

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

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Félix Segundo Nicolás
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Valente Guzmán Acosta
María Guadalupe Cruz Ríos
Cruz Ríos Cortés
Silvestre García Alarcón
Represented by: Myredd Alexandra Mariscal Villaseñor

Submitter (SEM-06-004): Roberto Abe Almada

Party: United Mexican States

Date of this plan: 9 August 2012

Submission I.D.: SEM-06-003 (*Ex Hacienda El Hospital II*)
SEM-06-004 (*Ex Hacienda El Hospital III*) (consolidated)

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 CEC Council (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

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/>>.

On 17 July 2006, Myredd Alexandra Mariscal Villaseñor, on her own behalf and representing Justina Domínguez Palafox, Félix Segundo Nicolás, Karina Guadalupe Morgado Hernández, Santos Bonifacio Contreras Carrasco, Florentino Rodríguez Vaira, Valente Guzmán Acosta, María Guadalupe Cruz Ríos, Cruz Ríos Cortés, and Silvestre García Alarcón, filed submission SEM-06003 (*Ex Hacienda El Hospital II*).² On 22 September 2006, Roberto Abe Almada filed submission SEM-06-004 (*Ex Hacienda El Hospital III*) and endorsed the assertions of submission SEM-06-003.³ Both submissions were filed with the Secretariat in accordance with NAAEC Article 14(1).

In submissions SEM-06-003 and SEM-06-004 the persons listed in the preceding paragraph (the “Submitters”), assert that Mexico is failing to effectively enforce its environmental law with respect to the operation, shutdown, and decommissioning of a pigment production plant (the “Facility”) operated by BASF Mexicana, S.A. de C.V. (BASF), located in Ex Hacienda de Nuestra Señora de la Concepción El Hospital (“Ex Hacienda El Hospital”) in the municipality of Cuautla, state of Morelos.

On 30 August and 28 September 2006, the Secretariat determined that submissions SEM-06-003 and SEM-06-004, respectively, met the requirements of NAAEC Article 14(1) and found that, in light of the NAAEC Article 14(2) criteria, they warranted a response from Mexico.⁴ In accordance with paragraph 10.3 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”) in effect at the time, the Secretariat consolidated the two submission files.⁵

On 10 January 2007, Mexico filed its response with the Secretariat in accordance with NAAEC Article 14(3).⁶ In its response, Mexico states that Profepa followed up on the recommendations in an environmental audit of the facilities operated by BASF and that it processed citizen complaints filed in relation to the matter raised by the Submitters in a timely manner. Mexico’s response notes that restoration actions for the site were blocked by one of the Submitters.

On 12 May 2008, the Secretariat notified the Council that consolidated submissions SEM-06-003 and SEM-06-004 merited development of a factual record. After considering the submissions in light of Mexico’s response, the Secretariat concluded that the response left open central questions as to the effective enforcement of environmental law in relation to several of the Submitters’ assertions. The central open questions identified by the

² SEM-06-003 (*Ex Hacienda El Hospital II*), Submission pursuant to Article 14(1) (17 July 2006).

³ SEM-06-004 (*Ex Hacienda El Hospital III*), Submission pursuant to Article 14(1) (22 September 2006).

⁴ SEM-06-003 (*Ex Hacienda El Hospital II*), Determination pursuant to Article 14(1) (2) (30 August 2006), and SEM-06-004 (*Ex Hacienda El Hospital III*), Determination pursuant to Article 14(1) (2) (28 September 2006).

⁵ SEM-06-004 (*Ex Hacienda El Hospital III*), Determination pursuant to Article 14(1) (2) (28 September 2006), p. 1.

⁶ SEM-06-003 (*Ex Hacienda El Hospital II*) and SEM-06-004 (*Ex Hacienda El Hospital III*) Response pursuant to Article 14(3) (10 January 2007).

Secretariat relate to the following environmental laws: the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA) Articles 134, 135 paragraph III, 136, 139, 150, 151, 152 *bis*, 169, and 170; the General Waste Prevention and Integrated Management Act (*Ley General para la Prevención y Gestión Integral de Residuos*—LGPGIR) Articles 68, 69, 75, and 78; the Federal Criminal Code (*Código Penal Federal*—CPF) Article 421, as well as CPF Articles 415 paragraph I and 416 in force prior to 6 February 2002; the Regulation to the LGEEPA respecting Hazardous Waste (*Reglamento de la LGEEPA en materia de Residuos Peligrosos*—RRP Articles 8 paragraph X, 10, and 12, and Mexican Official Standards (*Normas Oficiales Mexicanas*—NOM) NOM-052-SEMARNAT-1993⁷ and NOM-053-SEMARNAT-1993.⁸ These issues relate to the investigation and prosecution of environmental offenses, the alleged illegal disposal of waste during the operation of the Facility, as well as the control of contamination on other lots in the community where waste and materials resulting from the decommissioning were disposed.

On 15 June 2012, by means of Council Resolution 12-03, 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 by 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 12-03, the Secretariat will develop a factual record in connection with the following:

- a) Facts surrounding Mexico's alleged failures to effectively enforce LGEEPA Article 170 in connection with the alleged illegal dumping of hazardous waste in the community of Ex Hacienda El Hospital, in the Municipality of Cuautla, State of Morelos, and the alleged crimes against the environment, during the operation, shutdown and decommissioning of the Facility operated by BASF;
- b) Facts surrounding alleged failures by Mexico to effectively enforce LGEEPA Articles 134, 135, paragraph III, 136, 139, 150, 151, 152 *bis*, and 169; CPF Article 421, as well as Articles 415 paragraph I, and 416 paragraph I, of the CPF in force

⁷ This standard was originally issued as NOM-CRP-001-ECOL/93, *which establishes the characterization of hazardous wastes, a listing of hazardous wastes, and their maximum acceptable levels of toxicity*. Its title was later changed to NOM-052-ECOL-1993, and it is currently in effect under the title NOM-052-SEMARNAT-2005.

⁸ This standard was originally issued as NOM-CRP-002-ECOL/93, *which establishes the procedure to examine the components of a hazardous waste in order to determine its toxicity levels*. Its title was later changed to NOM-053-ECOL-1993, and it is currently in effect under the title NOM-053-SEMARNAT-1993.

before February 6, 2002; RRP Articles 8 paragraph X, 10 and 12; NOM-052-SEMARNAT-1993 and NOM-053-SEMARNAT-1993, regarding the alleged illegal dumping of hazardous waste in the Facility and the alleged illegal dumping of hazardous waste in the community of Ex Hacienda El Hospital, in the Municipality of Cuautla, State of Morelos, and the alleged crimes against the environment, during the operation, shutdown and decommissioning of the Facility operated by BASF.

Overall Plan

This estimate to develop a draft factual record is consistent with timeframes established in the Guidelines effective as of 11 July 2012.⁹

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 municipal, 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, and/or the JPAC to provide relevant information to the Secretariat as per NAAEC Article 15(4) [**This will take place in August 2012**].
- 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 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-October 2012**].
- 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, the JPAC and/or independent experts as per NAAEC Article 15(4)(b) and (c) [**This will take place in September 2012**].

⁹ 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 on which Council Resolution 12-03 was issued.

- 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 August-December 2012**].
- In accordance with NAAEC Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed [**This will take place October 2012-February 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 NAAEC Article 15(5) [**This will take place March 2013**]. Any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with NAAEC 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, according to 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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