

[UNOFFICIAL TRANSLATION]

RE: SUBMISSION ON THE ENFORCEMENT OF
MEXICAN ENVIRONMENTAL LAW

COMMISSION FOR ENVIRONMENTAL COOPERATION
393, Rue St. JACQUES QUEST, BUREAU 200
MONTREAL (QUÉBEC) CANADÁ H2Y 1N9

I, the undersigned, MYREDD ALEXANDRA MARISCAL VILLASEÑOR, acting for myself and as attorney for Justina Domínguez Palafox, Félix Segundo Nicolás, Karina Guadalupe Morgado Hernández, Santos Bonifacio Contreras Carrasco, Florentino Rodríguez Viaira, Valente Guzmán Acosta, María Guadalupe Cruz Ríos, Cruz Ríos Cortés, and Silvestre García Alarcón, as per notarized power of attorney no. 28440 drawn up before Notary Public No. 4 of the Judicial District of Cuautla, Morelos, Neftalí Tajonar Salazar, a copy of which is attached as Appendix 1 hereof, giving as domicile for the purposes of giving and receiving notice the one located at Hermenegildo Galeana No 4 antes 2, despacho 103, Colonia Centro, Cuernavaca Morelos, C.P. 62000, and e-mail myredd@yahoo.com, hereby, in accordance with Articles 14 and 15 of the North American Agreement on Environmental Cooperation, present the following:

SUBMISSION

That Mexico be sanctioned for “**failure** to enforce the environmental laws” and for “**failure to effectively** enforce the applicable environmental laws” on the part of the competent authorities as follows:

1. **Failure to punish illegal acts on the part of BASF Mexicana, S.A. de C.V., hereinafter referred to as “BASF” or “the Company,” at its facility in the municipality of Cuautla, Morelos during the period running from 1973 to 1997.**
2. **Failure to sanction the Company for violations of various environmental laws, regulations, and standards as demonstrated in the executive summary of the Auditing Plan put into effect by the environmental authority at the Company’s facilities in Cuautla, Morelos in 1996-1997.**
3. **Failure to perform the studies or diagnostics necessary to quantify the scale and severity of the environmental and health impacts caused by the Company at its facility when notified of the closing thereof in 1997.**
4. **Failure to order the prevention and control measures necessary to avoid the spread of the contamination caused by the Company in Cuautla, Morelos, which was partially confirmed in 2000–2002 when more than 11,800 tons of contaminated earth and hazardous waste was sent from the site for disposal.**

BACKGROUND

For better understanding of the official negligence and failure to effectively enforce the laws on the part of the Mexican authorities, we consider it relevant to explain to the Commission the problem of contamination that has affected the residents of Ex Hacienda El Hospital in Cuautla, Morelos, Mexico, from 1973 to date. For this purpose, it is indispensable to understand the characteristics of the initial source of the contamination, which leads us to the facility that was occupied by the Company in the central part of the hacienda of Nuestra Señora de la Concepción.

The premises occupied by the Company, measuring approximately 5 300 m², are in the center of the hacienda, which has a total area of approximately 43 000 m² and has been owned for approximately 70 years by the Abe family.

Appendix 2 contains photographs of the facility taken on 3 September 1997 when the premises were returned by the Company to their owners (Profepa file B-0002/0750) due to the termination of the lease. An examination of these photographs yields the following observations:

- The company's utter disregard for its environmental and health obligations to its own employees and to the neighbors.
- The official negligence of the environmental authority in failing to act of its own right instead of waiting for a public complaint filed by various residents and by the Abe family (Profepa B-0002/0750), since the irregularities committed by the Company were obvious, and in failing to impose sanctions on the transnational and to order preventive measures to prevent the contamination from spreading.

After all, any moderately qualified environmental technician could have predicted the consequences of the observable contamination for health and the environment. It was clear that this contamination would spread through the subsoil unless a set of measures were taken to prevent this eventuality. However, **the Mexican environmental authorities did nothing whatsoever to prevent the spread of the contamination.** For these reasons, we consider the environmental authority to be directly responsible for the spread of the contamination in El Hospital, as from the date when the community and the owner filed the first public complaint in 1998 (file B-0002/0750), or even earlier, **since the Company had been operating in a noncompliant fashion for over twenty years. This is evident from the conclusions of an environmental audit** conducted by Profepa at no charge to the Company but aborted by the Company. By this means, the environmental authority learned in detail of the contamination problem, which represented a violation or violations of the legal provisions set out in **Appendix 3**.

