
Secretariat of the Commission for Environmental Cooperation

**Determination pursuant to Article 14(1) and (2) of the
North American Agreement on Environmental Cooperation**

Submitter: Asociación Fuerza Unida Emiliano Zapata en Pro de las Áreas Verdes, A.C.
Represented by: Patricia Canales Martínez
Party: Mexico
Date of submission: 16 July 2009
Date of determination: 11 November 2010
Submission no.: SEM-09-003 (*Los Remedios National Park II*)

I. EXECUTIVE SUMMARY

1. 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) and the Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (the “Guidelines”). 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 and the Guidelines, the Secretariat may notify the Council that the matter warrants the development of a Factual Record, providing its reasons for such recommendation in accordance with Article 15(1). Where the Secretariat decides to the contrary, or certain circumstances prevail, it then proceeds no further with the submission.¹
2. On 16 July 2009, the Submitter filed submission SEM-09-003 (*Los Remedios National Park II*) (the “Submission”) with the Secretariat in accordance with NAAEC Article 14(1). The Submitter asserts that Mexico is failing to effectively enforce its environmental law in relation to the establishment, regulation, administration, and enforcement of Los Remedios National Park (the “Park”), located in Naucalpan, State of Mexico. The Submission at hand thus concerns different *ratione materiae* than SEM-06-006.²
3. The Secretariat finds that Submission SEM-09-003 (*Los Remedios National Park II*) meets all the admissibility requirements of Article 14(1) and, pursuant to the criteria set

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’s Citizen Submissions on Enforcement Matters website at: <http://www.cec.org/citizen/index.cfm?varlan=english>.

² Cfr. SEM-06-006 (*Los Remedios National Park*), submission and related determinations.

out in Article 14(2), warrants requesting a response from the Government of Mexico, for the reasons set out below.

II. SUMMARY OF THE SUBMISSION

5. The Submitter asserts that the federal, state, and municipal authorities are failing to effectively enforce Article 32 *bis* paragraphs VI and VII of the General Public Administration Act (*Ley Orgánica de la Administración Pública General* [sic]); Articles 5 paragraph VIII, 45 paragraphs I to VII, 46 paragraph III, 47 *bis* paragraph II subparagraph g, 47 *bis* 1, 50, 65, and 66 paragraphs I to V and VII of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA); Article 69 paragraphs I to III of the Regulation to the LGEEPA respecting Protected Natural Areas (*Reglamento de la LGEEPA en Materia de Áreas Naturales Protegidas*—RANP), and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).³ The Submitter asserts that the institutions responsible for the administration of the Park have failed to issue the management plan for the Park, thereby violating the aforementioned provisions cited in the Submission.⁴
6. The Submitter states that the Park was created by a Presidential Order (*Decreto Presidencial*) published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) on 15 April 1938⁵ that declared it a federal protected natural area (PNA).⁶ The preamble to the order states that it is necessary to reforest the Park and that the region in question would not be suitably preserved if it were abandoned to private interests.⁷ According to the Submitter, and based on a memo from the Regional Director of the National Protected Natural Areas Commission (*Comisión Nacional de Áreas Naturales Protegidas*—Conanp), the order in question remains in force and is administered by the municipality of Naucalpan.⁸
7. The Submitter maintains that: in 1986, the Federation, the government of the State of México, and the municipality of Naucalpan signed a Cooperation Agreement for the purpose of preserving, protecting, enforcing, promoting, and developing the Park, which has been repeatedly renewed and is still in force today.⁹ Likewise, the Submitter asserts that in 1995, a Coordination Agreement between the Ministry of the Environment, Natural Resources, and Fisheries (*Secretaría de Medio Ambiente, Recursos Naturales y Pesca*)¹⁰ and the government of the State of México was published in the DOF,¹¹

³ *Ibid.*, pp. 8-13.

⁴ Submission., p. 4.

⁵ Submission, p. 2.

⁶ Submission, p. 2 and Appendix 3, doc. no. FOO DRCEN/1007/06.

⁷ Submission, Appendix 1: Presidential Order declaring *Los Remedios* National Park, and the lands of the state of México that it comprises. Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF), 15 April 1938.

