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**Secretariat of the Commission for Environmental Cooperation**

**Notification to the Council that, pursuant to Article 15(1), the preparation of a factual record is warranted**

**Submitter:** Comité Pro-Mejoras de la Ribera Cahuaré  
**Represented by:** Fernando Guillermo Velázquez Pérez  
Raúl Amparo Guerrero Borraz  
María Alejandra Aldama Pérez  
Angélica Espinosa Interiano  
**Party:** United Mexican States  
**Date of original submission:** 29 November 2011  
**Date of revised submission:** 11 June 2012  
**Notification date:** 15 November 2013  
**Submission no.:** SEM-11-002 (*Sumidero Canyon II*)

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**I. EXECUTIVE SUMMARY**

1. Articles 14 and 15 of the North American Agreement on Environmental Cooperation (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”)<sup>1</sup> initially considers submissions to determine whether they satisfy the criteria specified in NAAEC Article 14(1). When the Secretariat finds that a submission meets these criteria, it then determines, pursuant to the provisions of NAAEC Article 14(2), whether the submission merits a response from the concerned Party. In light of any response from the concerned Party, and in accordance with NAAEC 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).<sup>2</sup> Following a two-thirds vote, the Council may instruct the Secretariat to develop a factual record.<sup>3</sup>
2. On 25 February 2010, the Comité Pro-Mejoras de la Ribera Cahuaré (the “Submitter”) filed submission SEM-10-001 (*Sumidero Canyon*) with the Secretariat, in accordance with Article 14 of the NAAEC.<sup>4</sup> The Secretariat requested a revised version of the

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<sup>1</sup> The Commission for Environmental Cooperation (CEC) was created in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), 13 Sept. 1993, reprinted in 32 I.L.M. 1480 (1993), signed by Canada, Mexico and the United States (the “Parties”) and published in the *Diario Oficial de la Federación (DOF)*, 21 December 1993 [NAAEC]. The CEC comprises a Council, a Secretariat and a Joint Public Advisory Committee (JPAC).

<sup>2</sup> For detailed information on the various stages of the process, as well as on previous factual records and determinations of the Secretariat, please consult the CEC website: <[www.cec.org/submissions](http://www.cec.org/submissions)>.

<sup>3</sup> NAAEC, Article 15(2), *supra* note 1.

<sup>4</sup> SEM-10-001 (*Sumidero Canyon*) Submission based on Article 14(1) (25 February 2010), <<http://goo.gl/Zi3xw>> (viewed 11 July 2012).

- submission.<sup>5</sup> However, as the Submitter did not respond to this request, the Secretariat gave notice of the termination of the process for SEM-10-001.<sup>6</sup>
3. On 29 November 2011, the Submitter filed a new submission with the Secretariat pursuant to Article 14(1) of the NAAEC.<sup>7</sup> The Submitter asserts that Mexico is failing to effectively enforce its environmental law in relation to the operations of a quarry where stone materials are being extracted. These operations allegedly cause damages to Sumidero Canyon National Park, in Chiapas, Mexico.
  4. On May 2012, the Secretariat determined that the submission in question did not satisfy all of the admissibility requirements set forth in Article 14(1) of the NAAEC.<sup>8</sup> On 11 June 2012, the Submitter filed a revised submission<sup>9</sup> with the Secretariat in accordance with paragraph 6.2 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”).
  5. On 6 September 2012, the Secretariat determined that revised submission SEM-11-002 (*Sumidero Canyon II*) satisfied all of the admissibility requirements established in Article 14(1) and requested, pursuant to Article 14(2), a response from the Government of Mexico.<sup>10</sup> On 27 November 2012, the Secretariat received Mexico’s response to submission SEM-11-002.<sup>11</sup>
  6. Upon analyzing the submission in light of Mexico’s response, the Secretariat determines that submission SEM-11-002 warrants the preparation of a factual record for the reasons detailed below.

## II. SUMMARY OF THE SUBMISSION

7. This section includes a summary of the assertions made in the original submission; assertions which were repeated in the revised version.<sup>12</sup> This section also includes a summary of the clarifications and other information requested by the Secretariat in its determination of 10 May 2012, pursuant to Article 14(1).
8. The Submitter asserts that Mexico is failing to effectively enforce its environmental law with respect to the alleged irregular operation of a quarry, which, it is asserted, is causing damage to Sumidero Canyon National Park, a protected natural area.<sup>13</sup> The Submitter asserts that Mexico is failing to effectively enforce the following provisions: Article 28, sections X, XI and XIII, Article 47 *bis*, section II, paragraph h), Articles 50,

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<sup>5</sup> SEM-10-001 (*Sumidero Canyon*) Determination based on Article 14(1) (14 June 2010), <<http://goo.gl/tfnf8>> (viewed 11 July 2012).

<sup>6</sup> CEC Secretariat, Comunicé A14/SEM/10-001/11/COM (15 July 2010). For information on the *Sumidero Canyon* submission processed in 2010, please consult the CEC’s registry of submissions, <<http://goo.gl/NfwuH>> (viewed 11 July 2012).

<sup>7</sup> SEM-11-002 (*Sumidero Canyon II*) Submission based on Article 14(1) (29 November 2011), <<http://goo.gl/Gjifw>> (viewed 12 January 2012) at 1 [original submission].

<sup>8</sup> SEM-11-002 (*Sumidero Canyon II*) Determination based on Article 14(1) (10 May 2012), <<http://goo.gl/ICRfx>> (viewed 11 July 2012) [Determination Article 14(1)].

<sup>9</sup> SEM-11-002 (*Sumidero Canyon II*) Revised submission based on Article 14(1) (11 June 2012) [revised submission].

<sup>10</sup> SEM-11-002 (*Sumidero Canyon II*) Determination based on Article 14(1) and 14(2) (6 September 2012), <<http://goo.gl/tifYe>> (viewed 12 May 2013) [Determination Article 14(1) and (2)].

<sup>11</sup> SEM-11-002 (*Sumidero Canyon II*), Response pursuant to Article 14(3) (23 November 2012) [Response].

<sup>12</sup> The references included in this section are to the assertions made in the revised submission.

<sup>13</sup> Revised submission, *supra* note 9 at 1-3, 5, 11-12.

- 64, 65, 111 *bis*, 155, 156 and 170 of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*);<sup>14</sup> Article 17 and 17 *bis*, paragraph G), section II, of the Regulation to LGEEPA respecting Air Pollution Prevention and Control (*Reglamento de LGEEPA en materia de Prevención y Control de la Contaminación de la Atmósfera—RPCCA*);<sup>15</sup> Article 18 of the Regulation to LGEEPA respecting the Pollutant Release and Transfer Register (*Reglamento de LGEEPA en materia del Registro de Emisiones y Transferencia de Contaminantes—RRETC*);<sup>16</sup> Articles 80, 81, 88, section XIII, and 94 of the Regulation to LGEEPA respecting Protected Natural Areas (*Reglamento de LGEEPA en materia de Áreas Naturales Protegidas—RANP*);<sup>17</sup> paragraph 5.4.2 of Official Mexican Standard NOM-025-SSA1-1993 (“NOM-025”)<sup>18</sup>; and Official Mexican Standard NOM-081-SEMARNAT-1994 (“NOM-081”).<sup>19</sup>
9. The Submitter points out that since 1963 the company known as Cales y Morteros del Grijalva, S.A. de C.V. (the “Company”) has been operating a quarry, from which it extracts materials that are processed “to obtain agricultural lime, *caliche*, gravel, cinders and other products intended for use in construction.” The Submitter asserts that the quarry is located within Sumidero Canyon National Park, a designated protected natural area (*área protegida natural—ANP*). Sumidero Canyon was so designated through a decree published in the Official Gazette of the Federation (*Diario Oficial de la Federación—DOF*) on 8 December 1980.<sup>20</sup>
10. Regarding the Sumidero Canyon National Park ANP (the “Park” or “Sumidero Canyon”), the Submitter asserts: that the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales—Semarnat*) has not published a management plan, “nor has it invited the residents of Cahuaré or the *Comité Promejoras* [the Submitter]” to a meeting to formulate such a plan, pursuant to Article 65 of LGEEPA;<sup>21</sup> that the activities of the Company in said ANP are inconsistent with the activities permitted under Article 50 of LGEEPA;<sup>22</sup> that, under Article 64 of LGEEPA, the Company “must demonstrate [...] its technical and financial capacity to operate without causing environmental deterioration”; that productive activities are subject to provisions on resources sustainability and use, under Articles 80 and 81 of RANP<sup>23</sup>; and that under Article 88, section XIII, of RANP, prior authorization from

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<sup>14</sup> *Ibid.*, at 3-4, 6, 8, 11 and 13.

<sup>15</sup> *Ibid.*, at 8.

<sup>16</sup> *Ibid.*, at 8 and 11.

<sup>17</sup> *Ibid.*, at 4-5.

<sup>18</sup> NOM-025-SSA1-1993 *Environmental health. Criteria for evaluating ambient air quality, with respect to particulates smaller than 10 microns (PM10). Permissible values for concentrations in ambient air of particulates smaller than 10 microns (PM10), as a public health protection measure*, *Diario Oficial de la Federación* (DOF), 26 September 2005. Revised submission, *supra* note 9 at 9.

<sup>19</sup> NOM-081-SEMARNAT-1994 *Which establishes the maximum permissible limits for noise emissions from fixed sources and the methods for the measurement thereof*, DOF, 13 January 1995. Revised submission, *supra* note 9 at 12.

<sup>20</sup> Revised submission, *supra* note 9 at 1. See also: “Decreto por el que se declara Parque Nacional, con el nombre de Cañón del Sumidero el área descrita en el Considerando Quinto, y se expropia a favor del Gobierno Federal una superficie de 217.894, 190 m<sup>2</sup>, ubicada en el estado de Chiapas,” DOF, 8 December 1980, <<http://goo.gl/liocT>> (viewed 12 January 2012), cited in the revised submission, *supra* note 9.

<sup>21</sup> Revised submission, *supra* note 9 at 3.

<sup>22</sup> *Ibid.*, at 4.

<sup>23</sup> *Idem.*

Semarnat is required for mining activities, which must comply with the requirements described in Article 94 of said regulation.

11. Concerning the authorizations and licenses that the Company is required to hold, the Submitter asserts that since 2003 Semarnat has not received any requests on renewing the Company's operating license, which allegedly signifies that it does not hold a valid license.<sup>24</sup> Furthermore, the Submitter argues that, once LGEEPA took effect, the Company faced the obligation of coming into compliance with the environmental impact provisions established in Article 28, sections X, XI and XIII, of LGEEPA.<sup>25</sup>
12. Concerning environmental pollution from atmospheric emissions, noise and the impact on public health, the Submitter asserts that Semarnat is not monitoring air quality and does not maintain a pollutant emissions register for a company that is an emissions source under federal jurisdiction, under Articles 111 *bis* of LGEEPA and 17 *bis*, paragraph G, section II of the RPCCA.<sup>26</sup> Furthermore, the Submitter asserts: that the Ministry of the Environment and Housing (*Secretaría del Medio Ambiente y Vivienda*—Semavi) of the state of Chiapas is not conducting air quality monitoring in accordance with NOM-025<sup>27</sup>; and that Semarnat is failing to effectively enforce Articles 155 and 156 of LGEEPA,<sup>28</sup> as well as NOM-081, in relation to the noise emissions detected in the vicinity of the Company.<sup>29</sup>
13. The Submitter asserts that “the destruction of this area is irreversibly altering the habitat of the fauna and flora [of the ANP in question] [and] the health of the population” of Ribera Cahuaré.<sup>30</sup> The Submitter cites Article 170 of LGEEPA which gives Semarnat the authority to establish safety measures when there exists an imminent risk of ecological imbalance or damage to, or grave deterioration of, natural resources, or in cases of pollution events with dangerous repercussions for ecosystems, or the components thereof, or for public health.<sup>31</sup>

### III. SUMMARY OF THE RESPONSE

14. Mexico's response to the submission of 27 November 2012, consists of a section in which it notifies the Secretariat of the existence of pending proceedings pursuant to NAAEC Article 14(3), and six other sections in response to the Submitter's assertions.

#### A) Existence of pending proceedings

15. Mexico notified the Secretariat of the existence of three pending proceedings—initiated by the Submitter—related to certain issues raised in the submission, which Mexico argues are consistent with the definition of “judicial or administrative proceeding” under Article 45(3) of the NAAEC.<sup>32</sup> One concerns a change in forest land use (file no. PFPA/14.3/2C.27.2/0031/2009), another concerns environmental impact (file no. PFPA/14.3/2C.27.5/0046/2009), and the final proceeding concerns air pollution (file no.

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<sup>24</sup> *Ibid.*, at 5.

<sup>25</sup> *Ibid.*, at 6.

<sup>26</sup> *Ibid.*, at 8.

<sup>27</sup> *Ibid.*, at 9.

<sup>28</sup> *Ibid.*, at 11.

<sup>29</sup> *Ibid.*, at 12.

<sup>30</sup> *Idem.*

<sup>31</sup> *Ibid.*, at 10-11.

