

[UNOFFICIAL TRANSLATION]

Case: EFFECTIVE ENFORCEMENT OF MEXICAN
ENVIRONMENTAL LAW IN LAGUNA DE CUYUTLÁN,
COLIMA

COMMISSION FOR ENVIRONMENTAL COOPERATION

393, Rue St. JACQUES OUEST, BUREAU 200
MONTREAL (QUEBEC) CANADA H2Y 1N9

**SECRETARIAT OF THE NORTH AMERICAN COMMISSION FOR
ENVIRONMENTAL COOPERATION**

CITIZEN SUBMISSION

Gabriel Martínez Campos, acting as the legal representative of the civil association BIOS IGUANA, A.C., which has legal status, as is attested to by a certified copy of its document of incorporation (Appendix 1), and Esperanza Salazar Zenil affirm that their legal address to receive and take cognizance of any class of written documents and notifications is calle de Santa Margarita número 227, esquina Angel Urraza, Colonia Insurgentes–San Borja, Delegación Benito Juárez, México, D.F. Furthermore, they authorize María del Carmen Colín Olmos, José Alberto Vázquez Martínez, Alejandro Olivera and Carol Berenice Arriaga García to appear before this Commission, and do affirm:

That by means of this written document and based on Articles 14 and 15 as well as other related and applicable articles of the North American Agreement on Environmental Cooperation (henceforth “NAAEC”), an agreement signed by the United Mexican States, Canada and the United States of America, published in December 1993 and which has been in force since 1 January 1994, we are making a citizen submission:

To denounce the absence of effective enforcement of: the Political Constitution of the United Mexican States, the Ramsar Convention on Wetlands, especially as regards waterfowl habitat, the General Act on Ecological Balance and Environmental Protection Act (*Ley General de Equilibrio Ecológico y Protección al Ambiente—LGEEPA*), the Federal Public Administration Act (*Ley Orgánica de la Administración Pública Federal*),

the Federal Administrative Procedure Act (*Ley Federal de Procedimiento Administrativo*), the Federal Wildlife Act (*Ley General de Vida Silvestre*), LGEEPA Environmental Impact Regulations (REIA), LGEEPA Ecological Zoning Regulations, Official Mexican Standard NOM-022-Semarnat-2003, Official Mexican Standard NOM-059-Semarnat-2001, the Environmental Act for Sustainable Development of the state of Colima (*Ley Ambiental para el Desarrollo Sustentable del Estado de Colima—LADSEC*), the Coordination Agreement for the Preparation, Issuance and Implementation of the Regional Ecological Zoning program for the Laguna de Cuyutlán (*Acuerdo de Coordinación para Apoyar la Formulación, Expedición y Ejecución del Programa Regional de Ordenamiento Ecológico Territorial de la Laguna de Cuyutlán*), the Regional Ecological Zoning Program for the Laguna de Cuyutlán Sub-basin (*Programa Regional de Ordenamiento Ecológico Territorial de la Subcuenca Laguna de Cuyutlán—PROETSLC*), and the Urban Development Program of Manzanillo (*Programa de Desarrollo Urbano de Manzanillo*). This absence of effective enforcement refers to the authorization of two projects, “the Liquefied Petroleum Gas (LPG) Plant in the Municipality of Manzanillo, Colima” and “the Manzanillo Liquefied Natural Gas (LNG) Terminal,” which affect the hydrologic cycle, and the flora and fauna found in the Laguna de Cuyutlán area.

Pursuant to Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC), let us mention the following points:

I. Grounds for the submission: The lack of effective enforcement of environmental acts and of specifically enumerated standards in respect of two projects: “the Manzanillo Liquefied Natural Gas (LNG) Terminal” and “the Liquefied Petroleum Gas (LPG) Plant in the Municipality of Manzanillo, Colima,” both of which are located in the Laguna de Cuyutlán area, in the state of Colima, Mexico.

II. Authorities responsible for the lack of effective enforcement of environmental acts and standards: the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales—Semarnat*, formerly Semarnap), the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección Ambiental—Profepa*), the Attorney General of the Republic (*Procuraduría General de la República—PGR*), the Mexican Geological Service

(*Servicio Geológico Mexicano*, formerly *Consejo de Recursos Minerales*), the Federal Electricity Commission (*Comisión Federal de Electricidad—CFE*), the Government of the state of Colima, the Ministry of Urban Development and the Environment of the state of Colima, the Attorney General of the state of Colima, the Manzanillo municipal government, the Armería municipal government, and the University of Colima.

III. Object of the submission: The object of this submission is to have the Commission for Environmental Cooperation (henceforth the “CEC”) declare its support for the effective enforcement of Mexican environmental legislation in the Laguna de Cuyutlán area (Colima), by all three levels of the Government of Mexico, in compliance with the provisions of NAAEC Articles 5, 6, and 7.

IV. Facts of the case: The facts which we shall presently adduce concern the irregularities in the procedures and authorizations that have been carried out in respect of two projects: “the Manzanillo Liquefied Natural Gas (LNG) Terminal” and “the Liquefied Petroleum Gas (LPG) Plant in the Municipality of Manzanillo, Colima.”

