

**MEXICO’S COMMENTS ON THE DRAFT FACTURAL RECORD REGARDING
SUBMISSION SEM-05-003 “ENVIRONMENTAL POLLUTION IN HERMOSILLO II”**

Paragraph	Secretariat’s text	Mexico’s comment	Explanation
“Abbreviations, acronyms and definitions”	DGGCARETC: General Directorate for Air Quality Management and the Pollutant Release and Transfer Register	DGGCARETC: Semarnat General Directorate for Air Quality Management and the Pollutant Release and Transfer Register	To ensure clarity regarding the ministry to which said General Directorate is attached, as well as regarding its jurisdiction.
“Abbreviations, acronyms and definitions”	INE: National Institute of Ecology	INECC: National Institute of Ecology and Climate Change	Correction of this acronym in this section and throughout the factual record. The INE ceased to exist with the creation of the INECC, a new decentralized agency of the federal government.
“Abbreviations, acronyms and definitions”	RETC: Pollutant Release and Transfer Register	RETC: Semarnat Pollutant Release and Transfer Register	To ensure clarity regarding the ministry responsible for administering said Register.
“Abbreviations, acronyms and definitions”	Semarnat: Ministry of the Environment and Natural Resources (formerly <i>Secretaría de Medio Ambiente, Recursos Naturales y Pesca</i> —Semarnap)	Semarnat: Ministry of the Environment and Natural Resources (formerly <i>Secretaría de Medio Ambiente, Recursos Naturales y Pesca</i>—Semarnap)	The name change from Semarnap to Semarnat occurred with the amendments to the Federal Civil Service Organization Act (<i>Ley Orgánica de la Administración Pública Federal</i> —LOAPF), published in <i>Diario Oficial de la Federación</i> on 30 November 2000. Consequently, for the purposes of the present factual record, any reference to the former name is irrelevant and potentially confusing.
“Abbreviations, acronyms and definitions”	SIUE: Ministry of Urban Infrastructure and Ecology	SIUE: Ministry of Urban Infrastructure and Ecology of the State of Sonora	To ensure clarity regarding said ministry’s jurisdiction.
9	“The Party observes that Hermosillo is not conducting vehicle inspections because it lacks the information	“In its Response, the Party observed that Hermosillo was not conducting vehicle inspections because it lacked	With the passage of so much time between the submission, the Party’s response and the development and eventual

	necessary to develop such a program”	the information necessary to develop such a program.”	publication of the factual record, it’s important that the public have a clear notion of the facts during the different stages of the process. This situation arises repeatedly throughout the factual record. Consequently, it is suggested that the required editing be done. In this regard, see the comments below in relation to paragraph 76.
15	... after the Council voted to instruct the Secretariat to prepare this factual record. As the modified Guidelines of 11 July 2012 include changes to include process timelines, the Executive Director and the Submissions on Enforcement Matters Unit of the Secretariat undertook, to the extent practicable, to meet the new timelines in the development of this factual record.	... after the Council voted to instruct the Secretariat to prepare this factual record. As the modified Guidelines of 11 July 2012 establish new timelines for completing the different phases of the process, the Executive Director and the Submissions on Enforcement Matters Unit of the Secretariat undertook, to the extent practicable, to meet the applicable timelines in the development of this factual record.	More precise language with respect to the “new” Guidelines.
21	Mexico expressed its disagreement with the Secretariat’s decision to admit the Submission and, consequently, argues that its response is <i>ad cautelam</i> regarding the assertions made in submission SEM-05-003. In its response, Mexico presented information related to enforcement of the environmental law at issue and explained why it considered the elaboration of a factual record unwarranted.	Mexico expressed its disagreement with the Secretariat’s decision to admit the Submission and, consequently, argues that its response is ad cautelam regarding the assertions made in submission SEM-05-003. In its response, Mexico presented information related to enforcement of the environmental law at issue and explained why it considered the elaboration of a factual record unwarranted.	The language deleted is of a technical-legal nature and is unnecessary inasmuch as it does not contribute elements facilitating the public’s understanding of the facts at issue in the factual record. Furthermore, the text in footnote 61 is unnecessarily contentious.
22, 23, 24		Delete these paragraphs.	The reporting of the Party’s