<sup>32</sup> Response, *supra* note 11 at 3-4.

PFPA/14.3/2C.27.2/0023-11).<sup>33</sup> Mexico requests that the Secretariat keep the information in relation to said proceedings confidential.<sup>34</sup>

16. Pursuant to NAAEC Article 14(2)(c), Mexico requests that the submissions process be partially terminated, i.e., solely in respect of the assertions on air pollution and environmental impact.<sup>35</sup> Without prejudice to the foregoing, Mexico then proceeded to respond to the submission's assertions.

**B) Concerning the assertions of submission SEM-11-002**

**i) The alleged failure to enforce Articles 111 *bis* of LGEEPA and 17 and 17 *bis*, paragraph G, section II, of the RPCCA respecting air quality at the company Cales y Morteros del Grijalva S.A. de C.V.**

17. Mexico indicates that LGEEPA Article 111 *bis*, first paragraph establishes that companies considered fixed emissions sources under federal jurisdiction shall obtain an operating license from Semarnat (an obligation cited in RPCCA Article 18). LGEEPA Article 111 *bis* also indicates that RPCCA Article 17 determines the concrete obligations that said companies must observe in relation to air pollutant emissions. The Party argues that for governmental authorities these are not operative articles *per se*, as they are unable to fulfil them directly. It asserts, however, that Mexico has an obligation to verify compliance with said articles through Profepa's inspection and monitoring activities, pursuant to Title Six of LGEEPA and RPCCA Article 49. In this regard, Mexico indicates it has initiated administrative proceedings in a timely manner in accordance with NAAEC Article 5(1)(j).<sup>36</sup>
18. Regarding the other paragraphs of LGEEPA Article 111 *bis*, Mexico argues that second paragraph does not establish any obligations, as it constitutes an enumeration of the types of businesses that qualify as "fixed sources under federal jurisdiction," for the purposes of LGEEPA, and that paragraph 3 establishes that industrial subsectors must be defined by a regulation, a requirement satisfied by RPCCA Article 17 *bis*.<sup>37</sup>
19. After describing the procedure for obtaining an operating license, as set out in the provisions of RPCCA Articles 18, 19 and 20,<sup>38</sup> Mexico asserts that on 24 May 1999 Semarnat granted the company Cales y Moteros del Grijalva, S.A. de C.V. an operating license, which established terms and conditions in accordance with the provisions of RPCCA Article 17.<sup>39</sup> Mexico indicates, furthermore, that this license was renewed by Semarnat, at the Company's request, on 22 April 2009.<sup>40</sup> Mexico specifies that said renewal was issued without a specific end date and that on said occasion conditions were added, including the obligation to comply with the Official Mexican Standards on the maximum permissible limits for air pollutant emissions.<sup>41</sup>

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<sup>33</sup> *Ibid.*, at 4-10.

<sup>34</sup> *Ibid.*, at 3.

<sup>35</sup> *Ibid.*, at 4-5.

<sup>36</sup> *Ibid.*, at 14-15.

<sup>37</sup> *Ibid.*, at 15.

<sup>38</sup> *Ibid.*, at 16.

<sup>39</sup> *Ibid.*, at 16-17.

<sup>40</sup> The Response refers to the year 1999. However, as consultation of said document's appendices makes clear, the correct year is 2009.

<sup>41</sup> Response, *supra* note 11 at 17-18.

20. Mexico details the actions undertaken by Profepa to verify the Company's compliance with the obligations imposed on it, in relation to air pollutant emissions, through the authorizations issued to it, in accordance with environmental law. In addition to reiterating the existence of a pending administrative proceeding in relation to this matter, Mexico enumerates various administrative proceedings, now concluded, which were instituted as a consequence of citizen complaints filed by the Submitter.<sup>42</sup>
21. Mexico asserts that, after a citizen complaint was filed on 2 May 2002,<sup>43</sup> irregularities were identified during an inspection visit on 2 September 2002, which, presumably, entailed violations of LGGEPA Article 111 *bis* and RPCCA Article 17, sections I, II, IV, V, VI, 18, 21 and 23.<sup>44</sup> The Party notes that said violations included the following: the absence of a renewed operating license specifying the emissions sources from Company operations; the absence of an air pollutants assessment, a pollutants register and inventory, as well as the failure to install conduits for said pollutant emissions; the absence of an operations and maintenance log for process and control systems; and fugitive dust emissions.<sup>45</sup> Said violations resulted—according to the Party—in particulates concentrations exceeding the limits established by NOM-024-SSA1-1993. This affected air quality in the area and constituted a health risk for the neighbouring population.<sup>46</sup> Mexico recounts that, due to said inspection, a temporary partial shutdown of operations was ordered as a safety measure, as were urgent measures to eliminate fugitive dust emissions. The Party indicates, moreover, that on 6 December 2002 an administrative proceeding was instituted authorizing Profepa to verify compliance with the imposed safety measures, which it subsequently did. Nevertheless, on 28 July 2006, Profepa ordered the termination of the aforementioned administrative proceeding due to alleged errors in the inspection order.<sup>47</sup>
22. Mexico recounts that on 5 November 2008 Profepa took receipt of a citizen complaint,<sup>48</sup> which led to the opening of an administrative file<sup>49</sup> and, consequently, an inspection visit on 15 December 2008. During said inspection irregularities were observed such as: non-ducted and fugitive total suspended particulates emissions and the absence of a renewed operating license. Mexico indicates that in issuing its administrative ruling of 26 February 2009 Profepa concluded that the Company was violating LGEEPA Articles 111 *bis*, 113, 121; RRETC Articles 10, 11; and RPCCA Articles 17, sections I to VII, 18, 21, 23 and 26, among other provisions. However, Profepa decided to terminate further processing of this file, after it had detected alleged procedural errors in the inspection report.<sup>50</sup>
23. The Party responded that Profepa issued a new inspection order,<sup>51</sup> executed on 6 May 2009,<sup>52</sup> during which irregularities included lack of an updated operating license and the

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<sup>42</sup> *Ibid.*, at 18-24.

<sup>43</sup> Citizen complaint no. D.Q. 113/02 (2 May 2002).

<sup>44</sup> Response, *supra* note 11, Appendix 23: Profepa, Chiapas Delegation, Document no. E07.SJ.307/2002 in file no. CH.SJ/VI-004/02 (6 December 2002).

<sup>45</sup> Response, *supra* note 11 at 19.

<sup>46</sup> *Idem*. Let it be noted that the CEC Council has determined that the NOMs on air quality issued by the Ministry of Health are not environmental law, in accordance with the response provided by Mexico. See: Council Resolution 12-04 (*Environmental Pollution in Hermosillo II*).

<sup>47</sup> *Ibid.*, at 19-20.

<sup>48</sup> Citizen complaint no. PFPA/CHIS/DQ/78/0031/2008 (5 November 2008).

<sup>49</sup> Administrative file no. PFPA/CHISS/47/0134/2008.

<sup>50</sup> *Ibid.*, at 20-22.

<sup>51</sup> Inspection order no. E07.SII.0061/2009 (21 April 2009).

<sup>52</sup> Inspection report no. PFPA/027/0061/2009 (6 May 2009).

failure to measure and inventory emissions. Consequently, Profepa instituted an administrative proceeding<sup>53</sup> and imposed the following corrective measures: the installation of control equipment for 100 percent of the total suspended particulates released by the Company; the elaboration of an inventory of pollutant emissions; and the obtaining of a renewed operating license taking into account the additional sources of emissions found during the inspection visit.<sup>54</sup> On 1 October 2009, Profepa issued an administrative ruling<sup>55</sup> which imposed on the company Cales y Morteros del Grijalva, S.A. de C.V. a fine for violating RPCCA Articles 17, sections I, IV and VIII, 21 and 23, and RRETC Article 10, section V, and which determined the corrective measures to be executed. On the basis of this administrative ruling, Profepa concluded its proceedings in relation to the citizen complaint of 5 November 2008.<sup>56</sup> On 30 August 2010, the Federal Court of Tax and Administrative Justice (*Tribunal de Justicia Fiscal y Administrativa*—TFJFA) rendered a decision in response to a suit filed by the Company. It ruled that administrative ruling 2388/2009 was completely null and void.<sup>57</sup> After the court's ruling, Profepa initiated a new administrative proceeding which is still pending.<sup>58</sup>

**ii) The alleged failure to enforce Article 155 of LGEEPA and NOM-081-Semarnat-1994 in relation to noise emissions by the company Cales y Morteros del Grijalva, S.A. de C.V.**

24. Mexico argues that the specific failures to effectively enforce LGEEPA Article 155 and NOM-081, are not made apparent in the submission.<sup>59</sup> Mexico indicates that the enforcement of LGEEPA Article 155 and NOM-081 in relation to fixed sources functioning as industrial establishments—which accurately describes the company Cales y Morteros del Grijalva, S.A. de C.V.—is a responsibility that falls to the government of the state of Chiapas, under Article 7, section VII, of LGEEPA.<sup>60</sup>
25. Mexico further indicates that on 29 October 2002 the Natural History and Ecology Institute (*Instituto de Historia Natural y Ecología*—IHNE) of the state of Chiapas monitored noise emissions by the Company, in response to a request from the Submitter. This, Mexico asserts, demonstrates that the Party effectively enforced environmental law by investigating the alleged violations and by concluding that the Company's noise emissions exceeded the limits established in NOM-081.<sup>61</sup> The Party recounts that, following another inspection visit on 14 November 2002, during which it confirmed noise emission infractions, the IHNE instituted administrative proceeding no. UAJ/006/002. This proceeding resulted in a fine assessed to the Company, in the amount of the equivalent of 600 days salary, at the current minimum wage in the state of Chiapas.<sup>62</sup>
26. The Party highlights the fact that, due to administrative proceeding no. CH.SJ/VI-004/02, which instituted citizen complaint no. D.Q. 113/02, the Company was ordered to take measures to comply with the maximum permissible noise emission limits.<sup>63</sup>

<sup>53</sup> Administrative proceeding PFPA/14.2/2C.27.1/0047-09.

<sup>54</sup> Response, *supra* note 11 at 22.

<sup>55</sup> Administrative ruling 2388/2009 (1 October 2009).

<sup>56</sup> Response, *supra* note 11 at 23.

<sup>57</sup> *Ibid.*, at 23.

<sup>58</sup> *Ibid.*, at 24.

<sup>59</sup> *Ibid.*, at 25.

<sup>60</sup> *Ibid.*, at 26.

<sup>61</sup> *Ibid.*, at 25-26.

<sup>62</sup> *Ibid.*, at 27-28.

<sup>63</sup> *Ibid.*, at 29-30.

Mexico indicates that among the conditions imposed during the renewal of the Company's operating license was the requirement that it observe the limits established in NOM-081.<sup>64</sup>

**iii) The alleged failure to enforce the criteria in relation to the preservation of ecological balance in Sumidero Canyon National Park, pursuant to Articles 50 and 64 of LGEEPA, and Articles 80, 81, section II, paragraphs b) and c), 88, section XIII, and 94 of the RANP**

27. Mexico argues that Articles 81, section II, paragraphs b) and c), 88, section XIII, and 94 of the RANP do not apply to the activities of the Company inasmuch as limestone does not fall under the purview of the Mining Act (*Ley Minera*), as is indicated by Articles 2, 4 and 5 of this legislation.<sup>65</sup> Mexico explains that, as limestone quarrying is not an activity under federal jurisdiction, the prevention and control of pollution generated by such activities is a responsibility that falls to the state authorities, under Article 7, section X, of LGEEPA. However, the prevention and control of air pollution generated by lime manufacturing is a responsibility of the federal authorities, under Article 111 *bis* of LGEEPA and Article 17 *bis*, section G) II, of the RPCCA.<sup>66</sup>
28. Regarding enforcement of LGEEPA Article 50, Mexico indicates that said provision only establishes an index of the activities permitted in protected natural areas and as such does not constitute a directly enforceable provision.<sup>67</sup>
29. With respect to the enforcement of RANP Article 80, Mexico notes that this provision does not stipulate that Semarnat must establish—within a specific legal instrument—acceptable use rates or limits to change and carrying capacities, in relation to the regulation of resource uses and enjoyment activities conducted within the Park. Mexico indicates that the decree which created the Sumidero Canyon National Park is in the process of being amended in order to lay the groundwork for the elaboration of a management program, which will be the proper instrument for defining the “acceptable limits to change” in the Park and its “carrying capacity.”<sup>68</sup>
30. Finally, regarding the enforcement of LGEEPA Article 64, which establishes that the granting of licenses for resource use activities in protected natural areas must comply with the applicable laws, national park creation decrees and management programs, Mexico cites the already mentioned enforcement measures that it has taken in relation to the Company.<sup>69</sup>

**iv) The alleged failure to enforce the environmental assessment process, pursuant to Article 28, section X, XI and XII of LGEEPA, in relation to the activities of the company Cales y Morteros del Grijalva, S.A. de C.V.**

31. Mexico recognizes that the Company's installations are located, in their totality, within the Park's boundaries. Consequently, under LGEEPA Article 28, section XI, the

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<sup>64</sup> *Ibid.*, at 30-31.