CHARACTERISTICS OF LAGUNA DE CUYUTLÁN, COLIMA, MEXICO

Laguna de Cuyutlán, which accounts for 90% of the wetlands in the state of Colima, is the fourth-largest coastal wetland in the country and the largest between the National Marshlands (*Marismas Nacionales*) in Nayarit and central Guerrero (Mellink, E. and Riojas-López, M., *Non-breeding waterbirds at Laguna de Cuyutlán and its associated wetlands*, Colima, Mexico).

According to the most recent inventory of the National Commission for the Knowledge and Use of Biodiversity (*Comisión Nacional de Uso y Aprovechamiento de la Biodiversidad—Conabio*), this zone includes 1,330.010 hectares of mangrove (Appendix 2), which represent 23% of the mangroves in Jalisco, Colima and Michoacán, and is considered a priority mangrove conservation area.

Furthermore, Conabio has classified this area as a Priority Marine Area, a Priority Hydrological Area and a Priority Biological Research Area. It should also be mentioned that this is a priority conservation area for migratory birds from North America. In 2008,

the lagoon was identified by Conabio as a mangrove site of biological relevance and ecological rehabilitation (<http://www.conabio.gob.mx/conocimiento/manglares/doctos/sitios.html>). Laguna de Cuyutlán ranks as the twelfth-highest priority wetland area for shorebirds and winter bird counts in the September 2008 Semarnat document titled “Estrategias para la Conservación y Manejo de las Aves Playeras y su Hábitat en Mexico” (Strategies for Conservation and Management of Shorebirds and their Habitat in Mexico).

FLORA. The following are among the species inhabiting this lagoon: *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove) and *Orbignya guacoyule* (*coquito de aceite*), all of which are specified in NOM-059-Semarnat-2001. In total, 9 families, 127 genera, and 257 species of flora may be found in the lagoon.

FAUNA. The following are among the local or migratory species inhabiting this lagoon: *Ctenosaurus pectinata*, *C. sinilis*, *Iguana iguana*, *Procyon insularis*, *Balaenoptera spp.*, *Echrichtius robustus*, *Nasua nelsoni*, *Caiman spp.*, *Chelonia agassizi*, *Lepidochelys olivacea*, *Dermochelys coriacea*, *Cocodylus moreleti*, *C. acutus*, *Macrobachium spp.*, *Ancistromesus mexicanus*, *Pinctada mazatlanica*, *Pinna rugosa*, *Pternia sterna*, *Crocibullus escutellatum*, *Purpura pansa*, *Noctilio leporinus mexicanos*, *Felis pardalis*, *Felis wiedii*, *Felis yagouaroundi*, *Icterus cucullatus* and *I. walgleri*, *Nomonyx dominicus*, *Aramides axillaris*, *Tachybaptus dominicu*, *Egretta rufescens*, *Mycteria americana*, *Chondrohierax uncinatus*, *Rostrhamus sociabilis*, *Buteo platypterus*, *Buteo albonotatus*, *Micrastur semitorquatus*, *Larus Herman*, *Sterna antillarum*, *Artinga canicularis*, *Glaucidium palmarum guatemalensis*. Of the 327 bird species found in Laguna de Cuyutlán, 56 are aquatic, 104 are land birds, 103 are resident species and 49 are migratory. Two of these species are specified in NOM-059-Semarnat-2001 as threatened and 15 as requiring special protection.

1. FACTS PERTAINING TO ECOLOGICAL ZONING

1.1. On 16 August 2000, Semarnat, the National Ecology Institute (*Instituto Nacional de Ecología—INE*), the Mexican Geological Service (then known as the *Consejo de Recursos Minerales*), the government of the state of Colima, and the municipal governments of Manzanillo and Armería signed the Coordination Agreement for the

Preparation, Issuance and Implementation of the Regional Ecological Zoning Program for Laguna de Cuyutlán, located in the state of Colima (henceforth, the Agreement). The Agreement was published on 27 October 2000, in the *Diario Oficial de la Federación* (Official Gazette of the Federation) and came into effect indefinitely (Appendix 2).

1.2. Under Clause No. 5 of said Agreement, the Government of Colima undertook to:

- a) “Carry out the actions incumbent upon it pursuant to the execution of the Regional Ecological Zoning Program of Laguna de Cuyutlán,”
- c) “Oversee compliance, in the areas under its jurisdiction, with the concessions, permits, licenses, authorizations, environmental feasibility studies, rulings and resolutions granted or made by state public administration with legal land uses and vocations, as well as with the ecological regulatory standards resulting from the regional ecological zoning program of Laguna de Cuyutlán”
- d) “Monitor the compatibility of urban development plans and programs, and the instruments that may derive from them, with the provisions arising from the Program...”