⁸ Submission, p. 2 and Appendix 3, doc. no. FOO DRCEN/1007/06 issued by the Regional Director, Central and Neovolcanic Axis Region, National Protected Natural Areas Commission.

⁹ *Ibid.*, p. 3.

¹⁰ Now the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat).

¹¹ Submission, Appendix 2: Coordination Agreement between the Ministry of the Environment, Natural Resources and Fisheries and the government of the state of México for the purpose of establishing the basis for the transfer of the administration of various national parks located in the latter's territory from

transferring responsibility for administration of the Park to the government of the State of México (the “Coordination Agreement”).¹²

8. The Submitter asserts that the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*— “Semarnat”) maintained without justification that the Presidential Order of 1938 that created the Park had been implicitly, albeit only partially, repealed by a Presidential Order of 1970 that created a residential and urban zone.¹³
9. The Submission further asserts that the authorities of the three levels of government failed to respect the boundaries of the Park, since they allegedly authorized urban development projects.¹⁴

III. ANALYSIS

10. NAAEC Article 14 authorizes the Secretariat to consider submissions from any person or non-governmental organization asserting that a NAAEC Party is failing to effectively enforce its environmental laws. As the Secretariat has found in previous NAAEC Article 14(1) determinations,¹⁵ Article 14(1) is not intended to be an “insurmountable screening device”, and this means that the Secretariat will interpret every submission in accordance with the Agreement and the Guidelines, yet without an unreasonably narrow interpretation and application of those Article 14(1) criteria. The Secretariat analyzed submission SEM-09-003 with the latter perspective in mind.

A. Opening paragraph of Article 14(1)

11. The opening paragraph of NAAEC Article 14(1) enables the Secretariat to consider submissions “from any non-governmental organization or person.” The Submitter is a non-governmental organization established in Mexico, and therefore meets the establishment requirement in the opening paragraph of Article 14(1).
12. The Secretariat also found that the time requirement of the opening paragraph of Article 14(1) is met by the Submission, since while some of the considerations adduced by the Submitter occurred in the past, the alleged failure to effectively enforce the environmental law is—apparently—ongoing since it allegedly continues to produce effects at the time of Submission. Having determined the latter, the Secretariat analyzes whether each of the provisions cited in the Submission fits within the NAAEC definition of environmental law, and in light of the Agreement and Guidelines, evaluates whether the assertions warrant further review by the Secretariat.

the Ministry, acting through the National Institute of Ecology, to the government of the state of México, DOF, 3 September 1999.

¹² Submission, pp. 2-3.

¹³ *Ibid.*, p. 7.

¹⁴ *Ibid.*, p. 6.

¹⁵ See, in this regard, SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998), and SEM-98-003 (*Great Lakes*), Article 14(1) and (2) Determination (8 September 1999).

1) Environmental law in question

13. The Secretariat reviewed the provisions cited in the Submission and determined that some of them do not qualify for review under the NAAEC Articles 14 and 15 process since they do not meet the definition of environmental law set out in NAAEC Article 45(2)(a).¹⁶ The Secretariat determines that LOAPF Article 32 *bis* paragraphs VI and VII; LGEEPA Articles 5 paragraph VIII, 45, 46 paragraph III, 47 *bis* paragraph II subparagraph g, 47 *bis* 1, and 50; and RANP Article 69 all can be considered environmental law in accordance with NAAEC Article 45(2).
14. Article 32 *bis* paragraphs VI and VII of the Federal Public Administration Act and LGEEPA Article 5 paragraph VIII cited in the Submission give Semarnat the power to establish, regulate, administer, and enforce PNAs.¹⁷ These provisions qualify as environmental law since they refer to the “creation, administration, and enforcement” of protected natural areas and since their main purpose is that of environmental protection in accordance with NAAEC Article 45(2). Therefore, these provisions also qualify for further review by the Secretariat.
15. LGEEPA Articles 45, 46 paragraph III, 47 *bis* paragraph II subparagraph g, 47 *bis* 1, and 50 are considered environmental law as their primary purposes are respectively, the protection of the environment through the establishment of the objectives of PNAs, such as preserving natural environments and guaranteeing the stability and continuity of evolutionary and ecological processes; and, safeguarding the genetic diversity of wildlife, and ensuring the preservation and sustainable enjoyment of ecosystems and their components, all in accordance with NAAEC Article 45(2).¹⁸ However, it should be noted that with respect to LGEEPA Article 45, the Secretariat only considers for analysis paragraph VII, as this is the only related to the facts expressed in the submission.