<sup>65</sup> *Ibid.*, at 31.

<sup>66</sup> *Ibid.*, at 33.

<sup>67</sup> *Idem.*

<sup>68</sup> *Ibid.*, at 34.

<sup>69</sup> *Ibid.*, at 35.

Company's activities require an environmental impact authorization. The Party indicates that the Company has filed no requests for such an authorization;<sup>70</sup> however, Mexico argues that it has initiated administrative proceedings to correct and sanction the Company's non-compliance.<sup>71</sup>

32. Mexico indicates that on 27 February 2004 the management of Sumidero Canyon filed a citizen complaint<sup>72</sup> against the company Cales y Morteros del Grijalva, S.A. de C.V., citing the damages to the environment caused by the latter, specifically: pollution of the Grijalva River, changes in land use and clearance of lowland forests.<sup>73</sup> Mexico argues that these issues were already being addressed by Profepa at the time the complaint was filed, via administrative proceeding no. CH.SJ/VI-001/2003, initiated on 29 July 2004. Said administrative proceeding resulted in the ordering of various safety measures, notably the suspension of extractive activities until such time as the Company obtained the required environmental impact and change of land use authorizations.<sup>74</sup> However, as the Party indicates, in response to the Company's request, Profepa declared this administrative decision null and void and terminated the administrative proceeding on 14 December 2004, since the Company had initiated its activities years before the relevant environmental impact legislation came into force and said legislation cannot be enforced retroactively. Mexico later indicated that the law in question is applicable to all expansions to, or modifications of, activities that the Company might effect. Consequently, inspection and enforcement activities continued, which resulted in the instituting of another administrative proceeding that remains pending.<sup>75</sup>
33. Furthermore, Mexico mentions that, based on the citizen complaint filed by the Submitter on 5 November 2008,<sup>76</sup> two other administrative proceedings were initiated; one concerning forest land use, and the other environmental impact.<sup>77</sup> Also, Mexico mentions another citizen complaint filed on 24 March 2009 by the management of Sumidero Canyon<sup>78</sup> and argues that the matters raised therein had already been addressed via said administrative proceedings. The Party asserts that Profepa concluded processing of the two citizen complaints discussed here in October 2009 when it issued an administrative ruling fining the Company for its forest land use practices. Mexico reiterates that the two above-mentioned administrative proceedings are pending.<sup>79</sup>
34. The Party adds that the Ministry of the Environment and Natural History (*Secretaría de Medio Ambiente e Historia Natural*—Semahn) of the state of Chiapas brought an administrative proceeding<sup>80</sup> against the Company, citing its failure to obtain prior environmental impact authorization, in contravention of Articles 79, section V, 87, 193 and 194 and other articles of the Environmental Act of the State of Chiapas (*Ley Ambiental para el Estado de Chiapas*). The proceeding concluded with the imposing of a fine on the Company.<sup>81</sup>

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<sup>70</sup> *Ibid.*, at 36.

<sup>71</sup> *Ibid.*, at 36-37.

<sup>72</sup> Citizen complaint no. DQ/049/2004 (27 February 2004).

<sup>73</sup> Response, *supra* note 11 at 37.

<sup>74</sup> *Ibid.*, at 37-38.

<sup>75</sup> *Idem.*

<sup>76</sup> Citizen complaint PFPA/CHIS/DQ/79/0240/2008 (5 November 2008).

<sup>77</sup> *Ibid.*, at 39.

<sup>78</sup> Citizen complaint PFPA/14.7/2C.28.2/0120-09 (24 March 2009).

<sup>79</sup> *Ibid.*, at 39-40.

<sup>80</sup> Administrative proceeding no. SEMAVIHN/UAJ/AAA/031/2010.

<sup>81</sup> *Ibid.*, at 40-41.

v) **The alleged failure to protect Sumidero Canyon National Park's ecological balance with safety measures pursuant to Article 170 of LGEEPA**

35. Mexico argues that no concrete facts are adduced in the submission which might serve as the basis for a failure to effectively enforce Article 170 of LGEEPA.<sup>82</sup> The Party points out that enforcing safety measures or, as the case may be, the decision of not to exercise the authority to order such measures, is a discretionary power of the Government of Mexico under NAAEC Article 45(1)(a), as is indicated by the expression “*podrá*” (“may”) of Article 170 of LGEEPA. Therefore, it is not possible to find that Mexico has failed to effectively enforce said provision.<sup>83</sup>
36. Without prejudice to the preceding, the Party cites the aforementioned administrative proceedings, which—pursuant to Article 170 of LGEEPA—ordered safety measures. Specifically, Profepa ordered the temporary partial shutdown of the Company due to air pollution infractions<sup>84</sup> and the temporary shutdown of the Company's activities due to environmental impact violations.<sup>85</sup> Furthermore, regarding the issues of land use changes and environmental impact, two administrative proceedings are pending, concerning which information is restricted.<sup>86</sup>

vi) **The state of progress regarding the elaboration of a management program for Sumidero Canyon National Park pursuant to Article 65 of LGEEPA**

37. Mexico first indicates that the applicable legal framework in force at the time of the decree creating Sumidero Canyon National Park in 1980 was the Forestry Act (*Ley Forestal*), in particular Articles 62, 63, 65, 66, 68, 69, 70, 71 and 72. This law did not stipulate that a management program be elaborated within a given period of time.<sup>87</sup> Mexico indicates that LGEEPA came into force in 1988, at which time it became a statutory requirement under Article 65 that a management program be elaborated for protected natural areas. Mexico argues that this latter provision may not be enforced retroactively in relation to Sumidero Canyon National Park.<sup>88</sup>
38. Without prejudice to the preceding, the Party argues that it is taking measures to address various problems presently adversely affecting the Park, notably the growth of irregular human settlements in the municipalities of Tuxtla Gutiérrez and Chiapa de Corzo, the encroachment of agricultural activities, and the extraction of stone materials within the boundaries of the Park. According to Mexico, to address these issues one must first amend the Park's original charter (*decreto de creación*) with the objective of establishing the technical and legal framework required to issue a management program for Sumidero Canyon.<sup>89</sup> The Party indicates that, acting in compliance with a preliminary requirement to the issuance of a protected natural area amending decree,

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<sup>82</sup> *Ibid.*, at 44.

<sup>83</sup> *Ibid.*, at 45.

<sup>84</sup> *Ibid.*, at 46-47. See administrative proceeding no. CH.SJ/VI-004/02 instituted in response to citizen complaint no. D.Q.113/02.

<sup>85</sup> *Ibid.*, at 47-48. See administrative proceeding no. CH.SJ/VI-001/2003.

<sup>86</sup> *Ibid.*, at 48-50. See administrative proceedings nos. PFPA/14.3/2C.27.2/0031/2009 and PFPA/14.3/2C.27.5/0046/2009.

<sup>87</sup> *Ibid.*, at 52-53.

<sup>88</sup> *Ibid.*, at 52-54.

<sup>89</sup> *Ibid.*, at 54.

pursuant to Article 64 of the RANP, the National Commission for Protected Natural Areas (*Comisión Nacional de Áreas Naturales Protegidas—Conanp*) is in the final stages of elaborating a preliminary supporting study (*estudio previo justificativo—EPJ*). Mexico asserts that the EPJ's draft amending decree shall address the following issues: a change to the Park's area to account for certain inconsistencies; the establishing of zoning by-laws to enable the regulation of activities and the conservation of the Park's ecosystems; and the establishment of the terms, conditions and restrictions governing the use and enjoyment of natural resources, in accordance with the provisions of LGEEPA Article 50.<sup>90</sup> Finally, the Party indicates that, pursuant to RANP Article 47, once the EPJ has been completed, it shall be made available for public consultation during a 30-day period. Semarnat shall then consider the comments and observations the Submitter makes, if any, during this public consultation phase.<sup>91</sup>

39. In conclusion, Mexico argues that its response contains sufficient information concerning the submission's assertions and considers it unnecessary to prepare a factual record.<sup>92</sup>

#### IV. ANALYSIS

##### A) Examination of the response in light of the Party's notification of the existence of pending proceedings, as defined under Article 14(3)

###### i) Preliminary considerations

40. NAAEC Article 14(3)(a) establishes that:

The Party shall advise the Secretariat within 30 days or, in exceptional circumstances and on notification to the Secretariat, within 60 days of delivery of the request:

(a) whether the matter is the subject of a pending judicial or administrative proceeding, in which case the Secretariat shall proceed no further; [...]<sup>93</sup>

41. NAAEC Article 45(3)(a) defines the term "judicial or administrative proceeding" as:

[A] domestic judicial, quasi-judicial or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; [...]

42. The Secretariat must consider any notification of a pending judicial or administrative proceeding in accordance with Article 45(3)(a).<sup>94</sup> When analyzing a Party's notification of the existence of a pending proceeding, the Secretariat thus analyzes whether said proceeding was initiated by the Party—clarifying as necessary whether aspects were also initiated by the Submitter—; whether said proceeding is timely in the terms of the Party's legislation; whether it is related to the issues of effective enforcement raised in

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<sup>90</sup> *Ibid.*, at 54-55.

<sup>91</sup> *Ibid.*, at 55.

<sup>92</sup> *Ibid.*, at 56-57.

<sup>93</sup> NAAEC, Article 45(3)(a), *supra* note 1.

<sup>94</sup> SEM-07-001 (*Minera San Xavier*) Determination pursuant to Article 15(1) (15 July 2009), §33.

the submission, and whether the proceeding in question may potentially resolve the matter(s) raised in the submission.<sup>95</sup>

43. Mexico affirms the existence of pending judicial or administrative proceedings which address the issues raised in the submission, and argues that addressing them in a factual record could “result in interference with the national systems for enforcement of the Party’s law, or duplication of the examination of the issues raised simultaneously before the CEC and national administrative or judicial bodies.”<sup>96</sup> Consequently—Mexico argues—the existence of such proceedings are grounds for the partial termination of the submission process, i.e., solely in relation to the assertions concerning “air pollution and environmental impact.”<sup>97</sup>
44. On this matter, although the duplication of efforts and interference with a pending legal action must be taken into account when deciding whether to continue with a submission or not, the Secretariat reiterates that the preparation of a factual record does not constitute litigation regarding the effective enforcement of environmental law and that it is not endowed with any judicial authority.<sup>98</sup> Furthermore, Article 15(3) of the NAAEC leaves open the possibility that further steps may be taken with respect to any submission, including proceedings pursuant to the domestic laws of the Parties.<sup>99</sup>
45. Consistent implementation of NAAEC Article 14 ensures predictability, transparency and fairness in the overall submissions process including, by necessity, consideration of a Party’s notification of a pending proceeding. The Secretariat has been historically consistent in its interpretation and application of Articles 14(3) and 45(3) of the Agreement.<sup>100</sup> This is supported by the principle of transparency which permeates the Agreement and thus terminating a submission on the sole basis of an assertion by one of the Parties, without analysis and reasoning, may reduce the credibility of the process. The Secretariat has a duty to fully examine submissions and the responses of the Parties in question and, when warranted, the Secretariat has determined that a citizen submission process is partially or wholly terminated due to the existence of such a proceeding.
46. In the following paragraphs, the Secretariat analyzes Mexico’s notification of the existence of judicial or administrative proceedings awaiting resolution, in order to determine whether said proceedings are, in accordance with Article 45(3), related to the same matters of effective enforcement raised in the submission, and whether the preparation of a factual record could interfere with or duplicate such proceedings.

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<sup>95</sup> *Ibid.*

<sup>96</sup> Response, *supra* note 11 at 5.

<sup>97</sup> *Idem.*

<sup>98</sup> See in this regard: SEM-07-001 (*Minera San Xavier*) Determination pursuant to Article 15(1) (15 July 2009), §33.

<sup>99</sup> NAAEC, Article 15(3), *supra* note 1: “The preparation of a factual record by the Secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.”

<sup>100</sup> The Secretariat is mindful that it has always fully analyzed the responses of a Party pursuant to Article 14(3), and that the “commitment to the principle of transparency pervading the NAAEC [means that] the Secretariat cannot construe the Agreement as permitting it to base its determination that it is before the situation contemplated by Article 14(3)(a), and that it shall proceed no further with a submission, on the mere assertion of a Party to that effect”; SEM-01-001 (*Cytrar II*) Determination pursuant to Article 14(3) (13 June 2001). See also SEM-97-001 (*BC Hydro*) Notification pursuant to Article 15(1) (27 April 1998); SEM-03-003 (*Lake Chapala II*) Notification pursuant to Article 15(1) (18 May 2005); SEM-04-005 (*Coal-fired Power Plants*) Notification pursuant to Article 15(1) (5 December 2005), and SEM-05-002 (*Coronado Islands*) Notification pursuant to Article 15(1) (18 January 2007).