1.3. For their part, the Municipalities undertook, under Clause No. 6 of the Agreement, to:

- a) “Carry out the actions incumbent upon them pursuant to the execution of the Program...”
- b) “Ensure that within their areas of jurisdiction, concessions, permits, licenses, authorizations, rulings and resolutions comply with the ecological precautions and criteria contained in the Program...”
- c) **“Effect whatever adjustments may be required to ensure that local zoning programs – along with the urban development plans and programs and instruments that may derive from them – are compatible with the provisions arising from the Program...”**

1. 4. The Government of Colima failed to comply with the obligations contained in the Agreement in that it:

a. Did not execute the regional ecological zoning program of Laguna de Cuyutlán, known as the Regional Ecological Zoning Program of the Laguna de Cuyutlán Sub-basin (*Programa Regional de Ordenamiento Ecológico de la Subcuenca Laguna de Cuyutlán*—PROETSLC), decreed by the Governor of Colima on 5 July 2003, in that it failed to carry out its administrative and oversight obligations, which are stipulated in Clause No. 5 of the Agreement.

This Program establishes conservation and protection policies that are incompatible with “human settlements, infrastructure and equipment” – see PROETSLC regarding Environmental Management Unit (*Unidad de Gestión Ambiental*—UGA) Ent5 39 and UGA Ent4 40 (Appendix 3).

This is demonstrated by the fact that on 12 June 2004 the Government of Colima improperly approved, within the purview of its jurisdiction, the construction and operation of “the Liquefied Petroleum Gas (LPG) Plant in the Municipality of Manzanillo, Colima” by the company Zeta Gas del Pacífico, S.A. de C.V., in the conservation and protection zones of UGA Ent5 39 and Ent4 40 of the Campos Ejido, a project which implies industrial infrastructure and equipment that is expressly prohibited by PROETSLC. In this way, the authorities of the municipality of Manzanillo, with the approval of the Urban Development Branch (*Dirección de Desarrollo Urbano*) of the Government of Colima, modified the Manzanillo Urban Development Program.

Furthermore, this action was a violation of Article 40 of the Environmental Act for Sustainable Development of the state of Colima (Appendix 4).

1. 5. The municipal authorities of Manzanillo failed to comply with the Agreement in that:

They modified the Manzanillo Urban Development Program under its jurisdiction. Said modification was published in the *Periódico Oficial del Estado de Colima* (the state of Colima’s Official Gazette) on 12 June 2004 (Appendix 5) and entailed changing the land use from forested area to a medium-term urban use reserve, and changing the zoning from ecotourism to high impact, and risk, to heavy industry.

In so doing, it failed to comply with PROETSLC ecological criteria by effecting modifications unfavorable to the area’s protection and conservation. In the Agreement (Clause 6, paragraph c), the municipalities undertook to adapt or harmonize their urban

development programs with PROETSCLC. However, the Municipality violated this provision by adjusting its urban development program to accommodate industrial projects and interests, such as the “the Manzanillo Liquefied Natural Gas (LNG) Terminal” and the “the Liquefied Petroleum Gas (LPG) Plant in the Municipality of Manzanillo, Colima” projects. This also constitutes a violation of Article 40 of LADSEC.

The Coordination Agreement ensues from LGEEPA Article 20 Bis 2:

ARTICLE 20 BIS 2. The governments of the States and the Federal District, in accordance with the applicable local laws, may draft and issue regional environmental land use plans comprising all or part of the territory of a federated entity.

Where an ecological region is situated within the territory of two or more federal entities, the Federal Government and the governments of the relevant states and municipalities, as well as the Government of the Federal District as applicable, within the scope of their respective jurisdictions, may draft a regional environmental land use plan. For such purpose, the Federation shall enter into the relevant coordination agreements with the local governments involved.

It also ensues from Article 7 of the LGEEPA Ecological Zoning Regulations:

“Article 7. Environmental land use planning under federal jurisdiction shall be carried out by means of the environmental land use planning process and shall have the following as its outcomes:

I. Coordination agreements that may be signed with:

- a. The agencies and entities of the Federal Public Administration having jurisdiction to take measures having an impact on the study area, and
- b. The federal entities, their municipalities, as well as the Federal District and those of its boroughs within the study area.

Article 8. The Ministry shall arrange for the signing of any coordination agreements required under paragraph I of the preceding article or, as applicable, the revision of existing agreements as a basis for any applicable environmental land use planning program, with a view to adapting them to the provisions of this Regulation.

Article 10. The coordination agreements contemplated in this Chapter, its appendices, and the coordination agreements signed within the environmental land use planning process are considered matters of public law and are binding upon the signatories.”

Finally, it ensues from REIA Article 2, which provides that “The Federal Executive Branch, acting by the Ministry of the Environment, Natural Resources, and Fisheries is responsible for the enforcement of this regulation in accordance with the applicable legal and regulatory provisions.”

Therefore, under the REIA, the Environmental Impact and Risk Branch (*Dirección General de Impacto y Riesgo Ambiental*) was obligated to conform to the legal and regulatory provisions related to land use planning when conducting the assessment of

the project, given that pursuant to Article 10 of the LGEEPA Ecological Zoning Regulations, coordination agreements are binding upon the parties. Thus, DGIRA should have ascertained that the Agreement was being performed, especially after being notified that an amendment had been made to the environmental land use plan consisting of insertion of the project that was under assessment.