There is a second public complaint referring to the local residents, filed by México Comunicación y Ambiente A.C. with Profepa on 25 October 2005 (**Appendix 26**) and presenting new technical evidence (geophysical studies) of contamination persisting on some lots that were filled or graded with toxic waste-contaminated demolition material. This complaint has still not been addressed. While it is true that certain Profepa inspectors have visited the site, no precautionary measures have yet been ordered, nor has the Company been ordered to clean up the site or indemnify the affected parties.

As stated above, the Mexican authorities' negligence in this matter dates from the beginning of the Company's operations on the site. The neighboring residents filing this submission hereby attest that fugitive dust emissions and pigmented wastewater discharges were a constant, yet there is no longer any documentary evidence of that era in the file opened by Profepa against the Company.

The oldest official information we have is contained in the executive summary of the environmental audit performed on the Company and its facility on the premises in Ex Hacienda El Hospital, Municipality of Cuautla, Morelos, April 1997 (Appendix 3), at no cost to the Company.

This was a voluntary environmental audit performed with public funds by Profepa. **By means of this audit, the authority learned of the severity and consequences of the contamination caused by the Company**, and if for some reason or circumstance we are unaware of – but we do not believe that there is any such justification – the authorities could not or did not wish to act at that time (April 1977), they could and should have acted upon the filing of the public complaint in 1998, which, **in our opinion, identified serious omissions on the part of the environmental authority and failures to effectively enforce the environmental laws in force at that time.**

Unfortunately, the instrument known as the “voluntary environmental audit” (which is expressly mentioned in the NAAEC) was misused in certain cases. The companies that registered for the program enjoyed a degree of immunity, though this was never enshrined in law. They ceased to be inspected, and their noncompliance was overlooked in return for their willingness to register for the program, in which they were given advantageous deadlines within which to regularize their situation. In addition, in the early stages of the program, the federal government paid the total cost of the audit in some cases; in return, the companies committed to taking the corrective measures arising from the audit, which unfortunately never happened in the case at hand. The company failed to keep its promise, **thereby, in our view, transmuting immunity into impunity with the full knowledge and consent of the environmental authority.**

These environmental violations and instances of noncompliance were confirmed in 2000–2002 during the restoration of the leased premises, including the cleanup of the affected area of the plant, which theoretically took place under Profepa's supervision. Profepa was able to confirm that over **11.8 million kg of soil had high concentrations of heavy metals (Pb, Cr, Mb, and others)** and, due to the hazardousness thereof, had to be sent for controlled disposal over a thousand kilometers away in Mina Nuevo León, **and that said contaminated soil had been in direct contact with the water table. However, despite the obvious risk this situation posed, Profepa did not foresee that the contamination would spread to other areas of the Abe family's property and the village following the direction of groundwater flow.** In this case, then, **the Mexican environmental authorities were systematically negligent and indifferent to the environmental problems caused by the Company.**

From the moment it learned of the environmental problems at issue – whether as a result of the environmental evidence related to pigment leaks caused by the lack of emission control equipment or the discharge of large volumes of untreated pigmented wastewater into the Espíritu Santo irrigation canal; **or the environmental audit** performed free of charge by Profepa but ultimately aborted by the Company; **or the inspection visit** that took place following the complaint filed by the property owner and certain residents after the Company returned the premises to their owner; or the evidence of environmental harm arising during

the remediation process (2000–2002) supervised by said authority – Profepa **should have ordered pollution prevention and control measures and should have notified the health authorities** and prevented the health effects of these toxic materials since, as discussed above, the Company was operating under appalling conditions and should have been considered a **public health risk**.

