

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submitters: Academia Sonorense de Derechos Humanos; and,
Domingo Gutiérrez Mendivil
Party: United Mexican States
Date of this plan: 09 August 2012
Submission no.: SEM-05-003 (*Environmental Pollution in Hermosillo II*)

Background

Articles 14 and 15 of the North American Agreement on Environmental Cooperation (the “NAAEC” or the “Agreement”) provide for a process allowing any person or nongovernmental organization to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. The Secretariat of the Commission for Environmental Cooperation (the “Secretariat” of the “CEC”) initially considers submissions to determine whether they meet the criteria contained in NAAEC Article 14(1). When the Secretariat finds that a submission meets these criteria, it then determines, pursuant to the provisions of NAAEC Article 14(2), whether the submission merits a response from the concerned Party. In light of any response from the concerned Party, and in accordance with NAAEC, the Secretariat may notify the Council that the matter warrants the development of a factual record, providing its reasons for such recommendation in accordance with NAAEC Article 15(1). Where the Secretariat decides to the contrary, or where certain circumstances obtain, it then proceeds no further with the submission.¹

On 30 August 2005, the Academia Sonorense de Derechos Humanos and Domingo Gutiérrez Mendivil (the “Submitters”) filed with the Secretariat a submission pursuant to NAAEC Article 14(1).

The Submitters assert that Mexico is failing to effectively enforce its environmental law with respect to air pollution control in the city of Hermosillo, Sonora.² The Submitters assert that the authorities identified in the submission are not taking the actions necessary to prevent and control environmental pollution in Hermosillo, in violation of the legal provisions cited in the submission. The Submitters assert that Mexican authorities “have failed to effectively enforce practically all legal provisions governing air pollution prevention and control” applicable to Hermosillo.³

¹ Full details regarding the various stages of the process as well as previous Secretariat determinations and factual records can be found on the CEC website at <http://www.cec.org/citizen/>.

² SEM-05-003 (*Environmental Pollution in Hermosillo II*) Submission pursuant to Article 14(1) (26 August 2005), p. 5. Note: page numbers of the submission referred to in this plan correspond to the original Spanish version of the submission.

³ *Ibid.*, p. 15.

Specifically, the Submitters state that the authorities of the three levels of government—federal, state and municipal—are failing to effectively enforce provisions of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*), the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*), the Regulation to the LGEEPA Respecting Air Pollution Prevention and Control (*Reglamento de la LGEEPA en Materia de Prevención y Control de la Contaminación de la Atmósfera—RPCCA*), the Federal General Health Act (*Ley General de Salud*), the Sonora State Ecological Balance and Environmental Protection Act (*Ley del Equilibrio Ecológico y la Protección al Ambiente para el estado de Sonora—LEES*), the Sonora State Health Act (*Ley de Salud para el estado de Sonora*), the Sonora State Emergency Preparedness Act (*Ley de Protección Civil para el estado de Sonora*), and various Mexican Official Standards (*Normas Oficiales Mexicanas—NOM*) applicable to air pollution.⁴

On 9 November 2005, the Secretariat determined that the submission met the requirements of Article 14(1) and found that, pursuant to the criteria of Article 14(2), the submission warranted requesting a response from Mexico.⁵

On 16 February 2006, Mexico filed its response in accordance with NAAEC Article 14(3). Mexico described air pollution-related actions taken by the federal, state and municipal governments, including street paving;⁶ inspection of establishments under federal jurisdiction; recording and control of emissions from fixed sources under federal jurisdiction by means of the Annual Operating Report (*Cédula de Operación Anual—COA*); operating licenses and the Single Environmental License (*Licencia Ambiental Única*);⁷ inspection and enforcement actions;⁸ and institutional coordination programs.⁹

On 4 April 2007, the Secretariat recommended the development of a factual record with respect to submission SEM-05-003.¹⁰ The Secretariat considered that the submission and Mexico's response, taken together, left open central questions regarding some assertions with respect to air pollution in Hermosillo, Mexico including LGEEPA Articles 7, paragraphs III