1.6. On 3 May 2007, the Government of Colima arbitrarily modified PROETSLC (Appendix 6). This modification consisted of changing the conservation, protection and restoration status of certain UGAs into industrial and port status. The UGAs in question correspond to the locations of the “Manzanillo Liquefied Natural Gas Terminal” and the “the Liquefied Petroleum Gas (LPG) Plant in the Municipality of Manzanillo, Colima” projects.

1.7. Under LADSEC Article 1 paragraph VII (Regulating liability for environmental harm and establishing mechanisms for ensuring the incorporation of environmental costs into production processes as well as mechanisms for repair of environmental harm), Articles 6, 36, 48, 49, and 50 of the LGEEPA Zoning Regulations are applicable. Therefore, the Government of Colima and the municipalities are authorized to modify PROETSLC to lessen the adverse environmental impacts generated by productive activities, but they may not authorize the increase of such impacts, as occurred with the Laguna de Cuyutlán projects.

1.8. Under LADSEC Article 1 paragraph VII, Articles 7, 13, and 14 of the LGEEPA Zoning Regulations are applicable. Pursuant to these articles the Government of Colima and the Municipalities must maintain a public ecological zoning registry. Be that as it may, the competent authorities have not complied with this statutory requirement.

1.9. In addition, LADSEC Article 40 establishes that works or activities carried out in the state shall be subject to the provisions of the pertinent ecological zoning programs, as shall the granting of land use or construction permits, and of zoning certificates. The state and municipal authorities violated this rule when they permitted and/or approved

a change in land use to enable the realization of the “the Manzanillo Liquefied Natural Gas (LNG) Terminal” and the “the Liquefied Petroleum Gas (LPG) Plant in the Municipality of Manzanillo, Colima” projects in the Laguna de Cuyutlán area.

1.10. For this reason, on 4 June 2007, a formal criminal complaint was lodged with Attorney General of the state of Colima charging the Governor of the state, the mayors of Manzanillo and Armería and the Minister for Urban Development of the Government of the state of Colima with illegally modifying the Regional Ecological Zoning Program of the Laguna de Cuyutlán Sub-basin (PROETSLC). The Justice Department took no action in response.

1.11. On 24 May 2007, a nullity action was initiated in respect of the decree that modified PROETSLC. This action remains to be adjudicated.

2. FACTS REGARDING SEMARNAT’S ENVIRONMENTAL IMPACT ASSESSMENT

2.1. On 24 February 2004, the company Z Gas del Pacífico S.A. de C.V. submitted its Environmental Impact Statement to Semarnat, the agency responsible for evaluating the project “Liquefied Petroleum Gas (LPG) Plant in the Municipality of Manzanillo, Colima” (Appendix 7).

2.2. The said project consists of the construction and operation of a Liquefied petroleum gas (LPG) and propane gas storage and distribution plant that includes twenty spherical storage tanks, each with a capacity of 43,380 barrels. Sixteen would be for LPG storage and the remaining four for propane. The plant would be located at kilometer 3.5 of the Manzanillo state highway in Colima, on the stretch between Campos and Cuyutlán. Such activities are classified as high risk.

2.3. On this particular issue, we must point out that the Environmental Impact Statement (or MIA, the acronym in Spanish) submitted by the company Z Gas del Pacífico S.A de C.V. lacked a serious and realistic description on the possible effects on the ecosystem which may arise from either the construction of the installation or its

future operations. The MIA also failed to consider in a comprehensive manner the elements forming such ecosystems. Nor did it address the preventive and mitigation measures or any other measures necessary to avoid and minimize negative effects on the environment, a requirement stipulated in the first paragraph of Article 30 of the LGEEPA.

2.4. On page 188 of the MIA, the company Z Gas states that “there does not exist any specific regional ecological zoning that includes the project site.” This is totally false, whereas the MIA is dated 24 February 2004, PROETSLC dates from 5 July 2003.

2.5. On 23 June 2004, Semarnat issued an environmental impact authorization to Z Gas del Pacífico (Appendix 8), via official communication S.G.P.A./DGIRA.DEI.-1443.04. Said document acknowledged the controversies regarding land use and zoning policies (see pp. 11 and 12 of this authorization). However, it did not consider the fact that this Program was modified after Z Gas del Pacífico submitted its MIA on the project “Liquefied Petroleum Gas (LPG) Plant in the Municipality of Manzanillo, Colima.”

2.6. The Manzanillo Urban Development Program (*Programa de Desarrollo Urbano de Manzanillo*—PDUM) dates from 18 September 2000. The PDUM originally classified the area as a forested area and zoned it for ecotourism. The modification to the PDUM, which was made at the late date of 12 June 2004, is arbitrary and illegal. This modification was made nearly four months after Z Gas del Pacífico submitted its MIA to Semarnat.

2.7. In effect, the PDUM was modified in a manner favorable to the interests of Z Gas del Pacífico after the MIA was submitted, without considering the zone’s characteristics and the obligation to protect it. It was thus reclassified from a forested area to a medium-term urban reserve area and its zoning changed from ecotourism to high impact, and risk, to heavy industry.