We know that in 1973, the Company leased an area of approximately 2 000 m² on part of the area of Ex Hacienda de Nuestra Señora de la Concepción (“El Hospital”) in Cuautla, Morelos, owned by the Abe Almada family. This area was originally rented by a former employee of the Company surnamed Von Bretano, who acted as a supplier to the German company BASF, the owner of Ex Hacienda being the Abe family. Shortly afterward, the Company requested an expansion of the leased area to approximately 5 300 m² on what had once been the premises of a sugar mill.

We are informed that the leases were for five-year terms and were repeatedly renewed until 1993. The owners of the property (the Abe family) inform us that in 1995 the Company notified them of its wish to terminate the lease early. It told them that it would return the property to them on 31 August 1997.

On 3 September 1997 the Abe family legally recovered the property, as appears from Profepa administrative files B-0002/0750 and B-0002/775.

Further to this, public complaints were filed with Profepa by some neighbors and by the owners, as appears from the above-mentioned files. In addition, several legal proceedings were brought by the owner against the Company. We are informed that these proceedings concluded, in respect of the owners, with a judicial settlement between the Abes and the Company.

In parallel with the legal proceedings, Profepa visited the premises formerly occupied by the Company **and only a few of the neighboring lots**, tardily addressing the aforementioned public complaints, as attested by the decision of 1 July 1998 by Lic. Artemio Roque Álvarez, Profepa’s Director General of Industrial Inspection, in file B-0002/0750 (**Appendix 4**). We must emphasize that the measures taken by Profepa, on this particular point, **in addition to being tardy, were incomplete, in that some of the residents whose property the Company had graded with hazardous waste**, or who had purchased contaminated demolition materials from the Company for construction of their makeshift dwellings and for other use, failed to return drums, boards, bricks, sheet metal, and other items acquired during dismantlement of the facility, unaware of the hazardousness thereof and/or fearful that once the contaminated materials and debris were removed their dwellings would not be rebuilt or the materials would not be replaced with nonhazardous equivalents; and yet **the environmental authority, which undoubtedly knew of the risks to health and the environment posed by the aforementioned hazardous wastes, did not make a detailed inventory of the problem, nor did it order preventive measures to avert the dispersal of the contaminants to other lots and into the water table.**

My clients and other residents of the locality of El Hospital stated to me that during the time when the Company was operating, it was common to see fugitive dust emissions coming from the site and to observe that the water emerging from the factory’s two drains was colored with blue, red, and yellow pigments (inorganic chromium-, lead-, and molybdenum-based pigments among others). One of the drains was discharging wastewater directly into a stream flowing into the village and used by the residents for washing clothes and utensils,

and even for personal hygiene. The other drain discharged contaminated effluent into the Espíritu Santo irrigation canal, which was used for irrigation of 40 ha of crops. **This practice undoubtedly affected the health of the residents and the environment, as appears from studies performed by UAM-Azcapotzalco (Appendix 5).** The source of this contamination problem clearly existed before 1 July 1998, the date of the aforementioned decision **(Appendix 4).**

As is evident from the Profepa decision of 20 July 2000 **(Appendix 6)**, signed by Lic. Artemio Roque, the urgent measures contained in the administrative decision of 1 July 1998 that is mentioned in his second preamble clause **are not mentioned in any of the seven provisions of said administrative act**, even though more than two years had elapsed since the administrative decision – proof of a patent failure to enforce the administrative decision.

During 1996–1997, Profepa conducted an environmental audit of the facility in question, while the Company was fully operative, as attested by a copy of the executive summary of said audit. The audit provides evidence of multiple violations of the applicable law, none of which have given rise as yet to any sanction whatsoever being imposed by the competent authority on the violator BASF **(Appendix 3)**, **nor has the relevant environmental assessment been performed, nor have any preventive measures been implemented so as to prevent the spread of the contamination to neighboring lots.**

Various studies and expert reports have been produced on the lot owned by the Abe family and on neighboring lots, by **Dr. Roberto Flores Ortega, a geophysicist, and by Manuel Murad Robles, a chemical engineer and an environmental engineering and soils consultant.** The results of this work show that **contamination persists in the area in question (Appendices 7–10).** This obvious fact **is confirmed by the UAM Azcapotzalco studies** contained in Appendix 5 and by notarized affidavits of 14 and 17 May 2005 **(Appendices 11–12).**

