

Secretariat of the Commission for Environmental Cooperation

REQUEST FOR INFORMATION **for preparation of a factual record** **in regard to submission SEM-05-003 (*Environmental Pollution in Hermosillo II*)** **August 2012**

I. Factual record development process

The Commission for Environmental Cooperation (CEC) is an international organization created by the North American Agreement on Environmental Cooperation (the “NAAEC” or the “Agreement”), signed by Canada, the United States, and Mexico in 1994. The CEC operates through three bodies: a Council composed of the highest environmental authorities of each member country, the Joint Public Advisory Committee (JPAC), made up five citizens from each of the three countries, and a Secretariat headquartered in Montreal, Canada.

Articles 14 and 15 of the NAAEC 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”) 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 the 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 Article 15(1). Where the Secretariat decides to the contrary, or where certain circumstances obtain, it then proceeds no further with the submission.¹

The introduction to 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, gives guidance as to the contents of a factual record:

The purpose of a factual record is to provide an objective presentation of the facts relevant to the assertion set forth in a submission and to allow the readers of the factual record to draw their own conclusions regarding a Party's environmental law enforcement. If a final factual record is prepared, the Council may make it publicly available. If a submission reaches this stage of the process, it would be expected to do so normally within two and a half years of the submission being filed. Although a factual record is not to contain conclusions or recommendations, it is expected to generally outline the history of the environmental enforcement issue raised in the submission, the relevant legal obligations of the Party, and the actions of the Party in fulfilling these obligations; therefore, it can be another valuable outcome of this information-sharing process.²

Pursuant to NAAEC Article 15(4) and section 11.1 of the Guidelines, in preparing factual records the Secretariat will consider any relevant technical, scientific or other information

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/>> (viewed 7 May 2012).

² *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”), at 1.

that is publicly available; submitted by the Joint Public Advisory Committee (JPAC) or by interested non-governmental organizations or persons, or developed by the Secretariat or independent experts.³

In addition, pursuant to NAAEC Article 21(1)(a), on request of the Secretariat, each Party to the NAAEC shall:

promptly [make] available any information in its possession required for the preparation of a report or factual record, including compliance and enforcement data;...

On 15 July 2012, in Council Resolution 12-04, the Council, pursuant to NAAEC Article 15(2), unanimously instructed the Secretariat to prepare a factual record in regard to submission SEM-05-003 (*Environmental Pollution in Hermosillo II*). The Secretariat is hereby requesting relevant information relating to the matters to be addressed in the factual record. The following sections provide background on the submission and describe the type of information requested.

II. Submission SEM-05-003 (*Environmental Pollution in Hermosillo II*) and Council Resolution 12-04 of 15 June 2012

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

In the submission, 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.⁴ 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, Sonora.⁵

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*

³ Paragraph 11.1 of the Guidelines.

⁴ SEM-05-003 (*Environmental Pollution in Hermosillo II*) Article 14(1) Submission (26 August 2005), at 5. Note: page numbers of the submission referred to in this request for information correspond to the original Spanish version of the submission.

⁵ *Ibid.* at 15.

de Sonora), and various Mexican Official Standards (*Normas Oficiales Mexicanas*—NOM) applicable to air pollution.⁶

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.⁷

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;⁸ environmental 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*);⁹ inspection and surveillance actions;¹⁰ and institutional coordination programs.¹¹

On 4 April 2007, the Secretariat recommended the development of a factual record with respect to submission SEM-05-003.¹² The Secretariat found that the submission and Mexico's response, taken together, leave open central questions regarding the effective enforcement of environmental law with respect to air pollution in Hermosillo, Mexico, including LGEEPA Articles 7 paragraph s III and XIII and 8 paragraphs III and XV; RPCCA Articles 4 paragraph III, 16, 41 paragraph I, and 13, and LEES Articles 73 paragraphs V, VI, VII, and IX, and 85 paragraph B subparagraph I,¹³ as well as some of the Mexican Official Standards cited in the submission.¹⁴

⁶ Mexican Official Standards cited in the Submission are: 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.

⁷ *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 Mexican Official Standards cited in the Submission. *See* SEM-05-003 (*Environmental Pollution in Hermosillo II*) Article 14(1)(2) Determination (9 November 2005), at 7-10.

⁸ SEM-05-003 (*Environmental Pollution in Hermosillo II*) Article 14(1)(2) Determination (9 November 2005), at 45.

⁹ *Ibid.* at 40-47.

¹⁰ *Ibid.* at 43, 45, 47-8.

¹¹ *Ibid.* at 45.

¹² SEM-05-003 (*Environmental Pollution in Hermosillo II*) Article 15(1) Notification (4 April 2007).