2.8. This, then, was how the provisions of Articles 48 and 66 of the Human Settlements

Act of the state of Colima (*Ley de Asentamientos Humanos del Estado de Colima*, Appendix 9) were violated. Under said articles, municipal urban development programs shall be consistent with the state urban development and ecological zoning programs, and the formulation or updating of urban development projects or programs shall ensure a certain mechanism for public participation. This did not occur.

2.9. LADSEC Article 40 was also violated. Under this article, “works or activities carried out in the state shall be subject to the provisions of the corresponding ecological zoning programs, as shall the granting of land use or construction permits and of zoning certificates.”

Semarnat was obligated to conform to Article 32 Bis of the Federal Public Administration Act (*Ley Orgánica de la Administración Pública Federal*) establishing that:

“The Minister of the Environment and Natural Resources is responsible for the following matters:...Paragraph V.- In coordination with the federal, state, and municipal authorities, enforcing and promoting compliance with the laws, Mexican official standards, and programs relating to natural resources, environment, water, forests, terrestrial and aquatic wildlife, and fisheries.”

LADSEC Article 40 is a Mexican legal provision related to natural resources and the environment. Therefore, Semarnat should not have authorized a project for which the land use permit had been granted in violation of the ecological zoning program, and hence in violation of LADSEC Article 40.

2.10. On 8 November 2006, by means of official letter 7B/2006/JMRA-00688 the Federal Electricity Commission (CFE) submitted a regional Environmental Impact Statement, or MIA, (Appendix 10) to Semarnat’s Environmental Impact and Risk Directorate (*Dirección General de Impacto y Riesgo Ambiental—DGIRA*) in respect of its Manzanillo Liquefied Natural Gas Terminal project (TGNLM). Said MIA has been registered under the following code number: 06CL2006G0008.

2.11. This project includes the installation of a terminal for the storage and handling of Liquefied natural gas (methane) at levels exceeding the reporting quantity of 500

kilograms. As such it would be considered a high risky activity, in Laguna de Cuyutlán, which is approximately 8 kilometers south of the city of Manzanillo, Colima.

2.12. The MIA submitted by the CFE did not indicate the harm that the installation and operation of the terminal would cause to each and every one of the species of flora and fauna specified in NOM-059-Semarnat 2001 (Appendix 11), which are categorized as threatened, requiring special protection or in danger of extinction. The species in question are: *Ctenosaurus pectinata*, *C. similis*, *Iguana iguana*, *Procyon insularis*, *Balaenoptera spp.*, *Echrichtius robustus*, *Nasua nelsoni*, *Caiman spp.*, *Chelonia agassizi*, *Lepidochelys olivacea*, *Dermodochelys coriacea*, *Cocodylus moreleti*, *C. acutus*, *Macrobachium spp.*, *Ancistromesus mexicanus*, *Pinctada mazatlanica*, *Pinna rugosa*, *Pternia sterna*, *Crocibullus escutellatum*, *Purpura pansa*, *Felis pardalis*, *Felis wiedii*, *Felis yagouaroundi*, *Icterus cucullatus* and *I. walgleri*; *Nomonyx dominicus*, *Aramides axillaris*, *Tachybaptus dominicu*, *Egretta rufescens*, *Mycteria americana*, *Chondrohierax uncinatus*, *Rostrhamus sociabilis*, *Buteo platypterus*, *Buteo albonotatus*, *Micrastur semitorquatus*, *Larus Herman*, *Sterna antillarum*, *Artinga canicularis*, *Glaucidium palmarum*, *guatemalensis*, *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove) and *Orbignya guacoyule* (coco de aceite).

2.13. Semarnat authorized the project on 11 February 2008, via official letter S.C.G.P.A./DGIRA.0465.08 (Appendix 12). This means that Semarnat failed to comply, by omission, with the obligation stipulated in Article 35 of the LGEEPA. In effect, in assessing the MIA, Semarnat was required to review whether it was in compliance with the LGEEPA, with LGEEPA Regulations and with the applicable Official Mexican Standards, such as NOM-059-Semarnat 2001.

2.14. Under Article 35 of the LGEEPA, Semarnat should have denied the authorization for the following reasons:

- a) It contravened the LGEEPA, the LGEEPA Environmental Impact Regulations and Official Mexican Standards NOM-059-Semarnat-2001 and NOM-022-Semarnat-2003, specifically subsections 4.0, 4.1, 4.3, 4.12, 4.23, 4.28, 4.29, 4.37, 4.38 and 4.40; and
- b) the works and operations of these projects may result in the declaring of one or more species as threatened or in danger of extinction, particularly when the species specifically listed in NOM-059-Semarnat 2001 are affected (as has already been

mentioned, such species do inhabit the Laguna de Cuyutlán area). This issue was brought to the attention of the relevant authorities during the public consultation of 19 May 2006.

2.15. Nor did this MIA cite studies demonstrating that the project guarantees the integrity of the mangrove ecosystem or avoids the fragmentation of coastal wetlands, as stipulated in paragraphs 4.0, 4.1, 4.2, 4.3, 4.12, 4.33 and 4.42 of NOM-022-Semarnat-2003 (Appendix 14).