¹⁶ NAAEC Article 45 defines the term “environmental law” as follows:

“2. For purposes of Article 14(I) and Part Five:

(a) ‘environmental law’ means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through

(i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,

(ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or

(iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party’s territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(b) For greater certainty, the term ‘environmental law’ does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

(c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.”

¹⁷ LOAPF Article 32 *bis* paragraphs V and VII, and LGEEPA Article 5 paragraph VIII.

¹⁸ LGEEPA Article 45.

16. The aforementioned provisions establish the federal government's jurisdiction over the creation of National Parks,¹⁹ and the division and subdivision of PNAs with a view to determining their respective functions in accordance with each respective management class.²⁰ Finally, these provisions establish that the activities aimed at protection and preservation of ecosystems and their components may take place in national parks.²¹ The Secretariat finds that these provisions qualify for further review.
17. LGEEPA Articles 65 and 66 paragraphs I-V and VII set forth Semarnat's obligation to formulate a management plan for a PNA. They provide for the designation of a director²² and set out the content of the program.²³ These provisions qualify as environmental law since they are aimed at the protection and administration of PNAs through management plans, and the Secretariat finds that these provisions thus qualify for further review.
18. Article 69 RANP is considered environmental law for the purposes of the Secretariat's further analysis since its main purpose is the protection of the environment, in that it tasks Semarnat to: (i) coordinate restoration actions that allow the evolution and continuity of natural processes in ecological restoration zones;²⁴ (ii) maintain the original land-use characteristics of the ecosystems in question so that new settlements and non-compatible activities are prevented;²⁵ and (iii) authorize productive activities in restoration zones when compatible with management and restoration programs.²⁶ The Secretariat finds that the primary purpose of such authority appears to be the protection of the environment, in accordance with NAAEC Article 45(2).
19. Article 11 of ICESCR refers to a universal human right to an adequate standard of living, including having adequate food, clothing and housing, and the continuous improvement of living conditions. However, Article 11 of the ICESCR's primary purpose is not the protection of the environment or human health and it does not meet the NAAEC Article 45(2) definition of environmental law. Therefore, assertions concerning the ICESCR will not be reviewed further by the Secretariat.

2) Assertions concerning the failure to effectively enforce the environmental laws at issue

20. The Secretariat now proceeds to consider whether the Submission asserts a failure to effectively enforce the environmental laws at issue and is not concerned with supposed deficiencies in the law. The Secretariat considers that the Submission contains assertions relating to alleged failures to effectively enforce environmental law. However, it finds that some of the Submitter's assertions cannot be reviewed further, as they have not been made in accordance with NAAEC Article 14(1).

¹⁹ LGEEPA Article 46 paragraph III.

²⁰ LGEEPA Article 47 *bis* paragraph II subparagraph g, and Article 47 *bis* 1.

²¹ LGEEPA Article 50.

²² LGEEPA Article 65.

²³ LGEEPA Article 66.

²⁴ LGEEPA Article 69 paragraph I.

²⁵ LGEEPA Article 69 paragraph II.

²⁶ LGEEPA Article 69 paragraph III.

i) Assertions regarding the implied repeal of the Order creating the Park

21. The Submitter asserts that Semarnat maintains without justification that part of the area of the Park was implicitly withdrawn from PNA status by a presidential order of 1970.²⁷ The Submitter adds that the latter order did not expropriate or affect the order that created the Park since it did not correspond to the same area, arguing that the first order (issued in 1938) takes precedence over the second.
22. The Secretariat finds that in view of the information presented by the Submitter, no further review of the assertion relating to implicit repeal arising from the Presidential Order of 1970 is warranted. The Submitter's assertions on the legal principle of "first in time, first in right,"²⁸ is not a factual question that the Secretariat may consider. In that connection, the Submitter's assertion regarding the implied repeal of the Order creating the Park is not considered for further analysis.

