

8 July 2014

COUNCIL RESOLUTION: 14-06

Instruction to the Secretariat of the Commission for Environmental Cooperation regarding submission SEM-09-002 (*Wetlands in Manzanillo*) in connection with the assertions that Mexico is failing to effectively enforce Article 4 of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*); Articles 1, 2, 3, and 4 of the Convention on Wetlands of International Importance Especially as Waterfowl Habitats; Articles 20 *bis* 2, 30, 35, and 35 *bis* of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*); Article 60 *ter* of the General Wildlife Act (*Ley General de Vida Silvestre—LGVS*); Article 32 *bis* of the Federal Public Administration Act (*Ley Orgánica de la Administración Pública Federal—LOAPF*); Article 60 of the Federal Administrative Procedure Act (*Ley Federal de Procedimiento Administrativo—LFPA*); Articles 2, 4 paragraph IV, 13 paragraph III, 22, and 46 of the Regulation to the LGEEPA Respecting Environmental Impact Assessment (*Reglamento de la LGEEPA en Materia de Evaluación del Impacto Ambiental—REIA*); Articles 6, 7 paragraph I, 8, 10, 13, 14, 36, 48, 49, and 50 of the Regulation to the LGEEPA Respecting Environmental Land Use Planning (*Reglamento de la LGEEPA en Materia de Ordenamiento Ecológico—ROE*); Articles 1 paragraph VII, and 40 of the Environment Act for Sustainable Development of the State of Colima (*Ley Ambiental para el Desarrollo Sustentable del Estado de Colima—LADSEC*); Articles 48 and 66 of the Human Settlements Act of the State of Colima (*Ley de Asentamientos Humanos del Estado de Colima—LAHEC*); NOM-022-SEMARNAT-2003, *Establishing the specifications for the preservation, conservation, sustainable use, and restoration of coastal wetlands in mangrove areas* (“NOM-022”); and NOM-059-SEMARNAT-2001, *Environmental protection - Native species of Mexican wild flora and fauna - Risk classes and specifications for their inclusion, exclusion, or change - List of species at risk*

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) regarding Submissions on Enforcement Matters and the preparation of factual records;

ACKNOWLEDGING the important role of the Secretariat, as the administrator of the Submissions on Enforcement Matters (SEM) process, in facilitating information-sharing among members of the public and their governments on matters concerning the effective enforcement of environmental law;

AFFIRMING that one of the objectives of the NAAEC, as indicated in Article 1, is the promotion of transparency;

CONSIDERING the revised submission, filed on 2 November 2009, by Bios Iguana, A.C., represented by Gabriel Martínez Campos and Esperanza Salazar Zenil (the “Submitters”), and the response provided by the Government of Mexico on 14 October 2010;

HAVING REVIEWED the 19 August 2013 Notification by the Secretariat recommending the development of a factual record with respect to certain assertions made by the Submitters;

REAFFIRMING the definition of “environmental law” provided in Article 45(2)(a) of the NAAEC and referenced in Guideline 5.1 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”);

EMPHASIZING that pursuant to Article 14(1) of the NAAEC and Guideline 5.1, the preparation of a factual record is to be based on assertions made by the Submitter(s); and

TAKING INTO ACCOUNT Guideline 10.4, which provides for the Council to offer its reason(s) for factual record instructions in writing to be placed in the SEM Registry;

HEREBY UNANIMOUSLY DECIDES:

TO INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15(4) of the NAAEC and the Guidelines, regarding the following assertions that Mexico is failing to effectively enforce its environmental law:

- a) LGEEPA Article 35 and REIA Article 13 paragraph III, with respect to the alleged failure to establish the relationship between the Manzanillo LPG Project and the environmental land-use plan;
- b) LGEEPA Article 35 and REIA Article 13 paragraph III, with respect to the alleged failure to establish the relationship between the Manzanillo LNG Project and the environmental land-use plan; and
- c) LGEEPA Article 30, LGVS Article 60 *ter* and NOM-022, with respect to the environmental impact assessment for the Manzanillo LNG Project, and with specific reference to the hydrodynamic flow in the coastal wetland of the Cuyutlán Lagoon;

TO DIRECT THE SECRETARIAT:

- a) to post the Council’s reasoning for its vote in the SEM Registry, as provided in Guideline 10.4;
- b) to conclude the preparation of the draft factual record as provided in Guideline 19.5 and submit it to the Council in accordance with Article 15(5) of the NAAEC; and
- c) to provide the Council with its overall work plan for gathering the relevant facts, to keep the Council informed of any future changes or adjustments to such plan, and to promptly contact the Council in connection with any clarification required with respect to the scope of the factual record hereby authorized.

APPROVED BY THE COUNCIL:

Dan McDougall
Government of Canada

Enrique Lendo Fuentes
Government of the United Mexican States

Jane Nishida
Government of the United States of America