

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submission I.D.: SEM-03-004 (ALCA Iztapalapa II)

Submitter: Ángel Lara García

Party: United Mexican States

Date of this plan: 21 July 2005

Background

On 17 June 2003, the Submitter identified above presented to the Secretariat of the Commission for Environmental Cooperation (CEC) a submission, in accordance with Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The submission, along with supporting materials, asserts that Mexico is failing to effectively enforce its environmental laws with respect to the operation of a footwear products facility owned by a company called ALCA, SA de CV (Alca), located on a piece of land adjacent to the personal residence of the Submitter in the Santa Isabel industrial suburb of Mexico City, DF. The Submitter alleges that the air releases by the facility and the handling of toxic substances and wastes by Alca's employees do not comply with Article 150 of Mexico's General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y de Protección al Ambiente*—LGEEPA) and Articles 414, first paragraph, and 415, Section I, of the Federal Criminal Code (*Código Penal Federal*—CPF).

In particular, the Submitter asserts that the company is illegally carrying on the storage, disposal and unloading of environmentally harmful hazardous substances without applying prevention and safety measures. The Submitter also claims that Alca does not apply prevention or safety measures to prevent the atmospheric release or discharge of environmentally harmful gas, smoke, dust or pollutants. The Submitter asserts that the company is failing to manage hazardous materials and wastes in accordance with LGEEPA and the Mexican Official Standards (*Normas Oficiales Mexicanas*—NOMs) issued by the Secretariat of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat). The Submitter asserts that these alleged violations are causing pollution harming his and his family's health. He further asserts that the Office of the Federal Attorney General for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa), despite having found violations during a factory inspection, terminated a citizen complaint filed by the Submitter without taking the actions necessary to stop the alleged violations.

On 9 September 2003, the Secretariat determined that the submission met the requirements of Article 14(1) of NAAEC and requested a response from the Party concerned (Mexico), in accordance with Article 14(2).

Mexico submitted its response on 4 December 2003. Referring to the citizen complaint filed on 10 November 1995 by the Submitter, alleging violations by Alca to Article 150 of LGEEPA, Mexico asserted the process was concluded by Profepa in accordance with the law. It additionally claimed that the relevant file was lost in a flood that occurred in the file room of Profepa, and asserted that the process was concluded without initiation of a criminal investigation. Mexico asserted that another complaint filed by the Submitter, on 14 September 2000, was concluded with the imposition of a fine against Alca of 2,421 pesos. Regarding Alca's alleged criminal violation under Article 415, first paragraph, of the CPF, Mexico asserted that it did not undertake a criminal action because, according to a technical opinion issued by officers of the District Attorney's Office, neither the commission of a crime nor the probable liability of the suspects was clearly established "as we deduce from the acts that although the asserted facts may constitute a crime, it is impossible to determine whether the crime exists due to irreparable material hindrance, because the proof provided is insufficient to evidence the crime."

On 23 August 2004, the Secretariat informed the CEC Council that, in light of Mexico's response, it considered that the Submission warranted the preparation of a factual record.

On 9 June 2005, in Council Resolution 05-05, the Council decided unanimously to instruct the Secretariat to prepare a factual record in accordance with Article 15 of NAAEC and the *Guidelines for Submissions on Enforcement Matters (The Guidelines)* under Articles 14 and 15 of NAAEC.

The Council directed the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and to provide the Parties with the opportunity to comment on that plan. The Council stated that the Secretariat may include, in its preparation of the factual record, any relevant facts that existed prior to the entry into force of the NAAEC on 1 January 1994.

Under Article 15(4) of NAAEC, in developing a factual record, "the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information: (a) that is publicly available; (b) submitted by interested nongovernmental organizations or persons; (c) submitted by the Joint Public Advisory Committee (JPAC); or (d) developed by the Secretariat or by independent experts."

Overall Scope of the Fact Finding:

To prepare the factual record, the Secretariat will gather and develop information relevant to the following items with regard to the Government of Mexico's alleged failure to effectively enforce Article 150 of LGEEPA and Articles 414, first paragraph, and 415, Section I, of the

CPF regarding the facility's air releases and hazardous substances and wastes handling by Alca's workers, as asserted in the submission:

- (i) the alleged failure by Alca to comply with Article 150 of LGEEPA and Articles 414, first paragraph, and 415, Section I, of the CPF;
- (ii) the inspections, administrative procedures or any other environmental actions that could have been initiated against ALCA before or after 2001 regarding (1) its trail of toxic chemical releases and its continuing to generate releases, and (2) its handling of hazardous substances and wastes; and
- (iii) if Mexico is failing to effectively apply Article 150 of LGEEPA and Articles 414, first paragraph, and 415, Section I, of the CPF, in the case of the company Alca.

Overall Plan:

Consistent with Council Resolution 05-05, execution of the overall plan will begin no sooner than 8 August 2005. All other dates are best estimates. The overall plan is as follows:

- Through public notices or direct requests for information, the Secretariat will invite the Submitters, JPAC, community members, the general public, and local, provincial and federal government officials to submit information relevant to the scope of fact-finding outlined above. The Secretariat will explain the scope of the fact finding, providing sufficient information to enable interested nongovernmental organizations or persons or JPAC to provide relevant information to the Secretariat (Section 15.2 of *The Guidelines*). **[August–October 2005]**
- The Secretariat will request information relevant to the factual record from federal, provincial and local government authorities of Mexico, as appropriate, and shall consider any information furnished by a Party (Articles 15(4) and 21(1)(a) of NAAEC). **[August–October 2005]**
- The Secretariat will gather relevant technical, scientific or other information that is publicly available, including from existing databases, public files, information centers, libraries, research centers and academic institutions. **[August–January 2006]**
- The Secretariat, as appropriate, will develop, through independent experts, technical, scientific or other information relevant to the factual record. **[October–January 2006]**
- The Secretariat, as appropriate, will collect relevant technical, scientific or other information for the preparation of the factual record, from interested nongovernmental organizations or persons, JPAC, or independent experts. **[August 2005–January 2006]**
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record, based on the information gathered and developed. **[January 2006 through April 2006]**

- The Secretariat will submit a draft factual record to Council, and any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5). **[end of April 2006]**
- As provided by Article 15(6), the Secretariat will incorporate, as appropriate, any such comments in the final factual record and submit it to Council. **[June 2005]**
- The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, according to Article 15(7).

Additional information

The submission, the Party's response, the Secretariat's determinations, the Council Resolution, and a summary of these are available online in the Registry on Citizen Submissions at the CEC home page <www.cec.org>, or upon request to the Secretariat at the following address:

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