¹³ Council Resolution 12-04 clarified that the LEES was repealed by the new Sonora State Ecological Balance and Environmental Protection Act (*Ley del Equilibrio Ecológico y Protección al Ambiente del Estado de Sonora*—LEEPAS), published in the State Official Gazette on 25 September 2008. Therefore, Article 73 paragraphs V and VII of the LEES is now Article 111 paragraphs V and VII of the LEEPAS; Article 73 paragraphs VI and IX of the LEES is now Article 111 paragraphs VI and IX of the LEEPAS, and Article 85 paragraph I subparagraph b) of the LEES is now Article 119 paragraph II subparagraph b) of the LEEPAS.

¹⁴ 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*

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 NAAEC Article 15(2) 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.

III. Request for information

In view of the instructions received via Council Resolution 12-04, the Secretariat takes note that the factual record is not to include information relating to the effective enforcement of Mexican Official Standards (NOM) issued by the Ministry of Health (specifically, NOM-020-SSA1-1993 to NOM-026-SSA1-1993).¹⁵ In this regard, Council Resolution 12-04 states that it authorizes the inclusion of information concerning:

- b) plans for verification, monitoring and control of the polluting emissions referred to in the applicable *Normas Oficiales Mexicanas* issued by the Ministry of the Environment and Natural Resources [Semarnat]...¹⁶

In accordance with Council Resolution 12-04, on 9 August 2012, the Secretariat issued a work plan delimiting the scope of the factual record and envisioning the gathering of information pursuant to NAAEC Article 15(4).¹⁷ According to the Work Plan, the information gathering process is to focus on the following aspects:

- a) The establishment of mandatory vehicle inspection programs and the establishment and operation of vehicle inspection centers, pursuant to LGEEPA Articles 7 paragraph III and 8 paragraph III; RPCCA Article 4 paragraph III, and Articles 111 paragraphs V and VII and 119 paragraph II subparagraph b) of the Sonora State Ecological Balance and Environmental Protection Act (*Ley del Equilibrio Ecológico y Protección al Ambiente del Estado de Sonora—LEEPAS*).¹⁸

(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.

¹⁵ Council Resolution 12-04 (15 June 2002).

¹⁶ *Idem*.

¹⁷ When the LEES was repealed by the publication in the official state gazette on 25 September 2008 of the Ecological Balance and Environmental Protection Act of the State of Sonora (*Ley de Equilibrio Ecológico y la Protección al Ambiente del Estado de Sonora—LEEPAS*), there was a change in the numbering of the articles about which a factual record was proposed to be prepared, but not in the underlying issues. Therefore, the Council, in its resolution, gave instructions to prepare a factual record in regard to “the establishment of mandatory vehicle inspection programs and the establishment and operation of vehicle inspection centers” and “plans for verification, monitoring and control of the polluting emissions referred to in the applicable *Normas Oficiales Mexicanas* issued by the Ministry of the Environment and Natural Resources” with reference to the updated provisions, which are now LEEPAS Article 111 paragraphs V and VII instead of LEES Article 73 paragraphs V and VII. See Appendix 1.

¹⁸ See note *Error: Reference source not found, supra*.

- b) The issuance of 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 Article 7 paragraph XIII, RPCCA Articles 16 and 41 paragraph I, and LEEPAS Article 111 paragraphs VI and IX.¹⁹
- c) Specific actions to reduce and control air pollutant emissions in the city of Hermosillo pursuant to RPCCA Article 13.
- d) The implementation of the Municipal Environmental Protection Program pursuant to LGEEPA Article 8 paragraph XV.

IV. Examples of relevant factual information

The following are examples of technical, scientific, or other information that could be presented by members of the community and the public with respect to the case before the Secretariat of the CEC. To facilitate the management and compilation of this information, it is requested that this information be submitted in electronic form.

1. Information about the area in question, specifically:
 - a. Maps of the city of Hermosillo (high-quality electronic format with vectors compatible with GIS, Autocad, or Acrobat).
 - b. Information about airsheds in the city of Hermosillo, including diagrams in electronic format.
 - c. Weather information for the municipality, including compass rose.
 - d. Current urban development plan, urban growth plans, distribution of current population, and projections.
2. Up-to-date information about establishment — and enforcement, as applicable — of mandatory vehicle inspection programs, as well as the establishment and operation of inspection centers in the city of Hermosillo. Specifically:
 - a. Up-to-date information about measures taken by the governments of Sonora and Hermosillo for prevention and control of air pollution from mobile sources, such as: the establishment of requirements and procedures for regulation of motor vehicle pollutant emissions; the application of traffic control measures; the suspension of traffic flow in the event of serious cases of pollution, and the implementation of mandatory vehicle inspection programs.
 - b. Information about the status of ambient gas monitoring in Hermosillo in preparation for the establishment of a vehicle inspection program; the history of data gathered for the purpose of implementing such a program; information about other measures taken by the state and municipal governments to effectively reduce or control mobile source emissions and to implement a vehicle inspection program in Hermosillo.
 - c. Information about the existence of any draft or proposed vehicle inspection program, or whether such a program is under development, and the resources assigned to the development of such a program.
 - d. Information as to whether the scope of this program has been defined and whether the resources planned — or estimated — for the implementation of this program have been determined.