47. In clarifying the importance of determining which matters are the object of pending proceedings and, thereby, identify any alleged interference and duplication of efforts, it is necessary to refer to the concept of *lis pendens*.<sup>101</sup> *Lis pendens* exists when there are “proceedings involving the same cause of action and between the same parties [...] brought in the courts of different States.”<sup>102</sup> For example, a *lis pendens* matter may exist when “a party brings an action before a court in a contracting state for the rescission or discharge of an international sales contract whilst an action by the other party to enforce the same contract is pending before a court in another contracting state.”<sup>103</sup>
48. Mexico has classified the information on the pending proceedings notified as confidential, in accordance with Article 19(2) of the Agreement. Although Mexico forwarded the Secretariat a public version of its response on 27 November 2012,<sup>104</sup> Mexico does not present a summary of the confidential information which would enable the Secretariat to make public its analysis regarding the existence of proceedings awaiting resolution and other enforcement actions pursuant to Article 14(3) of the NAAEC. Consequently, in this notification the Secretariat is, to the extent possible, making its analysis public concerning the pending proceedings of which it has been notified as well as other enforcement actions implemented by Mexico, while simultaneously taking care to not reveal information classified as confidential. Therefore, the Secretariat notes that the sections contained in paragraphs 54 to 54, 61, 63 to 65 and 67 to 68 are confidential, as they contain information classified as restricted by the Party.
49. Guided by the objectives of the Agreement,<sup>105</sup> the Parties may provide a summary of any confidential information to avoid limiting the Secretariat’s ability to make public its considerations on the existence or not of pending proceedings.

## ii) The proceedings initiated by Mexico

50. The Secretariat has analyzed the information pertaining to the proceedings of which it has been advised by Mexico and concludes that the matters addressed by said proceedings partially coincide with the assertions raised in the submission.
51. Concerning administrative proceeding no. PFPA/14.3/2C27.2/0031/2009, respecting forest land use, the Secretariat determined that this proceeding is not pending resolution, in the sense of Article 14(3)(a), nor is it related to the questions of effective enforcement raised in the submission. Consequently, terminating further processing of submission SEM-11-002 because of this specific matter does not appear justified. As for administrative proceeding no. PFPA/14.3/2C.27.5/0046/2009, which concerns environmental impact, the Secretariat has concluded that said proceeding—although it is awaiting resolution—is not related to the questions of effective enforcement raised in submission SEM-11-002. Consequently, the Secretariat shall continue its examination

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<sup>101</sup> See SEM-07-005 (*Drilling waste in Cunduacán*) (8 April 2009), §§23-24.

<sup>102</sup> Article 27 of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Official Journal of the European Union, 21 December 2007.

<sup>103</sup> *Gubisch Maschinenfabrik KG v. Giulio Palumbo*, case C-144/86, Court of Justice of the European Communities.

<sup>104</sup> Document no. 11200007431, dated 23 November 2012, issued by Semarnat’s Legal Affairs Coordinating Unit.

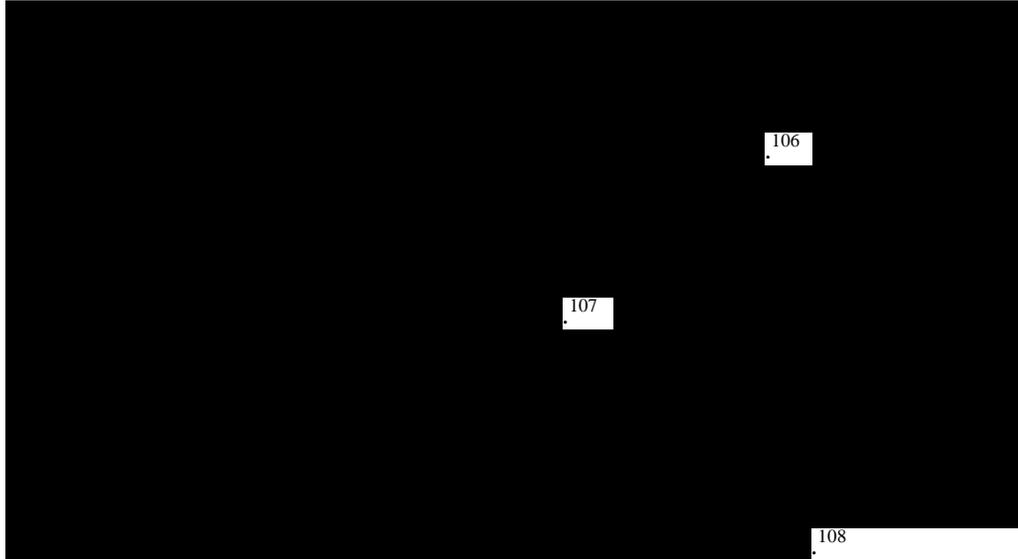
<sup>105</sup> NAAEC, Article 1(h), *supra* note 1: “The objectives of this Agreement are to: [...]promote transparency and public participation in the development of environmental laws, regulations and policies.”

of the submission's assertion in respect of environmental impact. In the case of administrative proceeding no. PFPA/14.3/2C.27.2/0023-11, respecting air pollution, the Secretariat determined that the object of this proceeding only partially coincides with the submission's assertions, namely those concerning the effective enforcement of RPCCA Article 17. Consequently, the Secretariat shall not further examine the effective enforcement of RPCCA Article 17, but shall continue to proceed in relation to Articles 111 *bis* of LGEEPA and 17 *bis* paragraph G), section II, of the RPCCA.

52. Subject to the confidentiality of information provided for under NAAEC Article 39(2), the Secretariat details in the following sections its analysis pursuant to Articles 14(3) and 45(3) of the NAAEC.

[Confidential section: paragraphs 54 to 58 and 61]

**a) Administrative proceeding no. PFPA/14.3/2C27.2/0031/2009  
respecting forest land use**

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- [REDACTED] <sup>112</sup>.
56. [REDACTED] <sup>113</sup>.
57. [REDACTED].

[The following two paragraphs are not confidential]

58. The Secretariat has already determined that “where a government is actively engaged in pursuing enforcement-related measures against one or more actors implicated in an Article 14 submission, the Secretariat is obliged to terminate its examination of the allegations of non-enforcement.”<sup>114</sup> Regarding the proceeding of which it has been notified, it does not appear that Mexico is “actively” pursuing the imposition of enforcement measures on the company Cales y Morteros del Grijalva, S.A. de C.V., since the Secretariat has not been identified of any administrative or jurisdictional authority currently examining proceeding no. PFPA/14.3/2C27.2/0031/2009.
59. This is further confirmed when the Secretariat determined that the mere possibility that legal actions may still be brought in a *negativa ficta* (an implicit ruling),<sup>115</sup> does not amount to saying that said proceeding is awaiting resolution, since the actions of the Party would not be “timely” in the terms of Article 45(3) of the NAAEC.<sup>116</sup>

[confidential paragraph]

60. [REDACTED] <sup>117</sup>.
- [REDACTED] <sup>118</sup>.

[The following paragraph is not confidential]

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<sup>114</sup> SEM-96-003 (*Oldman River I*) Determination pursuant to Article 15(1) (2 April 1997) at 3.

<sup>115</sup> “According to Mexico, because appellants may yet challenge the implicit upholding of the Approval, the joined proceedings filed in October 2004 and May 2005 are still pending.” In: SEM-05-002 (*Coronado Islands*) Notification pursuant to Article 15(1) (18 January 2007) at 14, <<http://goo.gl/a1fdi>> (viewed 17 June 2013).

<sup>116</sup> *Idem.*

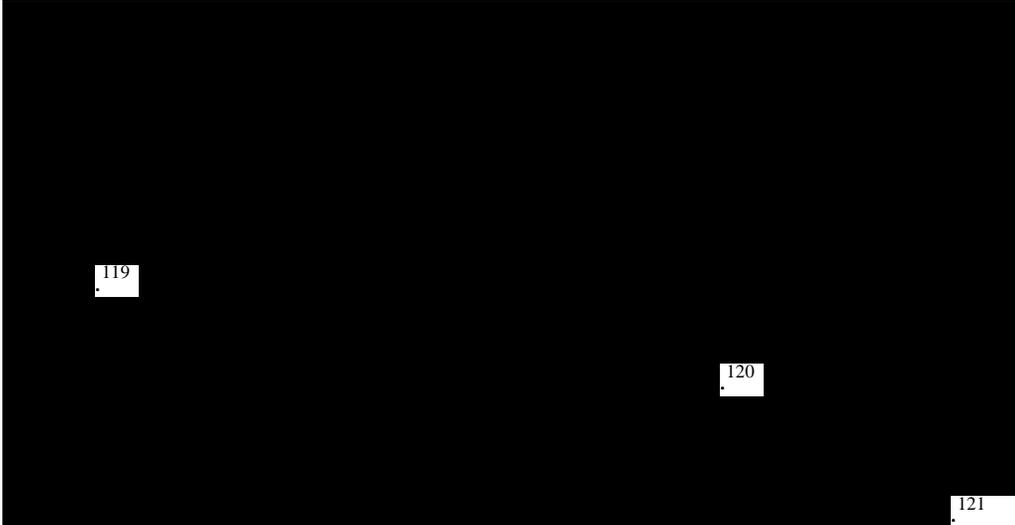
<sup>117</sup>

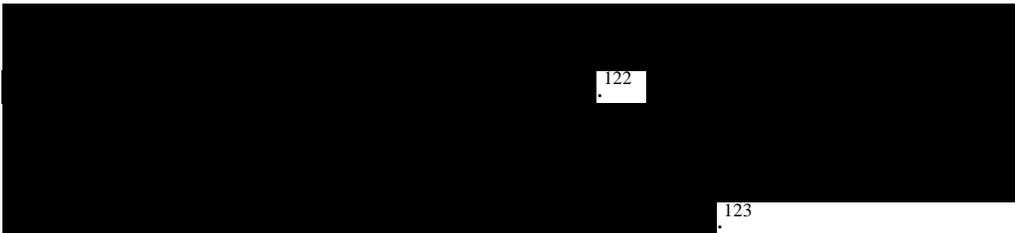
<sup>118</sup>

61. With respect to the administrative proceeding no. PFPA/14.3/2C27.2/0031/2009 respecting forest land use issues, the Secretariat concludes that: (i) it is not a pending judicial or administrative proceeding in accordance with Article 45(3) of the NAAEC, and (ii) it is not related to the questions of effective enforcement raised in submission SEM-11-002.

**b) Administrative proceeding no. PFPA/14.3/2C.27.5/0046/2009  
respecting environmental impact**

[Confidential section: paragraphs 63 to 65]

62. A large black rectangular redaction covers the text of paragraph 62. Three small white boxes containing the numbers 119, 120, and 121 are positioned within the redacted area.

63. A large black rectangular redaction covers the text of paragraph 63. Two small white boxes containing the numbers 122 and 123 are positioned within the redacted area.

64. A large black rectangular redaction covers the text of paragraph 64. Two small white boxes containing the numbers 124 and 125 are positioned within the redacted area.

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[The following paragraph is not confidential]

65. The Secretariat concludes that said proceeding, although pending, is unrelated to the questions of effective enforcement raised in the submission and thus concludes that it may further examine the assertion raised respecting environmental impact in submission SEM-11-002.

**c) Administrative proceeding no. PFPA/14.3/2C.27.2/0023-11  
respecting air pollution**

[Confidential section: paragraphs 67 to 68]

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[End of the confidential sections related with pending proceedings]

68. In view of the foregoing, the Secretariat concludes that termination of the submissions process for SEM-11-002 is justified in relation to the matter of the enforcement of Article 17 of the RPCCA. In addition, the Secretariat determines that the proceedings which have been notified by Mexico do not coincide with the assertion in relation to air pollution and the effective enforcement of Articles 111 *bis* of LGEEPA and 17 *bis* paragraph G), section II, of the RPCCA; consequently, terminating analysis of the effective enforcement of said provisions is not justified.

**B) Considerations of Mexico's response to the Submitter's assertions pursuant to Article 15(1) of the NAAEC**

69. Having determined, pursuant to Article 14(3) of the NAAEC, that the proceedings cited by Mexico in its response do not prevent further review of certain assertions made in submission SEM-09-001, the Secretariat then proceeded to consider whether, in light of Mexico's response, the submission warrants the development of a factual record.

70. The Government of Mexico classified as confidential various sections on actions it effected in relation to the Submitters' assertions. In presenting its reasoning, the Secretariat considers information designated by Mexico as confidential, but that has been made publicly available after Mexico's response.<sup>132</sup> Whenever the present notification discusses confidential or restricted information, this is indicated, and said information is redacted accordingly.

**i) Considerations on alleged enforcement failures respecting air pollution due to the activities of the company Cales y Morteros del Grijalva, S.A. de C.V.**

71. As detailed in a preceding section on pending proceedings, the Secretariat has determined that the assertion on the alleged failure to effectively enforce Article 17 of the RPCCA coincides with a pending proceeding. Consequently, the Secretariat shall conduct no further analysis of said matter.