In regard to contaminated soils and hazardous waste, the problem is in fact more serious, because **the company buried a large quantity of hazardous waste, basically consisting of sacks of (probably substandard) chromium-, lead-, and molybdenum-based yellow and orange pigments. These have now been found at a number of sites,** as per notarized affidavits **(Appendices 11–12).** In addition, as stated above, the Company gave or sold cheap to former employees and residents a variety of hazardous waste-contaminated demolition materials, packaging materials, boards, drying trays, and other materials that had been in contact with or contained highly toxic and persistent hazardous waste **(Appendices 4 and 6)**, with the knowledge of the authorities. However, Profepa **did not make sure that these were all fully recovered; worse, the environmental authority has not yet conducted an inventory of all the waste dispersed in the community of El Hospital, nor has it conducted its own assessment of the environmental issues arising from these facts. As a consequence, it has not implemented prevention or control measures to avert the spread of the contamination.**

We feel it is relevant to alert the commission to the way in which Profepa carried out the site characterization work, since it is our view that in some instances it overstepped its authority while in others **it based its actions exclusively on statements made by the Company that caused the problem,** and in still others showed ignorance of technical matters.

The assessment of the contamination on the premises originally occupied by the BASF plant was carried out directly by persons hired by the Company. As appears in file B-0002/775, the assessment was based on a limited number of samples, giving rise to a *sui generis* cleanup plan. BASF and Profepa signed an agreement whereby the Company would perform the cleanup, and when the Company considered the extent of the cleanup to have reached the required level, it would notify Profepa so that the latter could take samples of the ground and walls and declare the site to have been effectively cleaned up. **In so doing they agreed that the extracted soil would not be analyzed,** since the generator had earlier decided to send it for controlled disposal. This was in violation of the law and the procedure BASF was originally ordered to carry out **(file B-0002/775, establishing BASF's obligation to characterize the soil before sending it for disposal).** This procedure, in addition to being irregular, prevented the authority from gaining absolute clarity as to the characteristics, hazardousness, and concentration of the waste that had been in contact with the water table for over twenty years and ordering preventive measures that would prevent the spread of the contamination to neighboring lots.

We present some of the results of the contaminated soil tests contained in the file that were performed on the premises formerly occupied by BASF. From these it may be observed that the heavy metal contamination extended beyond these premises. In addition, in some cases the concentrations increase with depth, demonstrating that the contamination was carried down through the water table, another fact that was apparently not noted by the environmental authority **(Appendix 6).**

Profepa asserts that BASF completed the cleanup work it was authorized to do on the premises of the plant (decision of Ing. Coello of 26 July 2002) **(Appendix 13).** It claims to substantiate this with various assessments of areas that were cleaned up, basically with the test results provided by the remediator hired by BASF. But this does not mean that the premises are now cleaned up; rather, it means that the environmental authority was tripped up by its own procedure. Since it never made its own assessment, and never ascertained whether 100% of the existing contamination was ever in fact included in the cleanup plan prepared by BASF, it had no reference point from which to state that the entire premises had been cleaned up, as may be seen in Profepa file B-0002/775.

Notwithstanding the fact that prior to the sanctioning of the Company by the authority in December 2005 **(Appendix 14),** Profepa had been presented with scientific evidence that that part of the premises had not been cleaned up **(Appendices 7 and 9),** the environmental authority notified the owner that in its opinion, that was an area in which the approved cleanup work was completed **(Appendix 15).** **This exhibits the authority's failure to effectively enforce the law.**

The evidence found **(Appendices 16, 11, and 12),** such as the existence of clandestine drainages that were installed for the purpose of directly discharging some untreated process effluent, as well as the existence of illegal hazardous waste burial, clearly shows that the contamination on the site was much more serious than BASF initially admitted in the remediation or cleanup plan submitted to Profepa. **BASF clearly omitted information from that plan,** which basically focused on a superficial clean up of walls and soils contaminated with fugitive dust caused by the inefficient, insufficient process dust retention systems, themselves constituting a violation of the environmental law then in force.