¹⁹ *Idem.*

- e. In the event that any are operating, information about the technical requirements and costs related to the implementation, operation, and maintenance of vehicle inspection centers.
 - f. Information about any challenges or obstacles encountered in relation to the effective enforcement of the provisions relating to ambient gas monitoring in Hermosillo and the vehicle inspection program.
- 3. Up-to-date information about the adoption and results of the pollutant emissions inspection, monitoring, and control plans to which the applicable NOMs issued by Semarnat refer, and specifically:
 - a. Air-quality monitoring programs in effect in Hermosillo, the status of their implementation, and the technical requirements for the operation of air quality monitoring systems.
 - b. Information about the status and history of ambient gas monitoring in Hermosillo; information about other measures taken by the state and municipal governments to prepare, plan, implement, or improve an environmental pollutant monitoring system.
 - c. Environmental contingency program.
 - d. Criteria gas emissions inventory.
 - e. Information about modeling of air pollutant emissions and dispersion in the city of Hermosillo.
 - f. Information about specific measures to reduce and control pollutant emissions in the city of Hermosillo, particularly emissions of total suspended particles, PM10, PM2.5, ozone, carbon monoxide, sulfur dioxide and nitrogen dioxide, and lead.
 - g. Locator maps of air quality monitoring stations in Hermosillo.
 - h. Operating data and results for each of the monitoring stations in Hermosillo, indicating pollutants measured in a time series.
- 4. Information on industrial and commercial establishments in Hermosillo and their area of influence by industrial/commercial sector, including:
 - a. Map of establishments under federal and state jurisdiction located in the municipality and their area of influence.
 - b. Emissions generated by the establishments, principally of volatile organic compounds and of nitrogen and sulfur oxides.
- 5. Up-to-date information as to how the municipality of Hermosillo exercises and applies its power to formulate, implement, and evaluate the municipal environmental protection program.
- 6. Information about the application of specific measures to reduce and control air pollutant emissions in the municipality of Hermosillo, such as:
 - a. Maps of bus routes included in the “SUBA” transit system or any similar system for the city of Hermosillo, including maps or plans of future work or upgrades to “SUBA,” if any exist.
 - b. Information on the paving program and the “SUBA” program in relation to air pollution reduction and the vehicle inspection program. The information may include street paving maps.

- c. Information on the basis for the allocation of resources to the paving, SUBA, and vehicle inspection programs, and the correlation between this allocation of resources and air pollution control in Hermosillo.
- 7. Any other technical, scientific, or other information that could be relevant for the preparation of this factual record.

V. Additional background information

The submission, Mexico's response, the Secretariat determinations, the Council Resolution, and other information are available on the "Registry of Submissions" page in the "Submissions on Enforcement Matters" section of the CEC website at <<http://www.cec.org/SEMregistry>>, or may be requested from the Secretariat at <sem@cec.org>.

VI. Where to send information

Information relevant to the preparation of the factual record may be submitted to the Secretariat no later than **30 September 2012** by e-mailing <sem@cec.org>.

If the information is not available in electronic form, please send it to either of the following addresses:

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

CEC/Mexico Liaison Office
Attn: Submissions on Enforcement
Matters Unit
Progreso núm. 3
Viveros de Coyoacán
México, D.F., 04110, México
Tel.: (55) 5659-5021

Please reference submission SEM-05-003 (*Environmental Pollution in Hermosillo II*) in any correspondence.