Further evidence of this is that when requesting additional information (Appendix 15) on 2 February 2007, page 3, DGIRA requested “reference to NOM-022, establishing the manner in which the project adheres to and/or complies with its provisions. On page 5 of that document, the applicant is requested to present, in accordance with REIA Article 36, technical and scientific evidence as well as evidence from similar experiences demonstrating that the project will preserve the water flow levels necessary to maintain or improve the existing water balance in the component water bodies of Laguna de Cuyutlán.

After CFE provided additional information on 4 May 2007, DGIRA made a new request on 4 October 2007, for “complementary information concerning the exchange of seawater volumes that will enter the entire system and the direct impact that this will have on the potential variations in the average level of the lagoon, and concomitantly, on the various plant communities (particularly mangrove communities) and animal communities existing in this habitat, providing convincing evidence of how the existing conditions will be improved and specifying how this could occur” (Appendix 16). Such information should have been submitted in the body of the EIS as an indispensable requisite for assessment of such a large-scale project to be sited in a lagoon system, since the health of a coastal wetland depends upon its water balance, as is clearly set out in the preamble to NOM-022:

0.15. The salinity gradients determine the distribution of plant and animal communities in a hydrological unit, and therefore activities affecting these gradients within and outside the coastal wetland must be regulated;

0.16. The tidal regime determines the dynamics of the estuary and the levels of oxygen reaching the root system. Tidal movements affect the rates of sedimentation and exchange and remove toxic sulfides;

0.18. It is necessary to consider, in the preventive studies and the ecological zoning, the balance of forces between the water budget of the continental watershed and the sum of the forces of the existing oceanic currents and tides, which determine the mixing of fresh and salt water that preserves the estuarine conditions necessary for coastal wetlands and the plant communities they support;

0.20. Coastal wetlands are characterized by having hydrological, contiguity, climate regulation, coastal stabilization, and primary production functions that maintain the marine and land biodiversity dependent upon them;

0.22. Coastal wetlands play a role in recharging the aquifers that contain 97% of the world's non-frozen fresh water, and in Mexico the problem of overexploitation of groundwater is acute;

0.43. The cumulative environmental impacts on the majority of coastal and estuarine ecosystems caused by port and tourism infrastructure development, channelization, dredging, filling, various economic activities taking place in watersheds (farming, ranching, forest clearing, etc.), as well as dumping of urban wastewater, solid waste disposal, and certain forms of energy production, have diminished and degraded productive habitat, increasing sedimentation, affecting estuarine water quality, altering biogeochemical cycles, and putting pressure on the populations of estuarine species in general;

0.44. Such activities may be classified as external or internal. External activities include silting, salinization, eutrophication, watercourse alteration, and contaminated runoff. Internal activities include drying or filling of coastal wetlands, drying caused by channelization and dredging, changes in the watercourse due to fragmentation of the coastal wetland, changes in habitat caused by its conversion for aquaculture and other uses, excessive channelization, and total or partial opening or closing of outlets; deforestation, soil acidification, burning and overgrazing, heavy metal contamination, use of non-selective fishing gear, compaction caused by cattle and human traffic through marshes and other coastal wetlands;

0.48. Infrastructure construction has the potential to alter natural water flows, with changes in nutrient recycling and in the sediment deposition and/or transport cycle on a local scale;

0.51. The conservation of a coastal wetland is predicated on control of the activities having the greatest impact on it, such as channelization, use of runoff, dredging,

logging or burning of vegetation, and grazing, as well as on maintenance of the hydrological function and water quality.

It is important to point out to the Secretariat that DGIRA, in its decision of 11 February 2008 (Appendix 13), gave conditional authorization to the LNG project and, on pp. 140–143, condition 3, again requested a water balance study “giving a full demonstration of the impacts of the extension of Tepalcates Canal and resultant water flow toward the four ponds of the lagoon.” Thus it is clear that the competent authority never obtained the studies necessary to conduct its assessment, much less to ensure the absence of impact on this important coastal wetland, which is gravely and irreversibly harming the ecosystem as a whole.

2.16. Originally, no linkage was made with planning documents and the applicable legal instruments, such as PROETSLC and NOM-022-Semarnat-2003, as is required under Article 13, subsection III of the LGEEPA Environmental Impact Regulations. The promoter proceeded in this fashion without any additional information being asked of it until the state Government amended the PROETSLC.

2.17. In accordance with Article 4-IV of the LGEEPA Environmental Impact Regulations, a public information meeting was held on 19 December 2006, in the city of Manzanillo at the request of BIOS-IGUANA, A.C. and other citizens. In this meeting, the project’s sustainability was questioned. However, the CFE did not demonstrate the technical viability of its project, as required by law.

2.18. On 23 January, by way of official communication S.G.P.A./DGIRA/DG/0175/07, Semarnat’s DGIRA requested additional information from the CFE. This request did not require the CFE to justify the TGNLM project, which is industrial in nature, in the context of the PROETSLC, which concerns a zone where land use is reserved for conservation, protection and restoration.

