

**Secretariat of the Commission for Environmental Cooperation**

**Determination of the Secretariat in accordance with Article 14(1)(2)  
of the North American Agreement on Environmental Cooperation**

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Note from the Secretariat:  
In accordance with NAAEC Article 11(8), some  
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**Party:**

United Mexican States

**Original submission:**

24 August 2015

**Revised submission:**

7 December 2015

**Date of the determination:**

1 March 2016

**Submission no.:**

SEM-15-002 (*Management of Analog TV Waste*)

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**I. INTRODUCTION**

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

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<sup>1</sup> The Commission for Environmental Cooperation (CEC) was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC) signed by Canada, Mexico, and the United States (the “Parties”) and [NAAEC]. The constituent bodies of the CEC are its Council, Secretariat and the Joint Public Advisory Committee (JPAC).

considers submissions to determine whether they meet the requirements in NAAEC Article 14(1). When 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 Party and in accordance with the NAAEC, the Secretariat determines whether the matter warrants the preparation of a factual record. If it so determines, it then notifies the CEC Council and explains the reasoning for its recommendation in adherence with Article 15(1); should the Secretariat determine instead that the preparation of a factual record is not warranted, it shall proceed no further with the submission.<sup>2</sup>

2. On 24 August 2015, various individuals and non-governmental organizations (the “Submitters”) filed a submission pursuant to NAAEC Article 14 with the CEC Secretariat.<sup>3</sup> The Submitters assert that the authorities in Mexico are not implementing a management plan in compliance with the Mexico’s environmental law in relation to the analog television sets discarded due to the transition to digital television transmission (DTT).
3. On 22 September 2015, the Secretariat determined that submission SEM-15-002 (*Management of Analog TV Waste*) did not satisfy the admissibility criteria specified in Article 14(1) of the Agreement, as the Secretariat found that it failed to cite laws qualifying as “environmental laws” Consequently, in accordance with Guideline 6.1 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”),<sup>4</sup> it notified the Submitters that they had 60 working days to file a submission in compliance with all Article 14(1) requirements.<sup>5</sup>
4. On 4 December 2015, the Submitters filed a revised submission, in which they clarified their assertions and presented additional information addressing the questions raised by the Secretariat.<sup>6</sup>
5. The Submitters assert that Mexico is failing to effectively enforce various provisions of the Stockholm Convention on Persistent Organic Pollutants (“Stockholm Convention”), the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*), the General Law for the Prevention and Comprehensive Management of Waste (*Ley General para la Prevención y Gestión Integral de los Residuos—LGPGIR*) and the regulations to that law (“regulations to the LGPGIR”), as well as Mexican Official Standards (*Normas Oficiales Mexicanas—NOM*) on hazardous waste and waste requiring special management and other provisions in federal laws.

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

<sup>3</sup> The Submitters requested in their submission the non-disclosure of any information that could identify them. Pursuant to the provisions of NAAEC Article 11(8), the Secretariat must safeguard the confidentiality of the personal identification data of Submitters when the latter so request.

<sup>4</sup> *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, <<http://www.cec.org/guidelines>> (viewed on 2 November 2015) [the “Guidelines”].

<sup>5</sup> SEM-15-002 (*Management of Analog TV Waste*), Article 14(1) Determination, 22 September 2015 [Article 14(1) Determination].

<sup>6</sup> SEM-15-002 (*Management of Analog TV Waste*), submission pursuant to NAAEC Article 14(1), 4 December 2015 [“Revised submission”].

6. The Secretariat has determined that the revised submission satisfies all of the admissibility requirements specified in Article 14(1) and, in accordance with the criteria set out in Article 14(2), warrants requesting a response from the Government of Mexico, for the reasons detailed below.