72. The Submitter asserts that Mexico is failing to enforce LGEEPA Articles 111 *bis* of and RPCCA 17 *bis* paragraph G), section II because it has not fined the company Cales y Morteros del Grijalva, S.A. de C.V., for its failure to hold a renewed operating license.<sup>133</sup> Mexico responds that the latest renewal of the Company's operating license was granted on 22 April 2009, for an indeterminate duration.<sup>134</sup> Mexico also asserts that it instituted three administrative proceedings between 2002 and 2009 against the Company, and that in the resulting inspection reports irregularities were recorded, including the absence of a renewed operating license enumerating the Company's nine

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<sup>132</sup> This is the case of Appendix 42 to Mexico's response which contains the preliminary supporting study (EPJ) on amending the Declaration on the Sumidero Canyon National Park Protected Natural Area. This document was made publicly available as a notice published in DOF on 27 November 2012.

<sup>133</sup> *Ibid.*, at 5.

<sup>134</sup> Response, *supra* note 11 at 17.

fixed emissions sources.<sup>135</sup> In administrative proceeding no. CH.SJ/VI-004/02, which Profepa instituted in 2002, the Company is cited for “having four atmospheric emissions sources which are not specified in the [operating] license: two wetting systems, a jaw crusher and a hammer mill”.<sup>136</sup> Administrative proceeding no. PFPA/CHISS/47/0134/2008, instituted by Profepa in 2008, indicated that: “the operating license has not been renewed and, furthermore, said document neither specifies the emissions sources are contemplated nor does it specify their number.”<sup>137</sup> In administrative proceeding no. PFPA/14.2/2C.27.1/0047-09, instituted by Profepa in 2009, it is noted that although the license had not been renewed, the Company did present its license renewal request.<sup>138</sup>

73. Regarding administrative proceeding no. CH.SJ/VI-004/02, the activities localization agreement of 6 December 2002 indicates that “in said document [the inspection report] one observes the existence of various irregularities in the terms of Articles 111 *bis* of [LGEEPA] [...]” Consequently, a safety measure consisting of a temporary partial shutdown was confirmed.<sup>139</sup> In July 2006—three and a half years after instituting the administrative proceeding—Profepa made a determination to terminate said proceeding, citing alleged procedural errors in the inspection order.<sup>140</sup> On 28 November 2007,<sup>141</sup> the complainant—who is today one of the Submitter’s representatives—was notified of the proceeding’s termination; nearly five years after said complainant had filed the citizen complaint.<sup>142</sup>
74. In consulting the documents enclosed with the response and the submission, it is noted that whereas the administrative ruling of 28 July 2006 indicates that the proceeding was terminated pursuant to Article 57, section I, of LFPA, which stipulates the termination of a proceeding upon the issuance of an administrative ruling,<sup>143</sup> the Party’s response indicates that it was concluded pursuant to section VI, which provides for termination upon the signing of a compliance agreement;<sup>144</sup> and yet, the notification to the complainant indicates that the complaint process was terminated pursuant to section V,

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<sup>135</sup> *Ibid.*, at 19-24.

<sup>136</sup> *Ibid.*, Appendix 22: Profepa, inspection report no. PFPA/027/608/2002 (2 September 2002).

<sup>137</sup> Response (confidential version), *supra* note 11, Appendix 26: Profepa, inspection report no. PFPA/027/0196/2008 (15 December 2008).

<sup>138</sup> Response (confidential version), *supra* note 11, Appendix 28: Profepa, inspection report no. PFPA/027/0061/2009 (6 May 2009).

<sup>139</sup> Response (confidential version), *supra* note 11, Appendix 23: Profepa, activities localization agreement in file no. CH.SJ/VI-004/02 (6 December 2002).

<sup>140</sup> Response (confidential version), *supra* note 11 at 20, and Appendix 24: Profepa, compliance agreement in file no. CH.SJ/VI-004/2002 (28 July 2006).

<sup>141</sup> Revised submission, *supra* note 9, Appendix 8: compliance agreement in case no. DQ/113/02 (28 November 2007).

<sup>142</sup> The citizen complaint was filed on 2 May 2002. Response, *supra* note 11 at 20. Revised submission, *supra* note 9, Appendix 8: Profepa, compliance agreement to citizen complaint no. D.Q.113/02 (28 November 2007).

<sup>143</sup> Response, *supra* note 11, Appendix 24: Profepa, compliance agreement in file no. CH.SJ/VI-004/2002 (28 July 2006). See LFPA, Article 57, section I:

Shall conclude the administrative proceeding: [...]

I. An administrative ruling; [...]

<sup>144</sup> Response, *supra* note 11 at 20. See: LFPA, Article 57, section VI:

Shall conclude the administrative proceeding: [...]

VI. An agreement between the parties, with the scope, effects and specific legal framework, which, in each case, are stipulated by the provisions governing it, provided that such agreement is not contrary to the legal system and does not cover non-negotiable matters having as their object the satisfaction of the public interest.

which provides for termination in cases of physical impossibility due to supervening causes.<sup>145</sup>

75. On 5 November 2008—two and a half years after the aforementioned proceeding—a citizen complaint was filed by the Submitter and others,<sup>146</sup> which resulted in an inspection visit and, subsequently, administrative proceeding no. PFPA/CHISS/47/0134/2008.<sup>147</sup> On 26 February 2009, Profepa terminated the proceeding in its administrative ruling of that same date, citing the existence “of procedural errors in the conduct of the inspection.”<sup>148</sup> Profepa indicated that “the person under inspection is in contravention of Articles [...] 111 *bis* [...] of [LGEEPA]” and argued that “this authority cannot ignore the facts and omissions recorded in inspection report PFPA/027/0196/2008 of 15 December 2008, as the latter noted that the company in question is not controlling atmospheric emissions on the site under inspection.”<sup>149</sup> In the same administrative ruling, Profepa ordered a new inspection visit, which took place on 6 May 2009.<sup>150</sup>
76. On 21 April 2009, an inspection order was issued that led to proceeding no. PFPA/14.2/2C.27.1/0047-09.<sup>151</sup> On 6 May 2009, Profepa conducted an inspection visit at the Company,<sup>152</sup> during which it discovered that the latter was in contravention of Article 111 *bis* of LGEEPA, among other provisions. Profepa demanded as a corrective measure the presentation of a duly renewed operating license.<sup>153</sup>
77. The renewed operating license was issued the day after the issuance of inspection order of 21 April 2009.<sup>154</sup> However, the Company did not present the document on 6 May, the date of the inspection visit at its installations,<sup>155</sup> and the document was not delivered until 22 May 2009.<sup>156</sup>

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<sup>145</sup> Revised submission, *supra* note 9, Appendix 8: compliance agreement in file no. DQ/113/02 (28 November 2007).

<sup>146</sup> Response, *supra* note 11 at 20, and Appendix 25: Citizen complaint (5 November 2008).

<sup>147</sup> Response, *supra* note 11 at 21, and Appendix 26: Profepa, inspection report no. PFPA/027/0196/2008 (15 December 2008).

<sup>148</sup> Response, *supra* note 11, Appendix 27: Profepa, administrative ruling no. PFPA/14.5/2C.27.1/0715/2009 (26 February 2009) at 11. The administrative ruling indicates that “the inspectors did not show sufficient diligence in fulfilling the object of the inspection visit, inasmuch as they did not indicate with exactitude whether the company exercises control of its polluted emissions [*sic*] into the atmosphere [*sic*]. This authority therefore concludes that the actions arising from the inspection visit are, in their entirety, illegal,” *Ibid.*, at 9.

<sup>149</sup> Response, *supra* note 11, Appendix 27: Profepa, administrative ruling no. PFPA/14.5/2C.27.1/0715/2009 (26 February 2009).

<sup>150</sup> Response, *supra* note 11, Appendix 28: Profepa, inspection report no. PFPA/027/0061/2009 (6 May 2009).

<sup>151</sup> Response, *supra* note 11, Appendix 28: Profepa, ordinary inspection order no. E07.SII.0061/2009 (21 April 2009); Appendix 20: Semarnat, renewed operating license, document no. SDGPA/UGA/DMIC/01556/09 (22 April 2009).

<sup>152</sup> Response, *supra* note 11, Appendix 28: Profepa, inspection report no. PFPA/027/0061/2009 (6 May 2009).

<sup>153</sup> Response, *supra* note 11 at 23.

<sup>154</sup> Response, *supra* note 11, Appendix 28: Profepa, ordinary inspection order no. E07.SII.0061/2009 (21 April 2009); Appendix 20: Semarnat, renewed operating license, document no. SDGPA/UGA/DMIC/01556/09 (22 April 2009).

<sup>155</sup> “[...] a single copy of the actual unrenewed operating license was visible.” Response, *supra* note 11, Appendix 28: Profepa, inspection report no. PFPA/027/0061/2009 (6 May 2009).

<sup>156</sup> In the copy of the updated operating license, the following hand written text was noted: “I received the original [illegible] 22 May 2009”.

78. On 1 October 2009, Profepa issued an administrative ruling in which it recorded the Company's presentation of its operating license. Consequently, the fine it imposed was not based on a violation in that regard.<sup>157</sup> On the basis of this administrative ruling, the Submitter's second citizen complaint was declared closed.<sup>158</sup> Subsequently, the Company brought an action before the TFJFA, which declared the administrative ruling null and void because "the legal authority of the defendant [Profepa] was not sufficiently substantiated."<sup>159</sup>
79. From Mexico's response it emerges that, during a period of seven years (i.e., from the first inspection visit, on 2 September 2002, until the third inspection visit, on 6 May 2009), the Company did not present an operating license in the terms of LGEEPA Article 111 *bis*. With the exception of a partial shutdown none of the authority's three attempts to implement enforcement acts during this period were enforced against the Company that resulted in corrective measures, safety measures or sanctions. Although the last proceeding—terminated due to procedural errors, as were the other two,—established that the Company was no longer in violation of Article 111 *bis* from the moment it renewed its operating license on 22 April 2009, there are open central questions regarding the means to verify holding of a permit over seven years; it does not provide information regarding compliance with conditions, nor does it clarify whether the license has been subject to follow-up after renewal. A factual record would shed light on the effectiveness in actions implemented by the Party on this regard, considering the that air emissions from the facility are allegedly causing negative health effects to the nearby community.
80. The Secretariat considers that enforcement of Articles 111 *bis* of LGEEPA warrants development of a factual record, keeping in mind that the Company is an entity covered by RPCCA Article 17 *bis* paragraph G), section II.

**ii) Considerations regarding the alleged enforcement failures respecting noise emissions caused by the activities of the company Cales y Morteros del Grijalva, S.A. de C.V.**

81. The Submitter asserts that on 4 December 2002 the IHNE monitored noise emissions and detected levels exceeding the maximum permissible limits established in NOM-081.<sup>160</sup> The Submitter argues that Mexico is failing to enforce Article 155 of LGEEPA.
82. Mexico responds that the submission does not contain an assertion on the failure to effectively enforce noise emissions regulations and that, contrary to the assertions made, following the inspection visit of 14 November 2002, the IHNE instituted administrative proceeding no. UAJ/006/002, which imposed a fine equivalent to 600 days of the minimum wage then prevailing in the state of Chiapas and ordered the Company to

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<sup>157</sup> Response, *supra* note 11, Appendix 29: Profepa, administrative ruling no. 2388/2009 (1 October 2009).

<sup>158</sup> Response, *supra* note 11 at 24, and revised submission, *supra* note 9, Appendix 10: Profepa, compliance agreement no. PFPA/14.7/2C.28.2/0388/09 (28 October 2009).

<sup>159</sup> The judgement states that the administrative ruling was signed by a "Delegation Office Manager" according to the term employed by the head of Profepa, without clarifications on whether said official had sufficient authority to impose a fine on the Company. See Response, *supra* note 11, Appendix 31: Federal Court of Tax and Administrative Justice, Chiapas-Tabasco Regional Court, judgment in case no. 90/10-19-01-6 (30 August 2010).

<sup>160</sup> Revised submission, *supra* note 9 at 12, and Appendix 24: Institute of Natural History and Ecology, verification record, no file no. (29 October 2002) and document no. IHNE/DPA/464/2002 (4 December 2002).