			<p>arguments, as presented in these paragraphs, is incomplete. Consequently, said reporting is not clear and does not fully reflect the arguments raised by Mexico in its response.</p> <p>More importantly, the arguments contained in these paragraphs are of a strictly legal nature which do not contribute to understanding the matters discussed in the factual record.</p>
51, 52		Delete these paragraphs.	<p>The Federal Law on Metrology and Standardization does not constitute <i>environmental law</i> in terms of Article 45(2) of the NAAEC, nor is it a matter at issue in this submission. In addition, its inclusion under section 6.1, entitled “Validity of the environmental law in question,” is liable to cause confusion. Furthermore, these two paragraphs do not contribute to understanding the matters at issue in the factual record.</p>
55		Cite the abbreviated names of NOM-041 and NOM-045, as per the other NOMs in paragraph 54.	<p>As presented in this paragraph, it is not clear which authority issued these NOMs. In contrast, the issuing authority is clear with other NOMs (e.g., paragraph 54). This is the first mention of NOMs 041 and 045 in the factual record. Consequently, it is deemed that more information must be included to correctly identify these NOMs.</p>
56	..., mindful however not to present information on enforcement of the Ministry of Health NOMs in	..., mindful however of the Council’s instructions not to present information on enforcement of the Ministry of	Clarification of the syntax in this clause.

	accordance with the Council's instructions.	Health NOMs, in accordance with the Council's Resolution.	
59	... Semarnat develops NOMs focusing on determining concentrations of criteria pollutants in ambient air and the calibration procedures for measuring devices. The Ministry of Health develops NOMs that evaluate air quality with respect to specific criteria pollutants and determines limit values for the concentrations of said criteria pollutants.	... Semarnat develops NOMs focusing on determining concentrations of criteria pollutants in ambient air and the calibration procedures for measuring devices. The Ministry of Health develops NOMs that evaluate air quality with respect to specific criteria pollutants and determine limit values for the concentrations of criteria pollutants impacting air quality.	It is suggested that the struck through text be deleted to maintain consistency with the explanation given in preceding paragraphs (see 56, 57 and 58) regarding the relationship between the NOMs issued by the Ministry of Health and those issued by Semarnat. The NOMs issued by the Ministry of Health do not "evaluate" air quality. Instead, they establish the permissible values for concentrations of pollutants, which serve as criteria for air quality evaluation, as conducted in accordance with environmental law.
61	In contrast with NOM-034-SEMARNAT-1993 to NOM-038-SEMARNAT-1993, which establish standardized techniques and procedures for measuring concentrations of air pollutants, NOM-020-Ssa1-1993 to NOM-026-Ssa1-1993 establish the permissible values of criteria pollutants: ozone (O ₃), carbon monoxide (CO), sulfur dioxide (SO ₂), nitrogen dioxide (NO ₂), total suspended particulates (TSP), particulate matter under ten micrometers in diameter (PM ₁₀) and lead concentrations (Pb). The purpose of implementing such NOMs is to ensure that air quality is "satisfactory in every community and region of the country." Air quality is determined by measuring these attributes. NOM-020-	In contrast with NOM-034-SEMARNAT-1993 to NOM-038-SEMARNAT-1993, which establish standardized techniques and procedures for measuring concentrations of air pollutants, NOM-020-Ssa1-1993 to NOM-026-Ssa1-1993 establish the permissible values of criteria pollutants: ozone (O ₃), carbon monoxide (CO), sulfur dioxide (SO ₂), nitrogen dioxide (NO ₂), total suspended particulates (TSP), particulate matter under ten micrometers in diameter (PM ₁₀) and lead concentrations (Pb). The purpose of implementing such NOMs is to ensure that air quality is "satisfactory in every community and region of the country." Air quality is determined by measuring these attributes. NOM-020-	The struck through text repeats matters detailed in preceding paragraphs and contributes no new information. As such, it is liable to cause confusion among readers.

	SSA1-1993 to NOM-026-SSA1-1993 serve to identify the pollution index, assess air quality problems in relation to them and, on that basis, determine air quality management measures.	Ssa1 1993 to NOM 026 Ssa1-1993 serve to identify the pollution index, assess air quality problems in relation to them and, on that basis, determine air quality management measures.	
Title of Section 6.3	Establishment of mandatory vehicle inspection programs	Establishment of mandatory vehicle inspection programs and the establishment and operation of vehicle inspection centers	As per the language of paragraph a) of the Council Resolution.
Section 6.3		Include LGEEPA Articles 7, section III, and 8, section III; and RPCCA Article 4, section III.	Pertaining to this Section, the Council approved the development of a factual record in relation to LGEEPA Articles 7, section III, and 8, section III; RPCCA Article 4, section III; and LEES Articles 73, sections V and VII, and 85, section I, paragraph b). However, this section of the factual record only discusses LEES (now LEEPAS) Articles 73 and 85.
76	Under provisions cited by the Submitters, the state of Sonora and the municipality of Hermosillo are responsible for: (i) the establishment and operation of vehicle emissions inspection systems; (ii) the establishment of requirements and procedures for regulating motor vehicle emissions; and (iii) the suspension of vehicle traffic in the event of serious air pollution episodes.	Delete paragraph.	This paragraph belongs to section 6 of the factual record. The objective of this section, and in particular that of section 6.3, is to describe the provisions pertaining to the implementation of vehicle inspection programs. It is therefore relevant to include paragraphs 75 and 77, as they describe the LEEPAS Articles at issue in the factual record, particularly as regards this specific issue. This is not the case for paragraph 76, which consists of reiterating the submitters' allegations. Said allegations are already found or should be found in the