## II. ANALYSIS

7. NAAEC Article 14 authorizes the Secretariat to consider submissions from any person or non-governmental organization asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. As the Secretariat has stated in previous Article 14(1) determinations, Article 14 is not intended to be an “insurmountable screening device.”<sup>7</sup> The Secretariat examined the present submission with this perspective in mind.
8. The Submitters note that Mexico’s adoption of the digital television transmission (DTT) technological standard in 2004<sup>8</sup> led the federal government in September 2010 to implement the the transition process. According the submission, the DTT transition was scheduled to conclude on December 2021<sup>9</sup> and that since September 2010 the government had recommended implementing the use of DTT receptors.<sup>10</sup> On 18 July 2013, the first “analog blackout” took place in Tijuana, Baja California, where DTT receptors were distributed among the population.<sup>11</sup> After changes in the DTT program, the government opted to re-schedule the conclusion of the analog signal to an earlier date, 31 December 2015, and to distribute for free 10 million digital TV sets among the population.<sup>12</sup> The Submitters maintain that as a result, between 20.7 million and 34.4 million analog television sets will be discarded (the federal government’s estimate is approximately 40 million sets).<sup>13</sup> The Submitters assert that the actions implemented to date are insufficient to ensure the collection, warehousing and proper disposal of the resulting waste in accordance with applicable law.<sup>14</sup>
9. The Submitters assert that although on 24 June 2015 the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat) and the Ministry of Communications and Transportation (*Secretaría de Comunicaciones y Transportes*—SCT) publicly released the National Program for the Comprehensive Management of Television Sets Discarded due to the Transition to Digital Television Transmission (*Programa Nacional para la Gestión Integral de los Televisores Desechados por la Transición a la Televisión Digital Terrestre*, i.e. the “TV Waste Management Program,”) there has been a “failure to appropriate sufficient public

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<sup>7</sup> See: SEM-97-005 (*Biodiversity*), Article 14(1) Determination, 26 May 1998; and SEM-98-003 (*Great Lakes*), Article 14(1)(2) Determination, 8 September 1999.

<sup>8</sup> Agreement on the adoption of the digital television transmission technological standard and the establishing of the policy on the transition to digital television transmission in Mexico, published in the Official Gazette of the Federation (*Diario Oficial de la Federación – DOF*), 2 July 2004.

<sup>9</sup> *Ibid.*, item 8.

<sup>10</sup> See: Decree establishing the actions that the Federal Public Administration must carry out to make the transition to Digital Television Transmission a reality, DOF, 2 September 2010, Article 1, Section V.

<sup>11</sup> Revised submission, fact 10.

<sup>12</sup> Revised submission, facts 7 and 14.

<sup>13</sup> Revised submission, section X.

<sup>14</sup> Revised submission, facts 29 and 40.

resources for the management of analog television sets.” The Submitters also point out the “confusion regarding the responsibilities of different agencies, contradictory and inconsistent policies in different ministries [and] the overstepping of authority.” They further assert the “lack of compliance indicators and policy evaluation tools” and allege a “lack of capacity to conduct assessments, technical feasibility issues and the lack of recycling and waste disposal infrastructure for analog television sets.”<sup>15</sup>

10. Due to the foregoing, the Submitters assert that Mexico is failing to effectively enforce the provisions contained in Articles 1, 4 and 25 of the Political Constitution of the United Mexican States (the “Constitution”); Articles 7(1) and 7(3) of the Stockholm Convention; Articles 5, 10, 12, 13, 24, 25, 31, 52 and 54 of the Federal Environmental Responsibility Act (*Ley Federal de Responsabilidad Ambiental*—LFRA); LGEEPA Articles 11 sections I, II and III, 12 sections I, II, III, IV and VII, 15 sections IV, IX and XII; LGPGIR Articles 1 sections I, II, III, IV, V, VI, VII, VIII and X, 2 sections I, II, III, IV, V, VI, VII, VIII and X, 7 section XXIV, 9 sections II and IV, 19 section VIII, 20, 27 section I, 28 sections I and III, 30 sections II, III and IV, 31 sections VII and X, 32, 34, 64, 68, 71, 72, 104 sections I, II and III and 106 section XXIV; Article 16 sections I (paragraph b), II (paragraph b) and III (paragraph a), 17, 20 and 22 of the Regulation to the LGPGIR (RLGPGIR); Articles 1, 2, 3, 9, 21, 27, 41 of the Federal Planning Act (*Ley General de Planeación*); Article 3 of the Federal Social Development Act (*Ley General de Desarrollo Social*); Articles 1, 96 section IV, 111 section III, 112 sections I and II, 110 and 119 section I of the General Health Law (*Ley General de Salud*) and Mexican Official Standards NOM-052-SEMARNAT-2005 (NOM-052)<sup>16</sup> and NOM-161-SEMARNAT-2011 (NOM-161).<sup>17</sup>