2.19. On 2 February 2007 an amendment to the Chapter on “Species and Populations at Risk and Prioritized for Conservation” of the General Wildlife Act (*Ley General de*

Vida Silvestre), incorporating Article 60, came into force. It stipulates: **“Shall be prohibited the removal, filling, transplanting, pruning, or any other works or activities that affect the integrity of the mangrove’s hydrologic cycle, that of its ecosystem and zone of influence; that of its natural productivity; that of the ecosystem’s natural carrying capacity for tourism projects; that of its nesting, reproduction, refuge, feeding and fry rearing areas; or which affect the interactions between mangroves, rivers, dunes, the adjacent maritime zone and coral, or which provoke changes in ecological characteristics and services.”**

2.20. However, the DGIRA did not take this new provision into account, which prohibits the development of a project like the TGNLM, since it is located in a mangrove zone and would significantly modify the hydrologic cycle of the mangrove ecosystem in Laguna de Cuyutlán were it to be implemented.

2.21. On 4 May 2007, the CFE provided the DGIRA, by way of official communication 7B/2007/JMRA-00237, with the additional information (see Appendix 14) requested by Semarnat on 2 February 2007 via official communication S.G.P.A./DGIRA/DG/0175/07 (see Appendix 15). This information was not delivered in a timely manner. Article 22 of the LGEEPA Environmental Impact Regulations specifies that the date of delivery of such additional information may not exceed a term of 60 days following notification; and that once such a period has ended, the environmental impact assessment process shall be declared expired, in the event the promoter fails to deliver the information requested.

2.22. The additional information referred to in the foregoing point was incomplete, as the DGIRA itself mentioned, in its whereas clause XLII of the authorization dated 11 February 2008. On 6 July 2007, the CFE provided details on environmental matters in response to a request for additional information, specifically: the coast line, dredging, hydraulic control works, sea turtles, sediments, mangroves, INF criteria 20, irregular settlements, sodium hypochloride, disposal of dredged materials, paragraph 4.0 of NOM-022-Semarnat-2003 and its diagnostic of the lagoon.

2.23. On 21 May 2007, via official communication S.G.P.A./DGIRA/DESEI/0712/07 (Appendix 16), the DGIRA informed the CFE of its decision to extend the deadline by sixty days, on a one-time only basis, due to the complexity of the TGNLM project, as is permitted under the LGEEPA's Article 35, final paragraph, and Article 46 of the LGEEPA Environmental Impact Regulations. However, the authorization was issued beyond the legally permitted period, i.e., on the late date of 11 February 2008, six months after the established deadline. This therefore constituted a violation of the LGEEPA, the LGEEPA Environmental Impact Regulations and the Federal Administrative Procedure Act (Article 60).

3. FACTS REGARDING THE ADMINISTRATIVE PROCEDURES AND LEGAL ACTIONS BROUGHT AGAINST THE RESPONSIBLE AUTHORITIES

3.1. On 3 August 2006, Margarita Batáz Navarro appealed for review of the LPG supply project developed by Zeta Gas del Pacífico S.A. de C.V. On 10 June 2009, following an *amparo* action, Semarnat upheld its authorization (Appendix 19).

3.2. On 11 October 2005, Gabriel Martínez Campos wrote to the Minister of Social Development requesting its intervention in resolving the issues of the residents of Laguna de Cuyutlán. On 9 December, Semarnat replied to the request (Appendix 20).

3.3. On 24 May 2007, Esperanza Salazar Zenil, Margarita Batáz Navarro, Benjamín López Campos, América Moreno Cárdenas, and Timoteo Velasco Campos filed in State of Colima Tax and Administrative Court (*Tribunal Contencioso Administrativo*) for nullity of the order revising the ecological zoning program of the Laguna de Cuyutlán sub-basin. After two years and four months, the Judge dismissed the action (Appendix 21).

3.4. On 5 September 2007, Esperanza Salazar Zenil requested that the DGIRA declare the process for assessing the environmental impact and risk of the “Manzanillo Liquefied Natural Gas Terminal” project expired (name under which it is registered on page 13, numeral L of its authorization), as under the LGEEPA Environmental Impact Regulations, the DGIRA was required to conclude its assessment by 24 August 2007, at the latest. No response to this request was ever forthcoming.

3.5. On 28 April 2008, Esperanza Salazar Zenil lodged a complaint with the Civil Service Commission (*Secretaría de la Función Pública*) against the Secretary of the Environment and Natural Resources, Juan Rafael Elvira Quezada; the Under-

Secretary, Mauricio Limón Aguirre; the Director General for Environmental Impact and Risk, Eduardo Enrique González Hernández; the Director General for Environmental Policy, Antonio Díaz de León; and the local Semarnat official in Colima, in relation to the illegal authorization of the TGNLM project. This complaint was ignored.

3.6. On 14 May 2008, Esperanza Salazar Zenil lodged a complaint with the Federal Justice Department's Special Investigations Unit for Crimes Committed by Public Servants (*Unidad Especializada de Investigación de Delitos Cometidos por Servidores Públicos de la Procuraduría General de la República*) against the Secretary of the Environment and Natural Resources, Juan Rafael Elvira Quezada; the Under-Secretary, Mauricio Limón Aguirre; the Director General for Environmental Impact and Risk, Eduardo Enrique González Hernández; the Director General for Environmental Policy, Antonio Díaz de León; and the local Semarnat official in Colima, in relation to the illegal authorization of the TGNLM project. This complaint was not attended to.