ii) Assertion concerning the alleged subdivision of the Park and determination of the protected natural area

23. The Submitter asserts that the authorities of the three levels of government failed to respect the boundaries of the Park, since they impaired the designated land use by means of subdivision, thus allegedly demonstrating that the relevant authorities of Mexico did not effectively enforce environmental laws aimed at the protection and preservation of the Park.²⁹ The Submitter asserts that the alleged subdivision of areas of the Park does not coincide with the environmental authorities' mandatory role in the protection of PNAs,³⁰ since allowing real estate development in the Park is allegedly not consistent with the preservation of natural environments of the PNA,³¹ nor with the types of activities aimed at conservation.³² The Secretariat finds that the foregoing considerations qualify for further review.

iii) Assertions concerning the alleged enforcement failures relating to the administration of the Park and issuance of the Management Plan

24. The Submitter asserts that the authorities responsible for the administration and enforcement of the Park did not issue the management plan³³ and that "there is a situation of generalized disorder" in which encroachments on the PNA in question "are common practice", and moreover that the Submitter's complaints regarding such activity "have not been addressed".³⁴ The Submitter argues that the alleged harm caused by impacts on the Park has not been curtailed, nor have the areas affected by the alleged irregular construction work been restored.³⁵ The Submitter asserts that this demonstrates

²⁷ Submission, p. 7.

²⁸ Submission, p. 7.

²⁹ *Ibid.*, p. 6.

³⁰ Submission, pp. 6 and 8.

³¹ Submission, pp.14 and 15.

³² *Idem.*

³³ *Cfr.* LGEEPA, Article 65.

³⁴ Submission, p. 4.

³⁵ Submission, pp. 8-9.

an alleged failure to effectively enforce LGEEPA Articles 47 *bis*, 47 *bis* 1, 65, and 66 paragraphs I, II, III, IV, V and VII. The Secretariat finds that these assertions qualify for further review under Article 14(1) of the Agreement.

B. The six requirements of NAAEC Article 14 (1)

25. The Secretariat finds that the Submission meets the requirement of the opening sentence of Article 14(1) and proceeds to examine the Submission with reference to the six requirements listed in NAAEC Article 14(1).

a) *is in writing in a language designated by that Party in a notification to the Secretariat*

26. The Submission meets the requirement of Article 14(1)(a) since it is presented in writing and in Spanish, one of the languages designated by the Parties for presentation of submissions.³⁶

b) *clearly identifies the person or organization making the submission*

27. With respect to requirement in Article 14(1)(b), the Secretariat has previously determined³⁷ that including information such as the name and address of a submitter are sufficient to identify a submitter, which in this case is met.

c) *provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based*

28. The Submission meets the requirement of Article 14(1)(c) in that it provides sufficient information relating to those assertions in the Submission which qualify for further study.

29. The Submitter attaches: the Presidential Order that created the Park;³⁸ a document signed by the former regional director of Conanp corroborating the creation of the Park by the 1938 Order;³⁹ a Coordination Agreement whereby administration of the Park is transferred to the government of the State of México;⁴⁰ and, information referring to a

³⁶ NAAEC Article 19 stipulates that the official languages of the CEC are Spanish, French, and English. Likewise, section 3.2 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”) states that “Submissions may be made in English, French or Spanish, which are the languages currently designated by the Parties for submissions.” *Id.* Guideline 3.3 ff.

³⁷ In this regard see: SEM-07-005 (*Drilling Waste in Cunduacán*) Determination pursuant to Article 14(3), §25(a).

³⁸ Submission, Appendix 1: Order declaring “Los Remedios” National Park, the lands of the state of México that it comprises. DOF, 15 April 1938.

³⁹ Submission, Appendix 3, doc. no. FOO DRCEN/1007/06 of 13 October 2008, issued by the Regional Director, Central and Neovolcanic Axis Region, National Protected Natural Areas Commission.

⁴⁰ Submission, Appendix 2: Coordination Agreement between the Ministry of the Environment, Natural Resources and Fisheries and the government of the state of México for the purpose of establishing the basis for the transfer of the administration of various national parks located in the latter’s territory from the Ministry, acting by the National Institute of Ecology, to the government of the state of México. Issued by the Ministry of the Environment, Natural Resources and Fisheries. Published 3 November 1995 in the Gazette of the Government of the State of México.