#### **A Paragraph one of NAAEC Article 14(1)**

11. The revised submission incorporates new Submitters and includes a postal address and adequate contact information.<sup>18</sup> A cursory review of the submission, the Secretariat concludes that the Submitters are not part of the government or acting under its direction.
  - 1) **Environmental law in question**
12. On 22 September 2015, the Secretariat determined that Articles 1 (paragraphs four and five) and 25 of the Constitution —also cited in the revised submission— do not qualify for further analysis because they are not consistent with the concept of environmental law, as defined in the NAAEC.<sup>19</sup>
13. Furthermore, the Secretariat indicated that the following provisions refer to general principles, purpose statements of the law in question, or policy guidelines, which,

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<sup>15</sup> Revised submission, section VII (first paragraph).

<sup>16</sup> Official Mexican Standard NOM-052-SEMARNAT-2005 Establishing the characteristics of hazardous waste, hazardous waste identification procedures, hazardous waste classification and lists.

<sup>17</sup> Official Mexican Standard NOM-161-SEMARNAT-2005 Establishing the criteria for classification of those wastes requiring special management and determining which shall be subject to a management plan; the list thereof, the procedure for inclusion or exclusion therein, as well as the criteria and procedures for the formulation of management plans.

<sup>18</sup> One of the Submitters requested that his/her name not be disclosed in accordance with NAAEC Article 11(8)(a).

<sup>19</sup> *Ibid.*, §14.

although qualify as environmental law, are not directly enforceable without other specific provisions, and thus only guide the Secretariat's analysis: Articles 1 (paragraphs one, two and three) and 4 (paragraph five) of the Constitution;<sup>20</sup> LFRA Articles 5, 10, 13 (paragraph one), 25 and 52;<sup>21</sup> LGEEPA Articles 15 sections IV, V, IX and XII<sup>22</sup>; and LGPGIR Articles 2 section VII, 7 section XXIV and 64.<sup>23</sup>

**i. Classification of TV waste, management of hazardous waste and remediation of sites contaminated by hazardous waste**

14. The Submitters assert that enforcement of hazardous waste laws is ambiguous when it comes to the classification of electronic waste generated by discarding of television sets. They argue that there exists two different Mexican Official Standards of equal standing, one which considers said waste to be hazardous (NOM-052) and another which refers instead to waste requiring special management (NOM-161).<sup>24</sup>
15. In its determination of 22 September 2015, the Secretariat found that the provisions in LGPGIR and LGEEPA applicable to the management of hazardous waste qualify as environmental law, but were not applicable to analog television sets because waste from televisions are classified as waste requiring special management in NOM-161.<sup>25</sup> However, in light of the new arguments and information presented in the revised submission, the Secretariat considers that a response from Mexico could clarify how the respective hazardous waste management and special waste management regimes apply to analog TV waste. The Secretariat reasoning is outlined below in paragraphs 17-19.
16. In the revised submission, the Submitters assert that Mexico is failing to effectively enforce LGPGIR Article 31 sections VII and X, and NOM-052. In light of the information provided in the revised submission, these provisions do qualify as environmental law as their object is to classify hazardous waste and identify the methods for determining the hazardousness thereof (see NAAEC, Article 45 (2) ii). Sections I, II, III, IV, V, VI, VIII and X of LGPGIR Article 2 list the principles governing legislative and regulatory action promulgated with the object of enforcing the law. As such, they serve to guide the Secretariat's analysis and will be taken into consideration in future analysis.
17. The Submitters argue that the characteristics of a typical analog television set fall within the scope of NOM-052 and LGPGIR Article 31. NOM-052 establishes that waste is considered "environmentally toxic" after certain criteria is met (see paragraph 18 below) and that LGPGIR Article 31 lists components containing lead as "hazardous." Specifically, the Submitters cite to a characterization study on lead leaching from cathode ray tubes<sup>26</sup> which indicates an average lead concentration of 18.5 mg/L, which exceeds the 5.0 mg/L limit established in Table 2 of NOM-052. Furthermore, they cite LGPGIR Article 31, sections VII and X, in arguing that under said provision additives

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<sup>20</sup> *Ibid.*, §14.

