérrez Mendivil filed a submission with the Secretariat of the CEC, asserting that Mexico is failing to effectively enforce its environmental law in relation to the operation of the Molymex molybdenum plant in Cumpas, Sonora, Mexico.

The alleged failures to effectively enforce the environmental law of Mexico covered by this factual record refer to the environmental impact assessment of the Molymex activities that commenced in 1994 (Articles 28 paragraph III, 29 paragraphs IV and VI, and 32 of the LGEEPA); the definition of zones in Cumpas in which polluting facilities may be sited (LGEEPA Article 112); and sulfur dioxide emissions allegedly exceeding the SO₂ concentration limits in ambient air established for the protection of public health (NOM-022-SSA1/1993). The Submitters assert the existence of health risks to the residents of Cumpas, Sonora, as well as various negative environmental impacts at that locality, allegedly caused by molybdenum trioxide and sulfur dioxide emissions produced by Molymex. The submission cites a 1995 report of the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) expressing concern about the health risks to the residents of Cumpas arising from the Molymex emissions.

Mexico filed a response to this submission on 18 January 2001. In its response, the Party puts forward three arguments to dismiss the assertion that it is failing to effectively enforce the environmental impact assessment requirement: first, that environmental impact assessment did not apply because it was not required when Molymex commenced its operations; second, that environmental impact assessment is a purely preventive procedure; third, that the relevant environmental impact provisions were in fact enforced in regard to Molymex, since the expansion project of 1998 did undergo assessment and obtained the relevant authorization. In regard to the other assertions, the response asserts that the land-use permit issued to Molymex establishes the zoning for polluting facilities in Cumpas, and that the company has not violated NOM-022-SSA1/1993.

III. Request for information

The Secretariat of the CEC requests information relevant to the facts concerning:

- i) the alleged violations of Articles 28 (para. III), 29 (para. IV and VI) and 32 of the LGEEPA as well as NOM-022-SSA1/1993 by Molymex; and the alleged failure by the Municipality of Cumpas to enforce LGEEPA Article 112;
- ii) Mexico's enforcement of these provisions in the case of Molymex; and

- iii) the effectiveness of Mexico's enforcement of these provisions in the case of Molymex.

IV. Examples of relevant information

1. Information on Mexico's enforcement of Articles 28 (para. III), 29 (para. IV and VI) and 32 of the LGEEPA, as well as NOM-022-SSA1/1993 in the case of Molymex; and on the alleged omission by the Municipality of Cumpas with respect to LGEEPA Article 112.
2. Information on any municipal, state or federal environmental law enforcement policies or practices that apply to the alleged failures described above, as well as on the manner in which they were enforced in the case of Molymex.
3. Information on the effectiveness of Mexico's enforcement of the provisions in question in the case of Molymex, with regard to the environmental impact assessment of the activities commenced in 1994.
4. Information on the effectiveness of Mexico's enforcement of the provisions in question in the case of Molymex, with regard to the sulfur dioxide emissions that allegedly exceed the SO₂ concentration limits in ambient air established for the protection of public health, from the time that Molymex began operations in 1994 to the present moment.
5. Information on the SO₂ concentrations in ambient air at Cumpas, Sonora, from the time that Molymex began operations in 1994 to the present moment.
6. Information on the possible health effects on the population of Cumpas, Sonora, due to Molymex's alleged violation of the SO₂ concentration limits in ambient air.
7. Additional information on the health and environmental effects allegedly caused by Molymex, which are referred to by the Submitters and were identified by Profepa in 1995.
8. Information on the relationship between Molymex's authorized SO₂ emission levels and the observance of the maximum SO₂ concentration in ambient air established by NOM-022-SSA1/1993 for the protection of public health.
9. Information on Molymex's monitoring and reporting of its SO₂ emissions.
10. Information on whether there exists a municipal urban development plan defining the zones in which polluting facilities may be sited, and information enabling a determination of whether the Molymex plant is located outside of such zones.
11. Any other technical, scientific or other information that could be relevant.

V. Additional background information

The submission, Mexico's response, the Secretariat's determinations, the Council Resolution, the overall plan to develop the factual record, and other information are available in the Registry and

Public Files in the Citizen Submissions on Enforcement Matters section of the CEC web site at <http://www.cec.org> >. These documents may also be requested from the Secretariat.

VI. Where to send information

Relevant information for the development of the factual record may be sent to the Secretariat until **25 October 2002** at either of the following addresses:

Secretariat of the CEC
Submissions on Enforcement Matters
Unit (SEM Unit)
393, rue St-Jacques Ouest,
bureau 200
Montreal QC H2Y 1N9
Canada
Tel. (514) 350-4300

CCA/Mexico Liaison Office
Atención: Unidad sobre Peticiones
Ciudadanas (UPC)
Progreso núm. 3
Viveros de Coyoacán
México, D.F. 04110
México
Tel. (52-55) 5659-5021

For any questions, please send an e-mail to the attention of Carla Sbert, at info@ccemtl.org.