ACTS OR OMISSIONS CONSTITUTING THE TOTAL FAILURE OF ENFORCEMENT OF, OR THE FAILURE TO EFFECTIVELY ENFORCE, MEXICAN ENVIRONMENTAL LAW

I. Total failure of enforcement of the applicable environmental law, as substantiated in the executive summary of the auditing plan of action for BASF Mexicana, S.A. de C.V., at its Cuautla, Morelos facility (**Appendix 3**), where, operating during the years 1996–1997, the Profepa-accredited environmental auditor “Topografía, Estudios y Construcción, S.A. de C.V.,” supervised by Oso Ingeniería, S.A. de C.V. (also Profepa-accredited), identified as “deficiencies” **the following instances of noncompliance with the applicable legal provisions:**

1. **Air** “ATM” 001, 002, 003, 004, 005, 006, 007, 008, 009, and 010 (pp. 13–17, Appendix 2).
2. **Water** “AGA” 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, and 012, (pp. 18–25, Appendix 2).
3. **Hazardous waste** “RSP” 001, 002, 003, 004, 005, 006, 007, 008, and 009 (pp. 18–25, Appendix 2).
4. **Waste** “SOL” 001, and 002 (pp. 29–30, Appendix 2).
5. **Soil and subsoil** “SYS” 001 and 002 (pp. 3 and 31, Appendix 2).

The violations of various laws and regulations are itemized under each of the deficiencies observed by the auditor and supervisor. **We emphasize that up to the date of this submission, the Company has not been sanctioned for any of the aforementioned violations.**

II. Total failure of enforcement, in that the environmental audit is a self-regulatory tool that came into being in Mexico as a consequence of the North American Free Trade Agreement (NAFTA), and at its beginnings the Mexican federal government paid for a series of audits with its own funds and international funding in order to promote this tool, as occurred in the present case, **since the audit performed by the Company in 1996–1997 took place at no cost to the Company, thus violating the applicable environmental law and elementary principles of ethics, since in the first place BASF should not have accepted such work free of charge because it had already, in 1995, notified the lessor of its facility in Cuautla of its intent to terminate the lease early, announcing that it would vacate the premises on 31 August 1997, and was in fact evicted from the premises by the owner on 3 September 1997 as appears in Profepa files B-0002/0750 and B-0002/775.**

III. Total failure of enforcement, since when BASF refused to sign the auditing plan of action, whose executive summary is appended to this submission (**Appendix 3**), the Office of the Deputy Attorney for Environmental Auditing (*Subprocuraduría de Auditoría Ambiental*) should have referred the information produced by the auditor to the Office of the Deputy Attorney for Inspection (*Subprocuraduría de Verificación*) **and the latter should have immediately sanctioned the violator, which has not occurred to date.**

IV. Total failure of enforcement, in that the environmental authority, acting for itself or by the National Institute of Ecology (*Instituto Nacional de Ecología*—INE), should have conducted studies to identify the scale and severity of the environmental and health harms at the site, on neighboring lots, and to the residents, **as well as taken the steps necessary to prevent**

the spread of the contamination, control the contamination, and reduce the adverse environmental impacts thereof, which has not occurred to date.

In relation to the contamination directly caused to the premises formerly occupied by the Company and further to a lengthy legal process, a judicial settlement was reached between the lessor and the lessee.

We contend that the environmental authority improperly allowed BASF to devise an environmental remediation program for the premises occupied from 1973 to 1997, whereby as of this writing 11,800 tons of hazardous waste have been identified and removed from the site formerly occupied by BASF, and sent for disposal in Mina Nuevo León, as appears from the aforementioned file B-0002/775, much of this waste having been buried illegally.