- present an adequate alternative method for mitigating noise emissions within sixty days.<sup>161</sup>
83. Article 155 of LGEEPA provides for the prohibition of noise emissions when the limits fixed in the relevant Official Mexican Standard—in this case NOM-081—are exceeded. Furthermore, it authorizes the local authorities to implement measures to prevent the violation of such limits, as well as, where required, to enforce the corresponding fines and penalties. In effect, as Mexico points out in its response, under Article 7, section VII, of LGEEPA, responsibility for the prevention and control of noise pollution generated by fixed sources functioning as industrial establishments falls to the states.<sup>162</sup>
84. The Secretariat observes that the submission does, in effect, contain a concrete assertion regarding effective enforcement, stating that it appears that the IHNE has not conducted “the analysis, studies, investigations and enforcement required by the Act in this matter.”<sup>163</sup>
85. The Secretariat notes that, by means of administrative proceeding no. UAJ/006/002, the Party executed the enforcement actions stipulated under Article 155 of LGEEPA in relation to noise emissions contravening the maximum permissible limits established in NOM-081, and issued an administrative ruling on 13 February 2003. However, the Secretariat disposes of no information regarding whether the Company complied with said ruling and whether, in any case, there have been other enforcement actions over ten years after the noise levels were monitored in light of the response filed in November 2012. The Submitter’s assertions in relation to: the “origin, provenance, nature, degree, magnitude and frequency of emissions”<sup>164</sup>; the adoption by state authorities—as Mexico clarifies—of measures to prevent the contravention of the limits established in NOM-081; and the enforcement of the corresponding sanctions, are open central questions that should be addressed in a factual record.<sup>165</sup> Mexico’s response does not address this question and only addresses facts that do not answer the Submitter’s chief concern: the assertion that, although enforcement actions were executed in 2003, the Company is still generating, today—the Submitter asserts—, noise emissions above the maximum permissible limits established in NOM-081, without facing enforcement actions from the competent authority.
86. A factual record could present information on: the studies conducted to date regarding the Company’s noise emissions; the implementation of enforcement measures pursuant to Article 155 of LGEEPA; and the actions ordered by the state authority to enforce the Company’s compliance with the maximum permissible limits established in NOM-081.
87. Without making any determination on the effectiveness of the measures imposed by the IHNE in relation to the Company’s noise emissions, the Secretariat finds that the assertion respecting the enforcement of Article 155 of LGEEPA and NOM-081 merit development of a factual record.

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<sup>161</sup> Response, *supra* note 11 at 27, and Appendix 32: Institute of Natural History and Ecology, administrative ruling no. IHNE/DG/000108/2003 (13 February 2003).

<sup>162</sup> Response, *supra* note 11 at 26.

<sup>163</sup> Revised submission, *supra* note 9 at 12.

<sup>164</sup> Revised submission, *supra* note 9 at 12.

<sup>165</sup> *Ibid.*, at 11.

**iii) Considerations regarding the alleged absence of an environmental impact authorization on the part of the company Cales y Morteros del Grijalva, S.A. de C.V.**

88. The Submitter asserts that, under Article 28 of LGEEPA, Cales y Morteros del Grijalva, S.A. de C.V., must obtain an environmental impact authorization from Semarnat, as its activities are among those enumerated in section X, “Works and activities in wetlands, mangroves, lagoons, rivers, lakes and estuaries connecting with the sea [...]”; section XI, “Works and activities in protected natural areas under the Federation’s jurisdiction”; and section XIII, “Works and activities corresponding to matters under federal jurisdiction, which may cause grave and irreparable ecological imbalances, harm to public health or to ecosystems, or which exceed the limits and conditions established in legal provisions pertaining to the preservation of ecological balance and environmental protection.”<sup>166</sup> Mexico responds that Article 28, section XI, of LGEEPA is, indeed, the provision applicable to the Company and argues that it has initiated administrative proceedings to sanction and correct the Company’s infractions.<sup>167</sup>
89. The Party cites three proceedings. In the first (no. CH/SJ/VI-001/2003), initiated in 2004, the inspection report recorded the lack of an environmental impact authorization from Semarnat. In response, Profepa ordered the Company to suspend its activities and to present the appropriate authorization.<sup>168</sup> However, this action was declared null and void by an administrative ruling of 14 December 2004, as the Company had initiated its activities before LGEEPA took effect and thus retroactive enforcement was not justified.<sup>169</sup>
90. Mexico observes that Semarnat clarified in a communication dated 19 September 2012, that: “Although at a certain point in time, the Company did not require an environmental impact authorization, as the relevant environmental regulation came into force some years later, the Company must observe the provisions of said environmental regulations with respect to all expansions or modifications that it might wish to execute in relation to its works and/or activities.”<sup>170</sup> LGEEPA came into force on 1 March 1988<sup>171</sup> and, in light of the information provided by the Party, declaration of invalidity of the ruling initiating an administrative proceeding is only justified when the Company has not modified its production activities after such date. As the Secretariat has already observed in paragraphs 73 and 74 of this notification, a Profepa inspection report in 2002 established that the Company possessed four atmospheric emissions sources that were not specifically authorized in the operating license granted it by Semarnat in 1999.<sup>172</sup> This may indicate that between 1999 and 2002 the Company expanded its installations or made modifications to the pollution sources it operated.

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<sup>166</sup> Revised submission, *supra* note 9 at 6.

<sup>167</sup> Response, *supra* note 11 at 36-37.

<sup>168</sup> *Ibid.*, Appendix 36: Profepa, inspection report no. PFPA/026/149/2003 (28 January 2003); and Appendix 37: Profepa, activities localization agreement in file no. CH.SJ/VI-001/2003 (29 July 2004).

<sup>169</sup> Response, *supra* note 11, Appendix 38: Profepa, administrative ruling in file no. CH.SJ/VI-001/2003 (12 November 2004).

<sup>170</sup> Response, *supra* note 11, Appendix 34: Semarnat, document no. S.G.P.A./DGIRA/DG/7514 (19 September 2012).

<sup>171</sup> LGEEPA, provisional article, published in DOF, 28 January 1988.

<sup>172</sup> Response, *supra* note 11, Appendix 22: Profepa, inspection report no. PFPA/027/608/2002 (2 September 2002).

91. That said, Mexico argues that in 2009 a second administrative proceeding (no. PFPA/14.3/2C.27.5/0046/2009) was instituted on the grounds that the Company did not hold an environmental impact authorization. This proceeding—Mexico asserts—is still pending resolution.<sup>173</sup> On this matter, the Secretariat determined that although this proceeding is indeed pending it is unrelated to the enforcement issues raised in the submission.<sup>174</sup>
92. Finally, Mexico mentions a third proceeding (no. SEMAVIHN/UAJ/AAA/031/2010), which enabled a state authority to sanction the Company in 2011 for its failure to hold an environmental impact authorization, in contravention of the Environmental Act of the State of Chiapas.<sup>175</sup> In this regard, it is to be noted that said enforcement action does not constitute enforcement of Article 28, sections X, XI and XIII of LGEEPA, i.e., the environmental law cited in the submission.
93. The Secretariat finds that Mexico's response leaves a central open question in relation to the enforcement of Article 28, section XI of LGEEPA,<sup>176</sup> which stipulates the requirement to file an environmental impact assessment (*manifestación de impacto ambiental*—MIA) for works and activities consisting of the expansion or modification of installations—and pollution sources—operated by the Company. Verifications can be made by comparing the modifications to equipment and pollution sources made between 1999 and 2002 with the equipment and pollution sources enumerated in the Company's operating license. A factual record would present information related to possible expansion activities that may be reflected in the operating license and in the areas developed by the Company and the requirement to hold an environmental impact authorization. The Secretariat could gather public information available in proceedings terminated related to this question, permits and licenses in force and information from authorities in charge of administering the Sumidero Canyon, as well as any information related to Mexican authorities to enforce the environmental law in question.
94. For the reasons detailed above, and in light of Mexico's response, the Secretariat finds that the submission warrants the preparation of a factual record in relation to this assertion.

**iv) Analysis of the alleged failure to enforce Article 170 of LGEEPA**

95. The Submitter asserts that Mexico is failing to enforce LGEEPA Article 170, which establishes that Semarnat may order safety measures such as the temporary, partial or total shutdown of pollution sources when there is "an imminent risk of ecological imbalance or of damage to, or grave deterioration of, natural resources, or in cases of pollution with dangerous repercussions for ecosystems (or the components thereof) or for public health."<sup>177</sup>
96. Mexico responds that enforcement of such safety measures is discretionary and, therefore, it is incorrect to consider that it is failing to effectively enforce this provision pursuant to Article 45(1)(a) of the NAAEC.<sup>178</sup>

<sup>173</sup> Response, *supra* note 11 at 39-40.

<sup>174</sup> Paragraph 51 of this notification.

<sup>175</sup> Response, *supra* note 11 at 41, and Appendix 40: Ministry of the Environment and Natural History of the State of Chiapas (*Secretaría de Medio Ambiente e Historia Natural del estado de Chiapas*), file no. SEMAVIHN/UAJ/AAA/031/2010 (9 August 2011).

<sup>176</sup> Provision cited by the Submitter which, as Mexico clarifies, is the applicable provision.

<sup>177</sup> Revised submission, *supra* note 9 at 13.

<sup>178</sup> Response, *supra* note 11 at 44-45.

97. The Secretariat notes that effectiveness in enforcement of LGEEPA Article 170 has been subject to investigation by the CEC in *Metales y Derivados* and that a factual record was instructed for development and was ordered for publication with Mexico's favorable vote in both instances.<sup>179</sup> It is also worth noting that in *Metales y Derivados* Mexico did not remain silent with respect to enforcement of LGEEPA Article 170, but expressed its explicit consent to conduct an enforcement investigation, even despite record of enforcement actions conducted by Profepa<sup>180</sup> and agreed to a factual investigation related to effective enforcement of LGEEPA Article 170. In addition, the Secretariat considered that LGEEPA Article 170 "specifies the government's authority" and "empower[s] environmental authorities to take safety measures to respond to cases of imminent risk to the environment or contamination with dangerous repercussions to the environment or public health", even in light of the amendment of the provision in question in 1996.<sup>181</sup>
98. Article 45(1) sets out in what situations there has not been a failure to effectively enforce environmental law or in what situations Party officials have complied with Article 5(1). The Secretariat has been admonished on numerous occasions by the Council not to make any conclusions or determinations regarding the Parties' respective effective enforcement of environmental law, and to rather only provide objective factual information in factual records and determinations.<sup>182</sup> In practice, if the Secretariat were to proceed no further with a submission as a result of information presented by a Party purporting to satisfy Article 45(1)(a) or (b), the Secretariat could be charged with having drawn a conclusion about the Party's effective enforcement of environmental law. The Secretariat thus does not have a mandate to determine whether the Party "is failing to effectively enforce its environmental law", and whether or not information presented by a Party comports with Article 45(1)(a) and/or (b). Such a determination, if it were to be made at all, might be made for example by an arbitral panel constituted pursuant to Part Five of the Agreement<sup>183</sup> when considering whether there were a "persistent pattern of failure to effectively enforce" environmental law, but is beyond the Secretariat's purview in any case.<sup>184</sup>

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<sup>179</sup> Council Resolution 00-03 (16 May 2000), Instruction to develop the *Metales y Derivados* Factual Record and Council Resolution 02-01 (7 February 2002), Decision to make public the *Metales y Derivados* Factual Record.

<sup>180</sup> SEM-98-007 (*Metales y Derivados*) Response pursuant to Article 14(3) (1 June 1999), pp. 10-18.

<sup>181</sup> SEM-98-007 (*Metales y Derivados*) Notification pursuant to Article 15(1) (In *Metales y Derivados*, at 12. The submitters referred to LGEEPA Article 170 prior to amendment published in DOF on 13 December 1996.

<sup>182</sup> Regarding the Council's admonitions see for example: SEM-04-007 (*Quebec Automobiles*) Council Resolution 06-07 (14 June 2006) which reads: "FURTHER REAFFIRMING that a factual record thus contains neither an assessment of a Party's policy choices made in the exercise of its discretion in respect of investigatory, prosecutorial, regulatory or compliance matters, nor an assessment of a Party's decisions to allocate and prioritize its resources for the enforcement of environmental matters" and SEM-05-003 (*Environmental Pollution in Hermosillo II*) Council Resolution 12-04 (15 June 2012) which reads: "MINDFUL that the purpose of the final factual record is to present facts pertinent to assertions that a Party is failing to effectively enforce its environmental law".

<sup>183</sup> NAAEC Article 22(1), *supra* note 1, reads:

Any Party may request in writing consultations with any other Party regarding whether there has been a persistent pattern of failure by that other Party to effectively enforce its environmental law.

Whereas Article 33 NAAEC, *supra* note 1, reads:

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law,...

<sup>184</sup> Cf. NAAEC, *supra* note 1, Article 33: "...The disputing Parties shall promptly notify the Secretariat and the Council of any agreed resolution of the dispute."