			<p>section that summarizes the submission.</p> <p>Furthermore, Mexico considers that a factual record centers on the central questions of fact that remain open, regarding which the Secretariat determines that the development of a factual record is warranted, and which are authorized by the Council. In paragraph 76, aspects are included that are not among the issues in question in the factual record. This is liable to cause confusion regarding what matters are germane in factual records in general, and in this factual record in particular.</p> <p>The practice of alluding to what the submitter alleged in the submission, and not to what the Council authorized seems to be a pattern in the factual record, which is repeated throughout the FR in other paragraphs—see, for example paragraphs 74, 77, 79 and 83.</p>
Title of Section 6.4	Pollutant emissions monitoring	Plans for verification, monitoring and control of the polluting emissions	As per the language of paragraph b) of the Council Resolution.
Section 6.4		Include LGEEPA Article 7, section III and LEEPAS Article 111, sections V and VII (formerly LEES Article 73, sections VI and IX).	Pertaining to this Section, the Council approved the development of a factual record in relation to LGEEPA Articles 7, section III; LEEPAS Article 111, sections V and VII; and RPCCA Articles 16 and 41, section I. However, the factual record only discusses RPCCA Articles 16 and 41.

80		This paragraph must be rewritten or deleted in accordance with the reasons provided opposite.	<p>According to the Secretariat’s interpretation, paragraph 80 does not address Official Mexican Standards. Instead, it addresses a concept called “environmental technical standards” which must be elaborated by the state Ministry of the Environment <u>in coordination</u> with the Ministry of Health. Nowhere does this Article stipulate that in the elaboration of said “environmental technical standards” the NOMs issued by the Ministry of Health shall be taken into consideration. Moreover, the analysis of the latter was effectively excluded by the Council Resolution as they do not constitute environmental law. Thus, the Secretariat’s explanations in this paragraph are inaccurate and its clarification with respect to the MoH’s NOMs unnecessary and erroneous, and liable to cause confusion among readers.</p> <p>In light of the preceding, the Secretariat is also invited to consider the advisability and utility of retaining paragraph 79 in the factual record.</p>
Title of Section 6.5	Enforcement of specific measures to reduce and control air pollutant emissions in Hermosillo	Enforcement of Specific measures actions to reduce or and control air pollutant emissions of pollutants into the atmosphere in the city of Hermosillo	As per the language of paragraph c) of the Council Resolution.
Title of Section 6.6	Implementation of the Municipal Environmental Protection Program	Implementation Issuance of the Municipal Environmental Protection Program	As per the terms of paragraph d) of the Council Resolution and section XV of LGEEPA Article 8.

85	The requirement that municipalities adopt and implement a municipal environmental protection program derives from LGEEPA Article 8:	The requirement that municipalities adopt and implement a municipal environmental protection program derives from LGEEPA Article 8:	As per the terms of paragraph d) of the Council Resolution and section XV of LGEEPA Article 8.
110	Gasoline is the principal source of lead emissions from automobiles. As gasoline is not completely consumed during the combustion process, the result is lead emissions taking the form of particulate matter. Elimination of lead in gasoline eventually leads to eliminating this source. Lead is a toxic contaminant for humans.	Lead is a metal that was frequently used to make plumbing and containers for food, paint and gasoline. The primary source of air pollution from lead was the use of leaded fuels in automobiles. Since lead is not consumed in the combustion process, it is emitted as particulate matter. One of the greatest environmental successes of the last two decades has been the reduction of lead levels in air thanks to substitution of leaded gasoline with unleaded gasoline.	It is suggested that the complete quotation appearing in the INECC portal be used to provide the reader with a more accurate picture and context in relation to lead and lead environmental pollution. This context includes the actions of the Government of Mexico to reduce pollution through the nationwide substitution of leaded gasoline with unleaded gasoline.
110	No Semarnat issued NOM on the proper measurement method for determining lead concentrations in ambient air and the calibration procedures for measuring devices was identified.	It is suggested that the text be rewritten in keeping with the reasons argued opposite.	Although the statement is correct, it does not provide the reader with complete information regarding lead regulation in Mexico. As gasoline in Mexico ceased to contain lead many years ago, no official standard exists on regulating the measurement of lead concentrations from automobile emissions into the atmosphere, i.e., one of the matters at issue in the factual record. Presently, the measurement and regulation of lead levels is carried out in relation to specific emissions sources and activities. Specifically, in this regard, Semarnat has issued NOMs 147 and 157. To consult lead regulation