It is obvious that some waste still remains in Ex Hacienda (Appendices 3, 5, 7, 8, 9, 10, 11, and 12), since Profepa opened a new file (SII-DGIFC-046/2004) calling for the Company to complete the remediation work agreed to in the judicial settlement. It should be noted that the vagueness of the assessment produced by BASF makes it so that **even today not all the clandestinely buried hazardous waste on the lots adjacent to the leased lot has been located, nor have the corresponding preventive measures been taken.**

V. Total failure of enforcement, in view of the information contained in aforementioned file B-0002/775, in the Administrative Decision of 26 July 2002 by G. Rafael Coello García, **who presented himself as the Director General of Pollution Source Inspection** of the Office of the Deputy Attorney for Industrial Inspection of Profepa, yet I have not found published in the Official Gazette of the Federation (*Diario Oficial de la Federación—DOF*) any delegation of powers whereby he attained that position; therefore, I request that the Commission **corroborate this appointment**, since in said administrative act, Profepa acknowledges completion of a considerable part of the work, without **“this being in any way tantamount to release from any liability that may have been incurred by BASF Mexicana, S.A. de C.V.” (Appendix 13)**, since said Administrative Decision may be considered null and void as of right.

VI. Failure to effectively enforce the law and total failure of enforcement, as attested by the administrative decision of 1 July 1998 in file B-0002/0750, since on the one hand, an inspection visit took place on 23 June 1998 **and a reliable account of the findings was produced (Appendix 4)**; it included a description of waste filtering into the subsoil and improper disposal of contaminated demolition debris in the form of landfill and/or grading of various lots and streets, yet the environmental authority did not order and execute urgent enforcement measures to prevent migration of the contamination and consequent harm to health and the environment, nor did it sanction the violator **“since it is evident from a perusal of the administrative decision that even where the authority notes the urgent enforcement measures, they were not, I reiterate, taken, and the violator BASF Mexicana, S.A. de C.V. has not to date been sanctioned, and so the facts described remain unpunished.”**

VI. Failure to effectively enforce the law, as appears from the administrative decision of 20 July 2000 in file B-0002/775 **(Appendix 6)** in that, **more than two years after** the decision mentioned in the preceding paragraph of this Submission, **nothing had been done** by the competent authority, notwithstanding the evidence contained in the aforementioned decision of 1 July 1998.

Irregularly, in this administrative decision, Profepa received a proposal for restoration of the affected site from the Company, where in my judgment the environmental authority should itself have itemized the required measures and the timeline for taking them.

In addition to the fact that **no mention whatsoever is made of the measures to be taken on the lots of residents and on other sites where the BASF improperly disposed of hazardous waste from the demolition of its facility**, it is also to be noted that the environmental authority **is failing to address the points of agreement of the federal and state houses of representatives (cámaras de diputados) (Appendices 24–25).**

VIII. Total failure of enforcement in that for reasons I do not profess to understand, Dr. Gerardo Anselmo Alvarado Salinas initiated a new administrative proceeding under number SII-SGIFC-023/2004 for the completion of the required work by the Company that was still pending and on 5 August 2004, issued an administrative decision (**Appendix 17**) comprising plans or sketches submitted by the Company, and presumably reviewed and approved by Profepa, in which **BASF deliberately failed to identify a clandestine drainage**, thus violating Articles 414–416, 420 quater, and 421 of the Federal Criminal Code (*Código Penal Federal—CPF*); **which approval was confirmed by Lic. Dorantes of Profepa, as appears in the notarized affidavit and on page 5 of 8 of the administrative act, both dated 9 May 2005 (Appendices 16 and 18), where he states that the plans were reviewed and approved by Profepa, yet Alvarado Salinas argues in his sixth preamble clause as follows: “Considering the change of legal status of the premises...,” whereas the legal status of the premises in question never changed (that part was not leased).**

Additionally, the failure to effectively enforce the law can be corroborated by the fact that point 6 of the sixth preamble clause of the administrative decision was not complied with, and said noncompliance has not to date been punished, since no further testing was done on the premises apart from the testing done by the Universidad Autónoma Metropolitana (UAM) Azcapotzalco (**Appendix 5**), **since at no time is it recorded that personnel from any accredited laboratory entered the premises in question; see certified time sheets (Appendix 19).**

IX. Total failure of enforcement on 11 May 2005, as appears in the notarized affidavit and the detailed official record of the same date (**Appendix 16**), which mention **the irregularities in the licenses obtained by BASF to carry out the activities described in aforementioned file DGIFC-023/2004** and the observations made by the owner’s representative of the irregularities and omissions observed, **emphasizing once again the existence of the clandestine drainage that was not indicated on the sketch or plan submitted by BASF and approved by Profepa, such that the latter consented to and tolerated the false information submitted by the Company (proof of the drainage, as issued by the municipality, is given in Appendix 20)**, the result being violations of the Federal Public Servants’ Responsibilities Act (*Ley Federal de Responsabilidades de los Servidores Públicos—LFRSP*).