99. The Secretariat has noted that factual records are an adequate means for presenting information to allow the public to reach its own conclusions as to whether a Party has exercised its discretion in a reasonable manner and thus has, or has not, failed to effectively enforce its environmental law, but has refrained from applying Article 45(1) to make such a determination.<sup>185</sup> In the current submission, the central question brought before the Secretariat relates to impact to public health in the nearby community allegedly caused by the operations of a company. The Secretariat proceeds to explain why a factual record would provide information on how Mexico enforces LGEEPA Article 170 and the effectiveness of such enforcement in preventing the alleged risks to the environment and public health derived from Cales y Morteros del Grijalva, S.A. de C.V. Mexico maintains that it implemented four proceedings through which it imposed safety measures pursuant to LGEEPA Article 170 that, when weighted individually and as a whole, leaves open central questions, namely:<sup>186</sup>

- i) Upon considering proceeding CH.SJ/VI-004/02 respecting air pollution, the Secretariat finds that there is not enough information in the response with respect to the effective enforcement of LGEEPA Article 170. With the exception of Profepa's order of a temporary partial shutdown in 2002, the response does not throw light on further actions to implement safety measures or any other action after the Company operated its facilities without an operating license over a period of seven years and whether today, consideration of additional measures are at reach given the Company's record.<sup>187</sup>
- ii) Administrative proceeding CH.SJ/VI-001/2003 respecting environmental impact, by means of which Profepa ordered the temporary shutdown of the Company's activities as a safety measure.<sup>188</sup> In this regard, the Secretariat observes that although the activities localization agreement deriving from this proceeding mentions Article 170, section I, in its introductory paragraph, it in fact orders the implementation of "technical measures" consisting of the suspension of the Company's activities and the

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<sup>185</sup> In SEM-09-005 (*Skeena River Fishery*) Notification pursuant to Article 15(1) (12 August 2011) p. 14, <<http://goo.gl/pEkiu>> (viewed on 20 June 2013), the Secretariat did not opine on arguments raised by the Party that it had made "good-faith" enforcement efforts pursuant to Article 45(1), rather focused only on the probative value of information provided. Likewise, in SEM-99-002 (*Migratory Birds*), Notification pursuant to Article 15(1) (15 December 2000), p. 26, <<http://goo.gl/dWkuj>> (viewed on 19 August 2013), the Secretariat stated "If the Secretariat were obliged to accept at face value every assertion by a Party that it is not failing to effectively enforce its environmental laws because it qualifies for one of the Article 45(1) defenses, a Party could unilaterally force the termination of every single citizen submission simply by asserting such a defense. The effect would be the nullification of the opportunities nominally afforded by Articles 14 and 15 for citizen participation in the environmental enforcement process. Such a result would seriously undermine the utility of the submission process in promoting the Agreement's other goals, including fostering the protection and improvement of the environment in the territories of the Parties and enhancing compliance with and enforcement of environmental laws." See also SEM-97-006 (*Oldman River II*), Notification pursuant to Article 15(1) (19 July 1999), p. 22, <<http://goo.gl/b5D4k>> (viewed on 19 August 2013); and, SEM-05-003 (*Environmental Pollution in Hermosillo II*), Notification pursuant to Article 15(1) (4 April 2007), p. 24, <<http://goo.gl/T3RIW>> (viewed on 19 August 2013).

<sup>186</sup> *Ibid.*, at 46-50.

<sup>187</sup> Response, *supra* note 11, Appendix 22: Profepa, inspection report no. PFP/027/608/2002 (2 September 2002); and Appendix 23: Profepa, activities localization agreement in file number CH.SJ/VI-004/02 (6 December 2002).

<sup>188</sup> Response, *supra* note 11, Appendix 37: Profepa, activities localization agreement in file no. CH.SJ/VI-001/2003 (29 July 2004).

requirement to produce the missing authorizations—as the law requires—without, however, specifying the legal grounds for said measures. The Secretariat is unable to conclude that these constitute safety measures rather than emergency corrective measures, particularly since the measures imposed do not correspond to the ones prescribed under Article 170.

- iii) Proceeding no. PFPA/14.3/2C.27.2/0031/2009 respecting forest land use. The Party has designated information on this proceeding as privileged.<sup>189</sup> [START OF CONFIDENTIAL INFORMATION]

[REDACTED]

[END OF CONFIDENTIAL INFORMATION] In light of the information provided by Mexico in the confidential version of its response, the Secretariat observes that none of the measures mentioned in relation to this proceeding is based on Article 170 of LGEEPA.

- iv) Proceeding PFPA/14.3/2C.27.5/0046/2009 respecting environmental impact. The Party has designated information on this proceeding as privileged.<sup>190</sup> [START OF CONFIDENTIAL INFORMATION]

[REDACTED]

[END OF CONFIDENTIAL INFORMATION] In light of the information provided by Mexico in the confidential version of its response, the Secretariat observes that one of the measures which it cites resulted in enforcement of LGEEPA Article 170.

100. Mexico has at its disposal enforcement options under LGEEPA Article 170. A factual record would shed light on how safety measures are implemented to enforce other provisions considered for investigation in this notification. Without expressing an opinion on the effectiveness of the measures implemented by Mexico, the Secretariat finds that the effective enforcement of LGEEPA Article 170 warrants development of a factual record.

- v) **Effective enforcement of Articles 50 and 64 of LGEEPA respecting the activities permitted in the Park and the setting of limits or acceptable rates of change or carrying capacities**

101. The Submitter asserts that Mexico is not effectively enforcing LGEEPA Articles 50 and 64 with respect to activities permitted in the Park, the issuance of permits, licenses,

<sup>189</sup> Response, *supra* note 11 at 48-50.

<sup>190</sup> *Ibid.*, at 50-51.

concessions or authorizations and the setting of limits or acceptable rates of change or carrying capacities.

102. The Submitter asserts that the activities of the quarry do not correspond to any of the activities permitted in national parks under Article 50, paragraph 2, of LGEEPA, as these must be “related to the protection of its natural resources, the increase in its flora and fauna, and in general, the preservation of its ecosystems and the constituents thereof, as well as research, recreation, ecological tourism and education.”<sup>191</sup> Mexico responds that Article 50 of LGEEPA is not operative, because “it only serves to establish a restrictive set of activities permissible in protected natural areas under federal jurisdiction, in the category of National Parks.”<sup>192</sup>

103. In contrast, the Party indicates that the preliminary supporting study on the modification of the Park’s charter shall provide for “the establishment of modalities and limits in respect of the use and enjoyment of natural resources in accordance with the provisions of Article 50 of LGEEPA”,<sup>193</sup> and, evidently, such provisions may apply to the management and control of activities in the ANP via instruments such as the preliminary supporting study and the Park’s management program. As such, the restriction established in Article 50 of LGEEPA is likely to be put in place through management mechanisms for the effective protection of the Park.

104. A verbatim reading of Article 50 of LGEEPA leaves no doubt that the category of national park, described in paragraph 1,<sup>194</sup> only permits the activities provided for in paragraph 2, which shall be related to:

- the protection of its natural resources;
- the increase of its flora and fauna;
- the preservation of ecosystems and the components thereof; and
- scientific research, recreation, and ecological tourism and education.<sup>195</sup>

105. Furthermore, publicly available information on the preliminary supporting study regarding the amendment of the relevant ANP decree establishes that:

The demarcation of the protected natural area is defined, fundamentally, in relation to activities centering on the protection of its natural resources, the increase of its flora and fauna, and, in general, the preservation of ecosystems, scientific research, recreation, tourism and ecological education based on the provisions of Article 50 of LGEEPA.<sup>196</sup>

106. Whereas, national parks are considered protected natural areas by virtue of LGEEPA Article 46, section III, RANP Article 52 establishes that in said parks subzones for the sustainable exploitation of natural resources may be established on an “exceptional” basis, provided that this is contemplated in the corresponding ANP’s charter. Mexico’s

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<sup>191</sup> *Ibid.*, at 4.

<sup>192</sup> Response, *supra* note 11 at 33.

<sup>193</sup> *Ibid.*, at 55.

<sup>194</sup> LGEEPA, Article 50, paragraph 1: “National parks shall be constituted, as biogeographical representations, at the national level, of one or more ecosystems distinguished by: their scenic beauty; their scientific, educational, recreational or historical value; the existence of flora and fauna; their potential for tourism development; or for other analogous reasons of general interest.”

<sup>195</sup> LGEEPA, Article 50, paragraph 2.

<sup>196</sup> Conanp, “Estudio Previo Justificativo para modificar el decreto del área natural protegida Parque Nacional Cañón del Sumidero,” made publicly available via a notice in the DOF of 27 November 2012 at 48.

- response does not address the issue of how the use of limestone resources in Sumidero Canyon National Park is in compliance with LGEEPA Article 50, second paragraph .
107. The Submitter asserts that Cales y Morteros del Grijalva, S.A. de C.V., has not demonstrated the technical and financial capacity to conduct natural resources exploration, exploitation and use activities in the ANP in question without causing environmental deterioration, as required under Article 64, paragraph 2, of LGEEPA. Consequently, the Submitter adds, Semarnat should cancel or revoke the authorizations it has granted the Company.<sup>197</sup> Mexico's response, which only addresses the enforcement of first paragraph of Article 64, does not directly address this assertion.<sup>198</sup>
108. Mexico provides information noting that the Company has never filed an MIA in relation to its activities.<sup>199</sup> As a consequence, the Secretariat is unable to consult technical and socioeconomic studies to analyze whether or not the Company has indeed demonstrated its capacity to avoid deteriorating the Park's environment by successfully obtaining an environmental impact authorization. Moreover, Article 64 of LGEEPA encompasses all "permits, licenses, concessions or authorizations in general" for resource use activities taking place in the Park and not just the MIA. This point is not addressed in Mexico's response.
109. It is evident from the analysis of the appendices to both the response and the submission that the Company's activities have adverse effects on the ANP and the neighboring population. For example, administrative proceeding CH-SJ/VI-004/02 resulted in an activities localization agreement, dated 6 December 2002, which determined that fugitive dust emissions from the quarry provoke "the generation of great quantities of dust affecting the area's air quality" and "a risk of harm to the health of the installations' neighboring population."<sup>200</sup> The inspection report of 6 May 2009 indicates that the Company is not capturing total suspended particulates, and is instead "permitting the dispersion of particulates around the plant, the accumulation of which (as dust) may be observed on vegetation in the vicinity of the Company."<sup>201</sup> Moreover, according to the information in the submission and the response, noise emissions exceed the limits established in NOM-081.<sup>202</sup> Furthermore, according to information from Civil Protection, the Company's activities are a risk factor and potential source of damage to dwellings in the local community.<sup>203</sup> Said activities also allegedly cause damage to the eastern wall of Sumidero Canyon National Park.<sup>204</sup> It emerges from examination of the response that Mexico is leaving these concerns of the Submitter unresolved. Consequently, the Secretariat recommends the preparation of a factual record in relation to the effective enforcement of Articles 50 and 64 of LGEEPA.

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<sup>197</sup> Revised submission, *supra* note 9 at 4.

<sup>198</sup> Response, *supra* note 11 at 35.

<sup>199</sup> *Ibid.*, at 36.

<sup>200</sup> *Ibid.*, Appendix 23: Profepa, activities localization agreement in file no. CH.SJ/VI-004/02 (6 December 2002).

<sup>201</sup> Response, *supra* note 11, Appendix 28: Profepa, inspection report no. PFPA/027/0061/2009 (6 May 2009).

<sup>202</sup> Revised submission, *supra* note 9, Appendix 25: IHNE, document no. IHNE/DPA//464/2002 (4 December 2002), and Response, *supra* note 11, Appendix 28: IHNE/DG/000108/2003 (13 February 2003).

<sup>203</sup> Revised submission, *supra* note 9, Appendix 23: Ministry of Safety and Citizen Protection (*Secretaría de Seguridad y Protección Ciudadana*), "Evaluación de riesgos" in document no. SSyPC/SSPC/DCMCS/ER0019/09 (23 April 2009).

<sup>204</sup> Revised submission, *supra* note 9 at 12-13.

**vi) Effective enforcement of Articles 80 and 81, section II, paragraphs b) and c), 88, section XIII, and 94 of the RANP respecting the establishment of restrictions on resource use activities and authorizations for mining activities in the ANP in question**

110. The Submitter asserts that Semarnat has not authorized the rates and scope of resource uses and enjoyment, nor has it established the limits to acceptable change or carrying capacities, corresponding to the resource use and enjoyment activities carried out in Sumidero Canyon National Park, pursuant to enforcement of RANP Article 80.<sup>205</sup>
111. Mexico responds that Article 80 of the RANP does not require that Semarnat establish rates, limits and carrying capacities in a specific legal instrument,<sup>206</sup> rather that in every specific case it is a question of technical elements “which must be developed for a given area and ecosystem, based on the analysis of its biophysical and socioeconomic conditions.”<sup>207</sup>
112. Article 80 establishes that, respecting “uses and enjoyment of resources,” Semarnat “shall authorize the respective rates of use and establish the scope thereof, as well as the acceptable limits to change or the corresponding carrying capacities.”<sup>208</sup> The Party states that neither the acceptable limits to change nor the carrying capacity have as yet been determined for the ecosystem of the ANP in question.<sup>209</sup> Mexico adds, however, that the elaboration of a management program—an instrument for Park management provided for in Article 65 of LGEEPA—will cover use rates, scope of activities and acceptable limits to change or carrying capacities.<sup>210</sup>
113. According to Mexico, neither the limits to acceptable change nor the Park’s carrying capacity have been defined in the management program —nor in any other instrument—, all central issues raised by the Submitter that may be addressed in a factual record.
114. The Submitter asserts, furthermore, that the Company’s activities are “disturbing the ecological balance of the National Park’s flora, fauna and geology,” which—it affirms—contravenes Article 81, section II, paragraphs b) and c), of the RANP.<sup>211</sup> Moreover, the Submitter asserts, the Company has not obtained the permits stipulated in Articles 88, section XIII, and 94 of the RANP. Mexico argues that these provisions are not applicable to the extraction of lime, as said activity is not considered to be mining activity in the terms of Articles 2, 4 and 5 of the Mining Act.<sup>212</sup>
115. Mexico’s argument partially responds to some of the Submitter’s assertions. Firstly, it is clear that the Company’s activities do not fit the definition of the activities identified in Articles 2, 4 and 5 of the Mining Act, particularly the description given in Article 5.<sup>213</sup>

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<sup>205</sup> *Ibid.*, at 4-5.