			policy, see the INECC website. Furthermore, COFEPRIS maintains a catalog of all NOMs pertaining to lead regulation.
117	Regarding maximum permissible limits, LEEPAS Article 117 stipulates that owners of motor vehicles in circulation in the state of Sonora must observe the limits established in NOMs.	Delete paragraph.	It is suggested that this paragraph be deleted as the Article cited is not a matter at issue in the factual record. Although this fact is clarified in footnote 257, in Mexico's estimation this clarification is not communicated with sufficient clarity in the factual record. Moreover, this paragraph does not meaningfully contribute to comprehension of the issues in question in the FR.
129		Delete paragraph.	The relevance of including this paragraph is not apparent, inasmuch as the Secretariat has already outlined the emissions related NOMs issued by Semarnat elsewhere in the factual record. Furthermore, this paragraph refers to NOMs that are not at issue in the factual record.
Figure 7		Insert a legend for the points in orange, which, presumably, are the atmospheric monitoring stations indicated in Figure 6.	To ensure that the reader is provided with clear and precise information.
155	Figure 12 indicates the contribution (%) per each category of emissions source.	Figure 14 indicates the contribution (%) per each category of emissions source.	The wrong figure is cited in this paragraph. It should read figure 14, not figure 12.
156	Table 10 reproduces the results of the 2005 Hermosillo inventory of criteria air emissions and particulate matter conducted by REIICA. Table 11 provides a general summary of the data.	Table 8 reproduces the results of the 2005 Hermosillo inventory of criteria air emissions and particulate matter conducted by REIICA. Table 9 provides a general summary of the data.	Table numbers are corrected to ensure clarity and consistency.

<p>157</p>	<p>The emissions inventory reproduced in Table 10 does not include an estimate of suspended particulates emissions from unpaved roads, which is the most significant source of PM₁₀ and PM₂₅ according to Mexico. Area sources are important contributors of particulate emissions, mainly under the heading “Burning of fuels in stationary sources”...</p>	<p>In the emissions inventory reproduced in Table 8 does not include an estimate of suspended particulates emissions from unpaved roads, which is the most significant source of PM₁₀ and PM₂₅ according to Mexico. area sources are important contributors of particulate emissions, mainly under the heading “Burning of fuels in stationary sources”...</p>	<p>This paragraph is inaccurate inasmuch as Table 8 consists of the Hermosillo Emissions Inventory. Given that, properly speaking, dust from unpaved roads cannot be considered an emission as such, although it does represent a “pollution” source, it would be unjustified to include it in an inventory of this nature.</p> <p>In this regard, see LGEEPA Article 3, section XVII, for the definition of “emission” and the requirement that emissions originate from a specific source. The definitions of the various sources may be found in Article 6 of the Regulation to the LGEEPA respecting Air Pollution Prevention and Control.</p>
<p>158</p>	<p>Table 11 indicates that area sources generate the most PM₁₀ and PM_{2.5} suspended particulates.</p>	<p>Table 9 indicates that area sources generate the most PM₁₀ and PM_{2.5} suspended particulates.</p>	<p>Table numbers are corrected to ensure clarity and consistency.</p>
<p>159</p>		<p>It is suggested that this paragraph be rewritten.</p>	<p>This paragraph is confusing and even contradictory.</p>
<p>Final Note paragraphs 181-187</p>		<p>Move this section to the factual record’s “Executive Summary.”</p>	<p>The content of these paragraphs does not belong in a “final note.” They belong instead in the factual record’s executive summary. Given that the FR already has a section where the submission and the Party’s response are summarized, it would be logical to relocate these paragraphs to that section. In this way, the reader would have a summary of the entire process in a single section.</p>

			<p>It is also suggested that each of the paragraphs from 183 to 187 cite both the section of the factual record where the information being summarized is originally from, as well as the paragraphs included in said section. For example, the following might be written re paragraph 187: “Finally, with respect to the assertions on the alleged failure to comply with the requirement to develop and implement an environmental protection program (Section 11, paragraphs 177 to 180 of this factual record)...”</p>
<p>188</p>			<p>It is suggested that reference be made to the document in which the Parties undertook to provide information on actions taken in relation to factual records, a year after the publication thereof.</p>