⁴ Official Mexican Standards cited in the Submission were: NOM-020-SSA1-1993, NOM-021-SSA1-1993, NOM-022-SSA1-1993, NOM-023-SSA1-1993, NOM-024-SSA1-1993, NOM-025-SSA1-1993, NOM-026-SSA1-1993, NOM-048-SSA1-1993, NOM-040-SEMARNAT-2002, NOM-043-SEMARNAT-1993, NOM-085-SEMARNAT-1994, NOM-121-SEMARNAT-1997, NOM-041-SEMARNAT-1999, NOM-042-SEMARNAT-1999, NOM-044-SEMARNAT-1993, NOM-045-SEMARNAT-1996, NOM-048-SEMARNAT-1993, and NOM-050-SEMARNAT-1993.

⁵ *N.B.* The Secretariat concluded the following provisions fall within the meaning of “environmental law” as defined in NAAEC Article 45(2)(a): LGEEPA Articles 5, paragraphs II, V, XVIII, and XIX; 7, paragraphs III, XII, and XIII; 8, paragraphs III, XI, XII, and XV; 10, and 112, paragraphs II and IV; RPCCA Articles 3, paragraph VII; 4, paragraph III; 13, 16, and 41; LEES Articles 73, 75, 85, paragraph B, subparagraph I, 138, and 139 and the Official Mexican Standards cited in the Submission. *See* SEM-05-003 (*Environmental Pollution in Hermosillo II*) Determination pursuant to Article 14(1)(2) (9 November 2005), pp. 7-10.

⁶ SEM-05-003 (*Environmental Pollution in Hermosillo II*) (Response pursuant to Article 14(1)(2) (9 November 2005), p. 45.

⁷ *Ibid.*, pp. 40-7.

⁸ *Ibid.*, pp. 43, 45, 47-8.

⁹ *Ibid.*, p. 45.

¹⁰ SEM-05-003 (*Environmental Pollution in Hermosillo*) Notification pursuant to Article 15(1) (4 April 2007).

and XIII, and 8, paragraphs III and XV; RPCCA Articles 4, paragraph III, 16, 41, paragraph I, and 13; LEES Articles 73, paragraphs V, VI, VII, and IX, and 85, paragraph B, subparagraph I,¹¹ as well as some of the Mexican Official Standards cited in the submission.¹²

On 15 June 2012, in Council Resolution 12-04, the Council unanimously decided to instruct the Secretariat to prepare a factual record in accordance with Article 15(2) of the NAAEC with regard to alleged failures of Mexico to effectively enforce its environmental law. The Council directed the Secretariat to provide the Parties with an overall plan for gathering relevant facts, as well as to keep the Council informed of any future changes or adjustments to such plan. In following the Secretariat sets out the overall plan of work for developing the draft factual record.

Overall Scope of the Fact Finding

As per Council Resolution 12-04, the Secretariat plans to develop a factual record in connection with the following:

- a) Facts surrounding Mexico's alleged failures to establish a mandatory vehicle inspection program and the establishment and operation of vehicle inspection centers, pursuant to LGEEPA Articles 7, section III and, 8, section III; RPCCA Article 4, section III; and Articles 111, sections V and VII, and 119, section II, paragraph b) of the *Ley del Equilibrio Ecológico y Protección al Ambiente del Estado de Sonora*, Sonora State Ecological Balance and Environmental Protection Act—LEEPAS;¹³

¹¹ Council Resolution 12-04 clarified that the LEES was abrogated by the new *Ley del Equilibrio Ecológico y Protección al Ambiente del Estado de Sonora* (Sonora State Ecological Balance and Environmental Protection Act—LEEPAS), published in the State Official Gazette on September 25, 2008. Therefore, Article 73, sections V and VII, of the LEES is now Article 111, sections V and VII, of the LEEPAS; Article 73, sections VI and IX of the LEES is now Article 111, sections VI and IX, of the LEEPAS, and Article 85, section I, paragraph b), of the LEES is now Article 119, section II, paragraph b) of the LEEPAS.