Appendix I

Environmental law in question²⁰

- a) **The establishment of mandatory vehicle inspection programs and the establishment and operation of vehicle inspection centers, pursuant to LGEEPA Articles 7 paragraph III and 8 paragraph III; RPCCA Article 4 paragraph III, and LEEPAS Articles 111 paragraphs V and VII and 119 paragraph II subparagraph b)**

General Ecological Balance and Environmental Protection Act

Article 7. The following are powers of the States, in accordance with the provisions of this Act and the applicable local laws:

III. The prevention and control of air pollution generated by fixed sources that function as industrial establishments, as well as by mobile sources that are not, pursuant to this Act, under federal jurisdiction;

Article 8. The following are powers of the Municipalities, in accordance with the provisions of this Act and the applicable local laws:

III. The enforcement of the legal provisions governing the prevention and control of air pollution generated by fixed sources that function as commercial or service establishments, as well as air pollutant emissions from mobile sources not considered to be under federal jurisdiction, with the participation of the state government as prescribed by state law.

Regulation to the LGEEPA respecting Air Pollution Prevention and Control

Article 4. The federative entities and municipalities, within the scope of their territorial jurisdictions and in accordance with the distribution of powers established by local law, are competent in regard to the matters set out in Article 6 of the Act, and in particular:

III. The prevention and control of air pollution generated in zones or by emission sources under state or municipal jurisdiction.

Ecological Balance and Environmental Protection Act of the State of Sonora

Article 111. In matters of air pollution prevention and control, the State and the Municipality, within the scope of their respective powers:

V. Shall establish and operate emissions inspection systems for on-road motor vehicles;

VII. Shall establish requirements and procedures for the regulation of motor vehicle pollutant emissions, except those associated with federal public transportation, and transit measures, as well as suspension of traffic during serious pollution episodes, as applicable;

Article 119. In relation to motor vehicle pollutant emissions, except those associated with federal public transportation, it shall be the responsibility of :

²⁰ Headings correspond to provisions defined by Council Resolution 12-04

II. The Municipalities, within their territorial jurisdictions:

b) To establish mandatory vehicle inspection programs;

b) **The issuance of 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 (Semarnat), pursuant to LGEEPA Article 7 paragraph XIII, RPCCA Articles 16 and 41 paragraph I, and LEEPAS Article 111 paragraphs VI and IX**

General Ecological Balance and Environmental Protection Act

Article 7. The States, in accordance with the provisions of this Act and the applicable local laws, possess the following powers:

XIII. Enforcement of the Mexican official standards issued by the Federation, in the areas and under the conditions prescribed by paragraphs III, VI, and VII of this article;

Regulation to the LGEEPA respecting Air Pollution Prevention and Control

Article 16. Atmospheric emissions of odors, gases, and solid and liquid particles generated by fixed sources shall not exceed maximum allowable levels of emission and inmission per pollutant and per pollution source as set out in any such environmental technical standards as may be issued by the Ministry in coordination with the Ministry of Health, based on a determination of the maximum permissible concentration values for human beings of environmental pollutants determined by the latter.

In addition, and in view of the diversity of technologies used by different sources, when determining the maximum allowable levels of emission or inmission in an environmental technical standard, different values may be set for the same pollutant or source, depending on whether it is:

I. An existing source;

II. A new source, or

III. A source located in a critical zone.

The Ministry, in coordination with the Ministry of Health, further to any studies that may apply, shall, in the relevant environmental technical standard, determine the zones to be considered critical.

Article 41. The Ministry shall establish a national air quality information system and keep it up to date.

This system shall be made up of data arising from:

I. Air quality monitoring carried out by the competent authorities in the Federal District as well as the States and municipalities, and...

Ecological Balance and Environmental Protection Act of the State of Sonora

Article 111.- In matters of air pollution prevention and control, the State and the Municipality, within the scope of their respective jurisdictions:

VI. Shall establish and operate air quality monitoring systems with such technical support as they may request from the Ministry of the Environment and Natural Resources, and shall submit local air quality monitoring reports to the Ministry for inclusion in the National Environmental Information System, in accordance with the applicable coordination agreements;

IX. Shall produce such state-of-the-environment reports for the State or Municipality in question as they may agree upon with the Ministry of the Environment and Natural Resources by means of any coordination agreements entered into;

c) Specific actions to reduce and control air pollutant emissions in the city of Hermosillo pursuant to RPCCA Article 13

Regulation to the LGEEPA respecting Air Pollution Prevention and Control

Article 13. For the protection of the atmosphere, the following criteria shall be considered:

I. Air quality shall be satisfactory in all human settlements and regions of the country, and

II. Air pollutant emissions, whether from artificial or natural sources, and whether from fixed or mobile sources, shall be reduced or controlled so as to ensure air quality satisfactory for public well-being and ecological stability.

d) The implementation of the Municipal Environmental Protection Program, pursuant to LGEEPA Article 8 paragraph XV

Article 8. The Municipalities, in accordance with the provisions of this Act and the applicable local laws, possess the following powers:

XV. The formulation, implementation, and evaluation of the municipal environmental protection plan.