X. Total failure of enforcement in that the work which Profepa ordered BASF to perform in file SII-DGIFC-023/2004 was **suspended** by the municipality of Cuautla on 31 May 2005, **and the environmental authority has not to date required the Company to complete the work, nor has it assigned any responsibility to the Profepa public servants who tolerated or consented to the false information submitted by the Company** in regard to the performance of the work that was ordered in aforementioned administrative file SII-DGIFC-023/2004 (**Appendix 20**).

XI. Total failure of enforcement in that various studies were performed on the leased premises and adjacent areas (**Appendices 7 and 9**), in addition to what was acknowledged by then Attorney Campillo with respect to the existence of contamination on lots adjacent to the leased one, file 016/02 of 17 January 2002 (**Appendix 21**), a situation that persists, as may be corroborated if the Commission arranges for the performance of tests on the adjacent lots and on the soil that was extracted in May 2005 by BASF and could not be removed from Ex Hacienda due to **suspension of the license** by the municipality of Cuautla, Morelos (**Appendix 22**), the municipality having ordered the suspension due to false statements made by BASF when applying for the license, especially worrisome in light of the statements of Irma Estela Dorantes of Profepa to the effect that the plans and licenses had been shown to Profepa, which, after reviewing them, had found them to its full satisfaction, **which was accepted by Lic. José Luis Cárdenas Rodríguez of Profepa, who refused to give the owner a copy of the record he had produced to this effect on 31 May 2005.**

XII. Total failure of enforcement in the case of the health effects on some of my clients that were caused by environmental violations evidenced in the aforementioned environmental audit (**Appendix 3**), these being corroborated by the studies performed by UAM Azcapotzalco (**Appendix 5**), in addition to the clinical history of the former spouse of one of my clients (**Appendix 23**), it being obvious that these violations affected the health of the population and the ecological environment of the site.

XIII. Failure to effectively enforce the law as attested by the penalty applied to BASF during the term of Attorney Ignacio Loyola Vera, of which the owner's representative was notified in file PFPA/SJ/067/06 of 27 February 2006 (**Appendix 14**), signed by Deputy Attorney for Legal Affairs Mauricio Limón, which notice states that on 20 December 2005 a final resolution of the administrative proceeding in file B-0002/775 was issued, including a fine levied on the Company in the amount of \$1 872 000.00 (one million eight hundred seventy-two thousand Mexican pesos), further stating **"in addition, BASF Mexicana, S.A. de C.V. was ordered to carry out the necessary corrective measures, reiterating the obligation to comply with the relevant part of the Environmental Restoration Program approved during the administrative proceeding, with said measures to be completed by the aforementioned Company within a fixed, specified time period"**; as may be observed, the environmental authority **limits itself here exclusively to penalizing acts relating to the Restoration Program**, which was devised by BASF itself, and of which the owner was notified, and the Company filed an appeal for judicial review **of whose outcome the owner has yet to be notified; it is also to be noted that over one year has elapsed since the failure to comply with the relevant part of the Environmental Restoration Program, suspended 31 May 2005 by the municipality, and they have yet to return to the site, evidencing the failure to effectively enforce the environmental law even in this instance where provisions for the protection of the public order and the interests of society are at stake.**

XIV. Failure to effectively enforce the environmental law in terms of the indirect reference in file PFPA/SJ/067/06 to the decision signed by Ing. Coello (**Appendix 13**), **there being a presumption of nullity of said administrative act**, since there is no information on any delegation of powers being published in the DOF, in addition to what is stated in file EOO.PFPA.870 of 1 December 2003 **in which then Attorney Luege responds tardily to Roberto Abe's letter of 26 May 2003 (Appendix 19)**

XV. Failure to effectively enforce the law where, in the same document, Deputy Attorney Limón states “**As to the existence of a ‘clandestine drainage’ it must be noted that...**,” and continuing, “**this is outside the purview of this office.**” Deputy Attorney Limón attempts to exonerate Profepa from responsibility in the most bald-faced manner, claiming not to know that said clandestine drainage originated in the facility which, **under Profepa’s watch**, was the subject of environmental restoration work, and in addition is located on private property (**Appendix 14**).