<sup>206</sup> Response, *supra* note 11 at 34.

<sup>207</sup> *Idem.*

<sup>208</sup> RANP, Article 80, paragraph 1.

<sup>209</sup> Response, *supra* note 11 at 34.

<sup>210</sup> *Idem.*

<sup>211</sup> Revised submission, *supra* note 9 at 5.

<sup>212</sup> Response, *supra* note 11 at 32-33.

<sup>213</sup> Mining Act, Article 5, sections IV and V:

Shall be exempted from the enforcement of the present Law:

[...]

116. In light of Mexico's response regarding authorizations for "mining exploration and operations," as provided for under Articles 88, section XIII, and 94 of the RANP, and which concern enforcement of the Mining Act, the Secretariat finds that said law does not apply to the Company's activities; consequently, the assertions in relation to its enforcement do not warrant further analysis.
117. However, with respect to RANP Articles 80 and 81, section II, paragraphs b) and c) and based on the arguments advanced by the Party, a pertinent distinction is necessary between "mining" activities and resource "use" activities, with the latter term defined by the RANP as the "utilization of natural resources in an extractive or non-extractive fashion."<sup>214</sup> Based on the RANP's definition, obligations related to the Company's use activities, as well as the verification thereof, are admissible subjects for analysis provided such matters had been raised in the submission.
118. Such is the case with Article 81 of the RANP—including section II, paragraphs b) and c)—which permits "use" activities provided they i) generate benefits for the local inhabitants, and ii) are consistent with the concepts of sustainable development, the relevant ANP declaration, the ANP management program, ecological land use programs, the applicable NOMs and other legal instruments. Paragraph h) of section II of the Article in question concerns the restrictions applicable to mining activities. It therefore does not apply to the Company's operations, in the terms of the Mining Act.<sup>215</sup>
119. The Secretariat finds, for the purposes of this determination, that "use" activities, such as the ones conducted by the Company, are subject to the provisions of Article 50 of LGEEPA and Articles 80 and 81, paragraph 1, of the RANP. A factual record would provide information on how the carrying capacity is defined with respect to the ecosystem of the ANP in question in light of the Company established therein. It would also shed light on the extent to which the Company's productive activities generate benefits for the local inhabitants and whether these are compatible with the ANP declaration, the ANP management program (if any) land use programs, NOMs and other legal instruments at issue in the submission.
120. As Mexico did not provide further information concerning the effective enforcement of Articles 80 and 81, section II, paragraphs b) and c) of the RANP, the Secretariat finds that this matter warrants development of a factual record regarding the assertions pertaining thereto.

**vii) Considerations regarding the alleged failure to issue a management program for Sumidero Canyon National Park**

121. The Submitter asserts that Semarnat has not published a management program for the Park, as required under Article 65 of LGEEPA.<sup>216</sup> The Party responds that LGEEPA

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IV. Rocks or products made from breaking rocks into smaller fragments which may only be used for the manufacture of construction materials or are intended for that effect.

V. Products derived from breaking rocks into smaller fragments, when the exploitation thereof is conducted by means of open pit operations, and  
[...].

<sup>214</sup> RANP, Article 3, section II.

<sup>215</sup> RANP, Article 81, section II, paragraph h): "Respecting the works and operations of mineral resources exploration and exploitation within protected natural areas, and pursuant to the provisions of Article 20, paragraph 2 of the Mining Act, such activities shall require the holding of an authorization issued by the National Commission for Protected Natural Areas (*Comisión Nacional de Áreas Naturales Protegidas*—CNANP), pursuant to Article 94 of this Regulation."

<sup>216</sup> Revised submission, *supra* note 9 at 3.

- entered into effect on 1 March 1988, years after the decree ordering the creation of the Sumidero Canyon National Park on 8 December 1980. Mexico argues that “the Party is not legally bound to issue a [Park] Management Program within a given period of time,” as otherwise enforcement of the deadline stipulated in the environmental law in question would take on a retroactive character.<sup>217</sup> Mexico also indicates that the relevant management program is presently under development.<sup>218</sup>
122. Article 65 establishes that Semarnat shall formulate an ANP management program within one year of the date the decree creating said ANP is published in DOF. Article 66 stipulates that the content of said program shall include, *inter alia*: a description of the site in question;<sup>219</sup> the sustainable natural resources use activities to be conducted in the short, medium and long terms;<sup>220</sup> the organization of the ANP’s administration and the participation of interest groups<sup>221</sup>; and reference to the applicable NOMs.<sup>222</sup>
123. Mexico has already informed the CEC, in response to another submission, that the one-year deadline, incorporated into the law on 13 December 1996,<sup>223</sup> is not applicable to an ANP created prior to the date Article 65 of LGEEPA took effect. Consequently, the statutory requirement to formulate the management program within a year of the date of the relevant decree’s publication in DOF does not apply.<sup>224</sup> In its determination pursuant to Article 14(1)(2),<sup>225</sup> the Secretariat informed the Party that it had identified ANP management programs created prior to the date LGEEPA came into force.<sup>226</sup>
124. In its response to the submission, Mexico deems that the enforcement of the one-year deadline stipulated in Article 65 of LGEEPA would give retroactive force to the law, when said provision only applies to the ANPs decreed since it came into force.<sup>227</sup> On this matter, the Secretariat does not consider it pertinent to express its views on the scope and meaning of the retroactive enforcement of a law, and deems that it must act with caution in addressing said concept.<sup>228</sup> In any case, the one-year deadline was

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<sup>217</sup> Response, *supra* note 11 at 52-54.

<sup>218</sup> *Ibid.*, at 54.

<sup>219</sup> LGEEPA, Article 66, section I.

<sup>220</sup> LGEEPA, Article 66, section II.

<sup>221</sup> LGEEPA, Article 66, section III.

<sup>222</sup> LGEEPA, Article 66, section V.

<sup>223</sup> DOF, 13 December 1996.

<sup>224</sup> SEM-09-003 (*Los Remedios National Park II*) Response pursuant to Article 14(3) (21 December 2010) at 22-34.

<sup>225</sup> SEM-11-002 (*Sumidero Canyon II*) Determination pursuant to Article 14(1)(2) (10 May 2012), §33.

<sup>226</sup> For example, the Sian Ka’an biosphere reserve (RB), created on 20 January 1986, has a management program, <<http://goo.gl/6LNhB>>; as does la Sierra de Manatlán RB, created on 23 March 1987. Said management program was published via a notice in DOF, 17 November 2000, <<http://goo.gl/qgmAz>>.

<sup>227</sup> Response, *supra* note 11 at 53.

<sup>228</sup> The Secretariat occasionally turns to sources of international law for guidance when national law does not provide a solution to a legal question it is faced with. On retroactivity, see for example, the decision in the case *Técnicas Medioambientales Tecmed S.A. v. The United Mexican States*, CIADI case no. ARB (AF)/00/2, 29 May 2003, §55: [TRANSLATION] “The Arbitral Tribunal does not deem it appropriate to establish the meaning, in abstract or general terms, of ‘retroactive application’ of a legal provision, an expression that does not appear to meet generally accepted criteria.” Consult as well the ruling on jurisdiction in *Tradex Hellas S.A. v. Republic of Albania*, 24 December 1996, CIADI case no. Arb/94/2, p. 186: “there does not seem to be a common terminology as to what is ‘retroactive’ application, and also the solutions found in substantive and procedural national and international law in this regard seem to make it very difficult, if at all possible, to agree on a common denominator as to where ‘retroactive’ application is permissible and where not.”

incorporated into Article 65 of LGEEPA in 1996 and took effect at that time.<sup>229</sup> It is also evident that although Mexico is in the process of modifying the decree which created the Park in order to lay the “technical and legal” foundations for the release of a management program,<sup>230</sup> 25 years after Article 65 of LGEEPA took effect, no such program exists for Sumidero Canyon National Park. Mexico asserts that it is in the final stages of elaborating a preliminary supporting study (*estudio previo justificativo*—EPJ)—which is now publicly available—to furnish the legal grounding for the amended decree under consideration, as required under Article 64 of the RANP. The EPJ contains information relevant to the elaboration of a management program pursuant to Article 66 of LGEEPA; moreover, such a management program is mentioned in various parts of the document.<sup>231</sup> However, as long as said management plan remains unpublished, the Submitter’s assertion regarding the effective enforcement of LGEEPA Article 65 in relation to Sumidero Canyon National Park remains an open central question that warrants inclusion in a factual record.

125. Without addressing issues of retroactivity related to the one-year deadline for development of a management program under LGEEPA Article 65, a factual record would provide information to the public on the status of development of such program for the Sumidero Canyon National Park and its relation with the prevailing situation described by the Submitters. The information could be useful for individuals, communities, and government entities with interest in the issues presented in the Submission.

## V. NOTIFICATION

126. The Secretariat has examined submission SEM-11-002 (*Sumidero Canyon II*), filed by el Comité Pro-Mejoras de la Ribera Cahuaré, in light of the United Mexican States’ response.

127. Upon analysis, the Secretariat finds that processing of the submission should be partially terminated with respect to the effective enforcement of RPCCA Article 17.

128. On the other hand, the Secretariat finds that the response leaves central open questions regarding certain assertions in submission SEM-11-002. Thus, pursuant to the provisions of Article 15(1) of the NAAEC, it recommends the preparation of a factual record with respect to the alleged failure to effectively enforce:

- (i) Articles 111 *bis* of LGEEPA with respect to air emissions permitting;<sup>232</sup>
- (ii) Article 155 of LGEEPA and NOM-081 in relation to the noise emissions caused by the activities of the company Cales y Morteros del Grijalva, S.A. de C.V.;<sup>233</sup>
- (iii) Article 28, section XI, of LGEEPA in relation to the requirement to file an MIA (environmental impact assessment) and obtain an environmental impact authorization for the alleged modifications to, and expansions of, sources of environmental pollution between 1999 and 2002;<sup>234</sup>

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<sup>229</sup> DOF, 13 December 1996.

<sup>230</sup> Response, *supra* note 11 at 54.

<sup>231</sup> For example, paragraph 4.2 Type or category of management.

<sup>232</sup> Paragraphs 71 to 80 of this notification.

<sup>233</sup> Paragraphs 81 to 87 of this notification.

<sup>234</sup> Paragraphs 88 to 94 of this notification.

- (iv) LGEEPA Article 170 respecting the issuance of emergency measures, specifically those related to prevent damage to natural resources, air pollution and public health;<sup>235</sup>
- (v) Articles 50 and 64 of LGEEPA in relation to the activities permitted in the Park and the setting of limits or acceptable rates of change or carrying capacities;<sup>236</sup>
- (vi) Articles 80 and 81, section II, paragraphs b) and c) of RANP, in relation to establishing restrictions on the Company's natural resources use and enjoyment activities;<sup>237</sup> and
- (vii) Article 65 of LGEEPA respecting the issuance of a management program for Sumidero Canyon National Park.<sup>238</sup>

129. In accordance with NAAEC objectives, pursuant to Article 15(1) of the Agreement, and for the aforementioned reasons set out herein, the Secretariat hereby informs the Council of its recommendation that a factual record be developed for this submission.<sup>239</sup> Following Council Resolution 01-06<sup>240</sup> and Council Resolution 12-06,<sup>241</sup> the Secretariat will make its best effort to produce the factual record in as timely a manner as is practicable, should the Council decide to instruct it to prepare a factual record. In accordance with Article 15(2) and Guidelines 19.4, the Council has 60 working days, that is until 25 February, 2014, to vote on whether to instruct the Secretariat to prepare a factual record.

130. In accordance with NAAEC Article 39(2),<sup>242</sup> the Secretariat sends the complete version of this determination containing confidential information only to the government of Mexico.

Submitted respectfully for Council's consideration this 15 November 2013.

### **Secretariat of the Commission for Environmental Cooperation**

*(signature in original)*

By: Irasema Coronado, Ph.D.  
Executive Director

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<sup>235</sup> Paragraphs 95 to 100 of this notification.

<sup>236</sup> Paragraphs 101 to 109 of this notification.

<sup>237</sup> Paragraphs 110 to 120 of this notification.

<sup>238</sup> Paragraphs 121 to 125 of this notification.

<sup>239</sup> The Secretariat clarifies to interested persons and to the Submitter that neither this notification, nor any factual record that may be published, constitutes a finding on the effective enforcement of environmental law of Mexico.

<sup>240</sup> Council Resolution 01-06 Response to the Joint Public Advisory Committee (JPAC) Report on Lessons Learned regarding the Articles 14 and 15 Process (29 June 2001).

<sup>241</sup> Council Resolution 12-06 Adoption of revised Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (11 July 2012).

<sup>242</sup> NAAEC Article 39(2), *supra* note 1: "If a Party provides confidential or proprietary information to another Party, the Council, the Secretariat or the Joint Public Advisory Committee, the recipient shall treat the information on the same basis as the Party providing the information."