Cooperation Agreement of 1986 between the Federation, the government of the State of México, and the municipality of Naucalpan de Juárez.

30. The Submitter provides various documents⁴¹ in which the federal and state authorities refer to the status of certain lots located on the slope of Cerro de Moctezuma and others in Colonia Reubicación El Torito, all within the municipality of Naucalpan de Juárez, thus supporting assertions as to the alleged discrepancy regarding the Park's boundaries, and supporting the assertion that subdivision of lots took place in the PNA in question.

d) appears to be aimed at promoting enforcement rather than at harassing industry

31. The Submission satisfies the requirement of Article 14(1)(d), since it appears to be aimed at promoting enforcement rather than at harassing industry.⁴² In this regard, it is evident from the information presented that the Submitter does not appear to be a competitor of the real estate companies carrying out residential development who could benefit economically from the filing of the Submission. Furthermore, the Secretariat finds that the Submission raises matters of effective environmental law enforcement as regards the protection and restoration of protected natural areas in the territory of one of the Parties, *i.e.* it appears to be aimed "at promoting enforcement rather than at harassing industry".

e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any

32. The Submission satisfies the requirement of Article 14(1)(e). The Submitter provides information showing communications with the competent authorities on alleged impacts on the Park.

33. In this regard, the Submitter provides various documents in which the authorities indicate the status of certain lots within the Park,⁴³ and presents a document from the

⁴¹ Submission, Appendix 4, doc. no. F00.6.DRCEN/0166/2009, issued by the Regional Director, Central and Neovolcanic Axis Region, National Protected Natural Areas Commission; Appendix 5, doc. no. PFPA/ZMVM/OD/196.3/2791/08 of 24 November 2008, issued by the Profepa Officer in the Mexico Valley Metropolitan Area; Appendix 6, doc. no. PFPA/ZMVM/OD/196.3/2789/08 of 24 November 2008, issued by the Profepa Officer in the Mexico Valley Metropolitan Area; Appendix 7, doc. no. DGDU/4343/08 of 3 October 2008.

⁴² See also section 5.4 of the Guidelines, which states that in determining whether a submission is aimed at promoting environmental law enforcement rather than harassing industry, the Secretariat must consider whether or not: i) "the submission is focused on the acts or omissions of a Party rather than on compliance by a particular company or business; especially if the Submitter is a competitor that may stand to benefit economically from the submission", and ii) "the submission appears frivolous".

⁴³ Submission, Appendix 4, doc. no. F00.6.DRCEN/0166/2009, issued by the Regional Director, Central and Neovolcanic Axis Region, National Protected Natural Areas Commission. Appendix 5, doc. no. PFPA/ZMVM/OD/196.3/2791/08 of 24 November 2008, issued by the Profepa Officer in the Mexico Valley Metropolitan Area. Appendix 6, doc. no. PFPA/ZMVM/OD/196.3/2789/08 of 24 November 2008, issued by the Profepa Officer in the Mexico Valley Metropolitan Area. Appendix 7, doc. no. DGDU/4343/08 of 3 October 2008. Appendix 9, doc. no. DFARNAT/0839/2008 of 10 April 2008.

Ministry of the Environment of the government of the State of México in response to a request for information from the Submitter.⁴⁴

34. The Submitter attaches the response of the Access to Information Branch (*Dirección de Acceso a la Información*) of Semarnat in regard to the request filed by the Submitter with that entity for information concerning the existence of an environmental impact assessment for the project located in Colonia Reubicación El Torito.⁴⁵
35. The Submitter also attaches the decision to allow a complaint filed by the Submitter with Profepa, further to the alleged construction of various facilities.⁴⁶ Also attached is the document in which Profepa notifies the Submitter of the result of the complaint and that the proceeding was in progress, for which reason the information was considered confidential.⁴⁷
36. The Submitter includes the letter from the Assistant Director of Auditing and Enforcement (*Subdirectora de Verificación y Vigilancia*) of the Office of the Attorney for Environmental Protection (*Procuraduría de Protección al Ambiente*) of the State of México informing the Submitter that the violation represented by the construction of a development center in a greenspace and the felling of trees had been substantiated, the corresponding fine had been imposed, and, as a corrective measure, the party responsible had been ordered to apply for and obtain environmental impact authorization.⁴⁸
- f) *indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any*

37. Finally, the Submission meets the requirement of Article 14(1)(f), since it was filed by a nongovernmental organization represented by a natural person domiciled in the territory of a Party, in this case Mexico.