<sup>21</sup> *Ibid.*, §20.

<sup>22</sup> *Ibid.*, §15.

<sup>23</sup> *Ibid.*, §§16-17.

<sup>24</sup> Revised submission, *supra* note 6, fact 23.

<sup>25</sup> Article 14(1) Determination, §19.

<sup>26</sup> Townsend *et al.* (1999), *Characterization of Lead Leachability from Cathode Ray Tubes using the Toxicity Characteristic Leaching Procedure*, Florida Center for Solid and Hazardous Waste Management, 19 pp.

which may contain lead or persistent organic compounds shall be subject to a hazardous waste management plan. They also state that “the LGPGIR specifically lists these components ‘inside’ television sets as hazardous.” Moreover, according to their estimates, lead components (essentially concentrated in CRTs) together with components containing persistent organic compounds (i.e., plastic housing and circuit boards) account for 91.39% of the average weight of television sets.<sup>27</sup> Furthermore, according to one of the Submitters’ calculations, the analog television sets fated to become obsolete, as a result of the analog blackout, contain approximately 40 thousand tons of lead oxide.<sup>28</sup>

18. NOM-052 establishes that waste is considered “environmentally toxic” when a TCLP extract<sup>29</sup> exceeds the limit prescribed in Table 2 of NOM-052, which in this case is 5.0 mg/L.<sup>30</sup> Based upon this premise, it is reasonable for the Submitters to argue that TV waste may be considered hazardous waste. In fact, the TV Waste Management Program recognizes the hazardous nature of inappropriate management of CRTs, as it points out that it can result in liability in cases of transboundary movement of hazardous waste<sup>31</sup> and it further indicates that the proper management<sup>32</sup> of television sets will be contracted to companies authorized to manage and ensure the final disposal of hazardous waste.<sup>33</sup> The Secretariat finds that the Submitters’ rightly raise a question of which provisions apply, including whether NOM-052 applies to cathode ray tube waste from television sets also containing plastic housing and circuit boards containing persistent organic pollutants. A response from the Government of Mexico could shed light on this matter.
19. Finally, the Submitters cite LGPGIR Articles 68, 71, 72, 104 sections I, II and III and 106, in connection with hazardous waste pollution, the remediation of sites contaminated by hazardous waste and the carrying out of inspections. Based solely on the submission’s assertions, the Secretariat was unable to determine how Mexico is

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<sup>27</sup> Revised submission, *supra* note 6 at 6; L. S. Morf *et al.* (2005), “Brominated Flame Retardants in Waste Electrical and Electronic Equipment: Substance Flows in a Recycling Plant,” *Environ. Sci. Technol.*, Table 3, and D. Zumbuehl (2006), *Mass Flow Assessment (MFA) and Assessment of Recycling Strategies for Cathode Ray Tubes (CRTs) for the Cape Metropolitan Area (CMA)*, South Africa, Swiss Federal Laboratories for Materials Science and Technology, Table 4.

<sup>28</sup> L. A. Macías Raya (undated), *Cálculo de óxido de plomo (pbO) en las televisiones analógicas de México*, Vías Verdes, A.C. at 10.

<sup>29</sup> Subparagraph 5.4 of NOM-052 defines the TCLP extract as “the leachate used to identify the toxic constituents in waste and the concentration thereof for the purpose of determining whether said waste is hazardous due to its environmental toxicity.”

<sup>30</sup> NOM-052, subparagraph 7.5.1

<sup>31</sup> Semarnat-SCT, the National Program for the Comprehensive Management of Television Sets Discarded due to the Transition to Digital Television Transmission [TV Waste Management Program], 24 June 2015 at 17:

“Another of the risks associated with the improper management of analog television waste is the illegal shipment of such waste to other countries, resulting in harm to the environment and public health, as well as non-compliance with the Basel Convention in relation to transboundary trafficking of hazardous waste.”

<sup>32</sup> *Ibid.* “[T]his program addresses the entire process of comprehensive management of analog televisions, from their pickup, collection and warehousing to the recycling of their components [...] through recycling companies authorized to transport, recycle and process hazardous waste” at 20.