XVI. Failure to effectively enforce the law where the Deputy Attorney for Legal Affairs (*Subprocurador Jurídico*) states that Profepa does not have the power to order the audited party to sign the auditing plan of action, and in this regard **it is pertinent to mention that the owner did not request such action**; rather, what he argued was that, when the Company failed to sign the plan of action, the information obtained by the auditing area **should have been referred to the inspection area for the latter to proceed accordingly, since multiple and varied proofs of noncompliance existed**, and later during the putative restoration of the premises, 11,800 tons of hazardous waste was identified and sent for disposal in Mina Nuevo León; **it should be emphasized that more than three years passed before this took place**, which undoubtedly affected the health of the population and the environment in the area (aforementioned file B-0002/775); I must additionally reiterate the evidence of contamination found during the work initiated in May 2005, which is documented in **Appendices 11 and 12**, making plain that **contamination still exists on the site**.

XVII. Failure to effectively enforce the environmental law in that the competent authority did not enforce the provisions of Articles 134, 152, and 170 of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*) when it learned of the state of the Company’s facility further to information obtained from the voluntary environmental audit performed in 1996–1997, when the plant was operating as usual, the environmental authority should have ordered a set of urgent enforcement measures to prevent the hazardous waste from continuing to spread through the air or filtering through the subsoil, **contaminating the water table from 0 to 8 m depth**, the soil and subsoil contamination problems being very serious, as proven with the environmental restoration or remediation activities carried out by the Company from 2000 to 2002, **when more than 11,800 tons of hazardous waste was sent for disposal in Mina Nuevo León**, file B-0002/775, in large part made up of contaminated soil which still persists on the site, as corroborated by the notarized affidavits of 14 and 17 May 2005 (**Appendices 11 and 12**).

I base this submission on the following legal provisions:

Federal Criminal Code (CPF) Articles 414, 415 paragraph I to 416 paragraph I, 420 quater, and 421.

General Ecological Balance and Environmental Protection Act (LGEEPA) Articles 4, 5, 6, 134, 135, 136, 139, 140, 150, 151, 151 bis, 152, 152 bis, 160, 161, 162, 167, 167 bis, 167 bis 1, 167 bis 3, 167 bis 4, 168, 169, 170, 170 paragraph III, 170 bis, 171, 172 173, 174, 191, 192, and 193.

Regulation to the LGEEPA Articles 6, 8, 10, 12, and 23.

NOM-052-ECOL/93.

NOM-053-ECOL/93.

North American Agreement on Environmental Cooperation (NAAEC) Articles 14, 14(1), 14(2), 14(2)(c), 14(2)(d), and 14(3).

Comprehensive Waste Prevention and Management Act (*Ley para la Prevención y Gestión Integral de Residuos—LGPGIR*) Articles 68, 69, 75, 78, 101, 103, and 106.

Hazardous Waste Regulation (*Reglamento de Residuos Peligrosos*) Articles 8 paragraphs II, III, VI, VII and IX, 14, 15 paragraphs II and VII, and 17 paragraph II.

National Waters Act (*Ley de Aguas Nacionales*) Articles 29 paragraph VI and 119 paragraphs VI, VII, XI, XIV and XV.

Regulation to the National Waters Act Article 135 paragraphs IV, V, VI and VII.

In view of the foregoing and in accordance with Articles 14 and 15 of the North American Agreement on Environmental Cooperation, I hereby request that you accept my appearance in accordance with the terms set forth in this submission, proceeding according to law, my domicile being as stated for all relevant purposes.

Myredd Alexandra Mariscal Villaseñor

On my own behalf and as attorney for others

26 appendices