C. NAAEC Article 14(2)

38. Having determined certain assertions in the Submission meet all the requirements of NAAEC Article 14(1), the Secretariat now proceeds to review the Submission in order to determine whether it warrants requesting a response from the Party based on the criteria set out in Article 14(2) of the Agreement.

- a. *the submission alleges harm to the person or organization making the submission*

⁴⁴ Appendix 8, doc. no. 212130000/DGOIA/OF/1135/08 of 28 May 2008, signed by the Director, Environmental Impact and Land Use Planning (*Ordenamiento e Impacto Ambiental*), Ministry of the Environment, state of México.

⁴⁵ Submission, doc. no. Semarnat/UCPAST/DGA/ACT/DAI/027/08 of 23 January 2000, issued by the Access to Information Branch, Semarnat.

⁴⁶ Submission, doc. no. PFPA/ZMVM/DQ/79/0162-07 of 30 November 2007, issued by the Profepa Officer in the Mexico Valley Metropolitan Area.

⁴⁷ *Idem*.

⁴⁸ Submission, doc. no. PROPAEM/OF.0157/2009 of 12 February 2009, issued by the Deputy Director, Auditing and Enforcement, Office of the Attorney for Environmental Protection, state of México.

39. As to Article 14(2)(a) as to whether the Submission alleges harm to the person or organization making the Submission, the Submission alleges harm to Los Remedios National Park as a result of the federal, state, and municipal authorities' alleged failure to effectively enforce the environmental law. The Submitter argues that these authorities' alleged failure to meet their obligations to enforce the environmental law made unsustainable use of the Park's natural resources and the degradation of the Park possible.⁴⁹ In that connection, the Submitter is primarily concerned with the conservation of the Park, the Submitter argues that alleged failures to effectively enforce the laws at issue in the Submission have broadly caused harm. Informed by Guideline 7.4 the Secretariat notes that the alleged harm is due to the asserted failure to effectively enforce environmental law and that it relates to the protection of the environment, as per Article 45(2) of the Agreement.

b. the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Agreement

40. The Secretariat considered whether the Submission raises matters whose further study would advance the goals of the Agreement, as per Article 14(2)(b). In this regard, the Secretariat finds that further study of SEM-09-003 would be in line with several of the Agreement's objectives, yielding information about the administration and improvement of PNAs in the territory of one of the Parties; it would shed light on compliance with and enforcement of the environmental law cited in the Submission; and, it would promote the participation of society in the application of environmental policy, particularly as regards protection and enforcement of the Los Remedios National Park.⁵⁰

c. private remedies available under the Party's law have been pursued

41. As to whether private remedies available under the Party's law have been pursued, the Secretariat —guided by Article 14(2)(c)— notes that the Submission provides the decision allowing a complaint filed with Profepa against the municipality of Naucalpan de Juárez, State of Mexico, and in connection with the construction of community centers (*centros de desarrollo integral*).⁵¹ Also attached is the document in which Profepa notifies the Submitter that an inspection visit was made further to the complaint and that urgent measures were ordered to be taken.⁵²

42. Further, attached to the Submission is a document from the Office of the Attorney for Environmental Protection of the State of México notifying the Submitter of the result of

⁴⁹ Submission, p. 8.

⁵⁰ "Article 1: Objectives. The objectives of this Agreement are to: (a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations; [...] (g) enhance compliance with, and enforcement of, environmental laws and regulations; (h) promote transparency and public participation in the development of environmental laws, regulations and policies;"

⁵¹ Submission, unnumbered appendix: Decision to allow the complaint, file no. PFPA/ZMVM/DQ/79/0162-07 of 30 November 2007, issued by the Profepa Office in the Mexico Valley Metropolitan Area, Department of Environmental Complaints and Public Participation.