<sup>33</sup> *Ibid.* “Regarding hazardous waste, companies must be authorized to confine such waste by Semarnat” at 19.

allegedly failing to enforce these provisions. Consequently, said provisions will not be the subject of further analysis.

**ii. Implementation of an analog TV waste management plan**

20. The Submitters assert that the Work Program for the transition to DTT published in May 2014 which required a TV waste management plan, has not been implemented.<sup>34</sup> They argue that said transition program lacks a legal background from a waste management law or regulations standpoint.<sup>35</sup> Furthermore, they argue that the program focuses on two economic objectives: i) increasing the production and consumption of digital television sets; and ii) reduction of energy costs.<sup>36</sup> This is so, they affirm, despite recognition of “the risk and potentially serious impact on health and a healthy environment” posed by the generation of discarded TV sets.<sup>37</sup>
21. The Submitters argue that the federal government proposed the distribution of digital televisions to the population,<sup>38</sup> as a way to kick start the transition to DTT. To that end, the SCT conducted several tender calls for procurement purposes, which, the Submitters state were inadequate as they did not provide for waste management.<sup>39</sup> The Submitters point out that no programs were implemented to collect television sets upon completion of the “analog blackout” in various cities in Mexico.<sup>40</sup>
22. The Submitters note that following pursuit of legal remedies aimed at obtaining the waste management plan and the timetable for its implementation (see paragraphs 56 to 59), the SCT and Semarnat concluded an agreement on guidelines and principles for their collaboration in this regard.<sup>41</sup> On 24 June 2015, both government entities released a joint TV Waste Management Program.<sup>42</sup> According to the Submitters said management program is flawed in that it satisfies neither the requirements of the law nor the commitment prescribed in the transition program to DTT to develop a “management plan.” The Submitters assert that what this “implied is a change from the authorizing and verifying of an LGPGIR management and control tool [the management plan], to the creation of a public policy [the management program],” which, moreover, lacks the resources required for its implementation.<sup>43</sup>
23. The Submitters argue that the analog television collection centers lack the capacity and budgets required to function; they do not carry out the warehousing required, nor do they dispose of materials for informing the public. The Submitters further argue that “no specific budget resources were planned and appropriated to cover the costs pursuant to [...] the Work Program for the Transition to Digital Television Transmission,” which

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<sup>34</sup> Revised submission, *supra* note 6, fact 14.

<sup>35</sup> *Idem.*

<sup>36</sup> *Idem.*

<sup>37</sup> *Idem.*

<sup>38</sup> *Idem.*

<sup>39</sup> *Ibid.*, fact 21.

<sup>40</sup> *Ibid.*, fact 21.

<sup>41</sup> SCT-Semarnat, *An agreement on the cooperation guidelines on environmental protection regarding the negative impacts that could arise from the management and improper final disposal of analog television sets discarded due to the transition to digital transmission signed by the Ministry of the Environment and Natural Resources and the Ministry of Communications and Transportation*, 22 May 2015.

<sup>42</sup> Revised submission, *supra* note 6, fact 22.

<sup>43</sup> *Ibid.*, fact 22.

provides for a strategy for “ensuring the environmentally correct management and final disposal of discarded analog televisions.”<sup>44</sup> According to the Submitters one of the public tenders to procure collection center services posited impossible requirements.<sup>45</sup> The Submitters explain that such collection centers, once established, would have the capacity to warehouse just 0.1799% of the analog television sets discarded after the analog blackout; that collection center operators are not required to provide a description of the recycling process<sup>46</sup> and that said operators have no experience in electronic waste management.<sup>47</sup> The Submitters assert that the SCT, as a distributor of digital televisions, is under the legal obligation to prepare an effective management plan for said digital sets.<sup>48</sup>