3.7. On 26 March 2008, Benjamín López Campos appealed to Semarnat for review of the "Manzanillo Liquefied Natural Gas Terminal" project. Following an *amparo* action, on 24 March 2009, Semarnat upheld its authorization (Appendix 22).

3.8. On 4 June 2008, Esperanza Salazar Zenil and Gabriel Martínez Campos brought an *amparo* action at the District Court in the state of Colima against the official at table 3 of the Justice Department of the state of Colima and the Attorney General, Arturo Díaz Rivera, for failing to initiate the preliminary inquiries into the complaint referred to in the immediately preceding point, as well as against the Governor of the state and other officials. This *amparo* action prospered. However, prosecutors have not put forth a precise description of the actions or omissions that are considered offenses in this case.

3.9. On 15 June 2008, the CFE started the work without having complied with the conditions, specifically condition 3 and its subparagraphs (water balance study) and condition 16 of Semarnat doc. no. S-G-P-A-/DGIRA/DSEI/0591/08 of 28 May 2008 (Appendix 23). It should be noted that six months after the authorization of the project, the most important study for determining the impact on Laguna de Cuyutlán that will be caused by alteration of the water budget has not yet been conducted, nor have the conditions been complied with, as is evident from the CFE's first semiannual administrative report, doc. no. ROMZ-341/08, of 6 August 2008 (Appendix 23-A), sent to Profepa. We reemphasize that the project commenced on 15 June 2008.

3.10. On 10 July 2008, Esperanza Salazar Zenil lodged a complaint with Profepa concerning the commission of environmental damages by the CFE in the area of the TGNLM project, a project that went ahead despite the CFE's failure to comply, to date, with the conditions established in the authorization of 11 February 2008. Profepa responded that the project was already authorized without, however, reviewing compliance with said conditions.

STATUS OF THE PROJECTS

3.11. Installation of infrastructure in the Manzanillo LPG project began in September 2004. The storage facility, consisting of 20 spheres (Appendix 24, photos 1 and 2) is practically completed and is now operating, with 40 trucks daily. This project has dramatically affected the landscape and severely impacted the habitat of mammals, reptiles (including green and black iguanas and three species of marine turtle, all listed in NOM-059-SEMARNAT-2001), and local and migratory birds, especially shorebirds. In addition, the project developers intend to install a 327-km gas pipeline that will have severe impacts on 25 municipalities of the states of Colima and Jalisco.

Construction on the LNG project commenced on 15 June 2008, beginning with the clearing of a wide area of palms, fruit trees, and native species (Appendix 24, photos 3 and 4). This was followed by filling of a 400 m by 100 m area of the lagoon starting from the mangrove edge (Appendix 24, photos 5, 6, and 7), causing severe harm to species of fish, crustaceans, mollusks, and benthos and having considerable impacts on inshore fishing. To this may be added an irreversible alteration in the water balance from which damage to the entire wetland will ensue. The worst is yet to come, since the developer plans to extend the Tepalcates Canal (Appendix 24, images 8 and 9) from its current length of 90 m to 400 m. Furthermore, it will dredge both the canal and the lagoon to a depth of 16 m. This will produce major changes in the water balance of the lagoon's four ponds. It will also alter the salinity of the water, irreversibly affecting the existing mangrove ecosystem throughout the whole wetland. Finally, the developer will install a gas pipeline running through 25 communities of Colima and Jalisco, affecting two wetlands of great biological value in the latter state.

3.12. We wish, further, to point out to the Secretariat that the CFE and the University of Colima are responsible for compliance with the environmental law, since in producing the EIS, they should have taken account of all environmental laws, regulations, and

provisions of all kinds, and analyzed their relationship to the project. This did not happen; specifically, they failed to comply with the ecological zoning plan of 2003, and evaded their technical/scientific responsibility by ignoring points 0.15, 0.16, 0.17, 0.18, 0.20, 0.22, 0.43, 0.44, 0.48, and 0.51 of the preamble to NOM-022.

0.17. Any economic activity must take account of the full range of services and functions provided by coastal wetlands, in both the environmental impact studies and the ecological zoning, with a view to circumscribing the negative impacts of close or distant alterations due to human and natural activities.

IV. CONCLUSION: This complaint lodged against all three levels of the Government of Mexico bears on what constitutes a flagrant violation of: Article 4 of the Political Constitution of the United Mexican States; Articles 1 to 4 of the Ramsar Convention on Wetlands, especially concerning waterfowl habitat, which under Article 133 is the Supreme Law of the Republic; and of Mexican environmental acts and regulations applicable to Laguna de Cuyutlán, Colima. As a consequence, we request that the Commission for Environmental Cooperation of North America intervene in order to declare its support for securing the due protection of this area.

V. CITIZEN SUBMISSION: Please acknowledge the present citizen submission and act upon it in accordance with provisions of Articles 14 and 15 of the NAAEC and other related and applicable articles.

Gabriel Martinez Campos
President, Bios Iguana A.C.

Esperanza Salazar Zenil