¹² NOM-020-SSA1-1993: *Environmental health. Criterion for assessment of ambient air quality with respect to ozone (O₃). Legal limit for ozone (O₃) concentration in ambient air as a public health protection measure*; NOM-021-SSA1-1993: *Environmental health. Criterion for assessment of ambient air quality with respect to carbon monoxide (CO). Permissible value for carbon monoxide (CO) concentration in ambient air as a public health protection measure*; NOM-022-SSA1-1993: *Environmental health. Criterion for assessment of ambient air quality with respect to sulfur dioxide (SO₂). Legal limit for sulfur dioxide (SO₂) concentration in ambient air as a public health protection measure*; NOM-023-SSA1-1993: *Environmental health. Criterion for assessment of ambient air quality with respect to nitrogen dioxide (NO₂). Legal limit for nitrogen dioxide (NO₂) concentration in ambient air as a public health protection measure*; NOM-024-SSA1-1993: *Environmental health. Criterion for assessment of ambient air quality with respect to total suspended particles (TSP). Permissible value for total suspended particle (TSP) concentration in ambient air as a public health protection measure*; NOM-025-SSA1-1993: *Environmental health. Criterion for assessment of ambient air quality with respect to particles of diameter less than 10 microns (PM₁₀), permissible value for particles of diameter less than 10 microns (PM₁₀) in ambient air as a public health protection measure*; NOM-026-SSA1-1993: *Environmental health. Criterion for assessment of ambient air quality with respect to lead (Pb). Legal limit for lead (Pb) concentration in ambient air as a public health protection measure.*

¹³ See *supra* note 11.

- b) Facts surrounding Mexico's alleged failures to issue plans for verification, monitoring and control of the polluting emissions referred to in the applicable NOMs issued by the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat), pursuant to LGEEPA Articles 7, section XIII; RPCCA Article 16 and 41, section I; LEEPAS Article 111, sections VI and IX;¹⁴
- c) Facts surrounding Mexico's alleged failures regarding specific actions to reduce and control emissions of pollutants to the atmosphere in the city of Hermosillo pursuant to RPCCA Article 13; and,
- d) Facts surrounding Mexico's alleged failures regarding the Municipal Environmental Protection Program, pursuant to LGEEPA Article 8, section XV.

Overall Plan

This time estimate for developing a draft factual record is consistent with timeframes established in the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the "Guidelines"), effective as of 11 July 2012.¹⁵

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, state/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 the JPAC to provide relevant information to the Secretariat in accordance with NAAEC Article 15(4) [**This will take place in August 2012**].
- The Secretariat will request information relevant to the factual record from Mexican federal, state and municipal government authorities, as appropriate, and shall consider any information furnished by a Party as per NAAEC Articles 15(4) and 21(1)(a) [**This will take place in August 2012**].
- 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 as per NAAEC Article 15(4)(a) [**This will take place August-September 2012**].
- The Secretariat, as appropriate, will collect relevant technical, scientific or other information for the preparation of the factual record, from interested nongovernmental

¹⁴ *Idem*.

¹⁵ The *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the "Guidelines") were recently revised by the NAAEC Parties. Consistent with new Guideline 19.5, the Secretariat aims to conclude preparation of the draft factual record within 180 working days from the date Council Resolution 12-04 was issued.

organizations or persons, the JPAC or independent experts as per NAAEC Article 15(4)(b) and (c) [**This will take place in September 2012**].

- The Secretariat, as appropriate, will develop through independent experts, technical, scientific or other information relevant to the factual record as per NAAEC Article 15(4)(d) [**This will take place September-December 2012**].
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the above detailed information gathered and developed [**This will take place October 2012-January 2013**].
- The Secretariat will translate and finalize editing of the draft factual record into the other official languages of the CEC [**This will take place February-March 2013**].
- The Secretariat will submit a draft factual record to Council, in accordance with Article 15(5) [**This will take place in March 2013**]. Any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5) [**This will take place March-May 2013**]. 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 [**This will take place June-July 2013**]. The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, in accordance with NAAEC Article 15(7) [**This will take place in October 2013**].

Additional Information

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

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