⁵² Submission, unnumbered appendix, doc. no. PFPA/ZMVM/OD/196.3/0019/08 of 10 January 2008, issued by the Profepa Officer in the Mexico Valley Metropolitan Area.

a complaint filed by the Submitter against the municipality of Naucalpan de Juárez in connection with the construction of a development center.⁵³

43. Following Guideline 7.5(a),⁵⁴ the Secretariat finds that reasonable efforts were made to pursue private remedies.

d. the submission is drawn exclusively from mass media reports

44. As to the criterion of Article 14(2)(d), the Secretariat finds that the Submission is not based exclusively on mass media reports, but rather on the technical and legal information gathered by the Submitter in support of the Submission.
45. In summary, having reviewed the Submission in light of the criteria set out in NAAEC Article 14(2), the Secretariat finds that the assertions concerning the alleged subdivision of lots within the Park boundaries; the determination of the Park's areas and their administration and surveillance; as well as the publication and implementation of the corresponding management plan; all warrant a response from the Government of the United Mexican States.

IV. DETERMINATION

46. For the reasons expressed herein, the Secretariat finds that certain assertions in Submission SEM-09-003 (*Los Remedios National Park II*) meet the requirements of Article 14(1) and moreover that these warrant requesting a response from the Government of the United Mexican States in light of the criteria set out in Article 14(2) and informed by the Guidelines.
47. The Party in question may, in any response, present information about the assertions concerning the alleged failures of effective enforcement related to the administration and enforcement of the Park; the alleged subdivision; the demarcation and enforcement of the protected area, and the alleged failure to prepare and produce the management plan for the PNA in question; all of the foregoing in relation to the effective enforcement of LOAPF Article 32 *bis* paragraphs VI and VII; LGEEPA Articles 5 paragraph VIII, 45: paragraph VII, 46 paragraph III, 47 *bis* paragraph II subparagraph g, 47 *bis* 1, 50, 65 and 66 paragraphs I, II, III, IV, V and VII; and RANP Article 69, which provisions the Secretariat considers environmental law in accordance with NAAEC Article 45(2).
48. As stipulated by NAAEC Article 14(3), the Party may provide a response to the Submission within the 30 calendar days following the receipt of this determination, until **13 December 2010**. Under exceptional circumstances, the Party may notify the extension to 60 calendar days.⁵⁵

⁵³ Submission unnumbered appendix, doc. no. PROPAEM/OF.0157/2009, complaint entry 0387/2007 of 12 February 2009, issued by the Deputy Director, Auditing and Enforcement, Office of the Attorney for Environmental Protection, state of México.

⁵⁴ "In considering whether private remedies available under the Party's law have been pursued, the Secretariat will be guided by whether:

(b) reasonable actions have been taken to pursue such remedies prior to making a submission, bearing in mind that barriers to the pursuit of such remedies exist in some cases."

⁵⁵ *Cfr.* Section 9.2 of the Guidelines.

49. Recognizing that a response from the Government of Mexico may contain confidential information and that the Secretariat shall make public its reasons to recommend or not a factual record, the Secretariat recalls that guideline 17.3 of the Guidelines,⁵⁶ encourages the Party to provide a summary of any such confidential information for public disclosure.

50. A copy of the Submission and its appendices is attached to this determination.

Respectfully submitted for your consideration this 11 of November of 2010.

Secretariat of the Commission for Environmental Cooperation

(signature in original)

Paolo Solano

Legal Officer, Submissions on Enforcement Matters Unit

(signature in original)

per: Dane Ratliff

Director, Submissions on Enforcement Matters Unit

ccp: Enrique Lendo, Alternate Representative, Mexico
David McGovern, Alternate Representative, Canada
Michelle DePass, Alternate Representative, United States
Evan Lloyd, Executive Director, CEC Secretariat
Submitter

⁵⁶ “Given the fact that confidential or proprietary information provided by a Party[...]may substantially contribute to the opinion of the Secretariat that a factual record is, or is not, warranted, contributors are encouraged to furnish a summary of such information[...].”