24. In support of their assertion, the Submitters cite the following provisions: LGEEPA Articles 11 sections I to IX, 12 sections I to IV and VII; LGPGIR Articles 1 sections I to VIII and X, 2 sections I to VIII and X, 7 section XXIV, 9 sections III and IV, 19 section VIII, 20, 27 section I, 28 sections I and III, 30 sections II, III and IV, 32, 34 and 64; and RLGPGIR Articles 16 sections I-b, II-b and III-a, 17, 20 and 22. The Submitters also cite NOM-161 as applicable to the elaboration of waste management plans.
25. The Secretariat notes that LGEEPA Articles 11 and 12 are applicable to the agreements under which state and municipal governments, and the Federal District as well, assume powers under federal government jurisdiction. Consequently, they are not considered environmental laws under the NAAEC and are not further analyzed in this determination.. On the other hand, the rest of the provisions in question qualify as environmental law in the terms of NAAEC Article 45(2), as their principal object is environmental protection through the proper management of waste requiring special handling. The Secretariat’s reasoning is detailed below.
26. The provisions cited by the Submitters concern: establishing the object and principles underlying enforcement of the LGPGIR;<sup>49</sup> vesting in the federal government the power to promote and publicize environmental information on waste; vesting in the states the powers to authorize special waste management where required, to identify wastes within their territories which may require such special management and enforce the laws pertaining thereto;<sup>50</sup> establishing that technological wastes require special management,<sup>51</sup> be identified as such and communicate their properties to the public in accordance with Mexican Official Standards, and;<sup>52</sup> establishing the purposes and objectives of management plans;<sup>53</sup> identifying the obligated parties who are required to produce management plans;<sup>54</sup> establishing the criteria for determining which types of waste shall be subject to a management plan (e.g., waste generated in high volumes by a

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<sup>44</sup> *Ibid.*, fact 29

<sup>45</sup> The Submitters observe that a successful bidder would be required to install a network of television waste collection centers in just four days. Submission, fact 29 at 8.

<sup>46</sup> Revised submission, *supra* note 6, fact 29.

<sup>47</sup> *Ibid.*, fact 34.

<sup>48</sup> *Ibid.*, fact 25.

<sup>49</sup> LGPGIR, Article 1 sections I to VIII and X, and Article 2 sections I to VIII and X.

<sup>50</sup> LGPGIR, Article 7 section XXIV, and Article 9 sections III and IV.

<sup>51</sup> LGPGIR, Article 19 section VIII.

<sup>52</sup> LGPGIR, Article 20.

<sup>53</sup> LGPGIR, Article 27 section I.

<sup>54</sup> LGPGIR, Article 28 sections I and III.



small number of generators, waste that may contain persistent toxic substances and waste posing a risk to the environment),<sup>55</sup> and referencing the environmental management systems formulated and implemented by federal agencies.<sup>56</sup>

27. The environmental law in question also indicates that management plans may be joint (depending on the participating authorities), collective (given the possibility of associating different obligated parties) and national (when such plans apply to the whole territory of the nation).<sup>57</sup> Moreover, according to the law in question, the parties who must formulate and implement a management plan may do so either by adhering to an already established management plan<sup>58</sup> or implement one by means of the signing of any legal instrument,<sup>59</sup> including agreements between the private sector and the competent authorities.<sup>60</sup>
28. The Secretariat determines that the legal provisions analyzed in paragraphs 26 and 27 qualify as environmental law and deems that a response from the Government of Mexico could address one of the Submitters' central concerns: the development and effective implementation of a management plan for analog television sets discarded as a result of the transition to DTT, which, as the Submitters maintain, must meet certain standards for its implementation.

### iii. Minimizing of waste generation from analog television sets

29. The Submitters note that a presidential decree was issued on 2 September 2010 establishing actions for implementing the transition to DTT.<sup>61</sup> As a result, promoting and facilitating of economic support to purchase digital receivers or decoders was established as public policy.<sup>62</sup> The Submitters assert, moreover, that a Transition Program to DTT issued on 13 May 2014 mentions for the first time, the distribution of digital TVs to the population rather than decoders.<sup>63</sup> The Submitters argue that the federal government "replaced the distribution of decoders" with the distribution of free digital televisions to the population.<sup>64</sup>
30. The Submitters cite LGPGIR Article 2 section III, which establishes that legislative and regulatory action promulgated with the object of enforcing the law shall observe the principle of waste prevention and minimization. Furthermore, they cite RLGPGIR Articles 20 section II and 22, which state that the elaboration of waste management plans includes contemplation of waste minimization and stipulate that Semarnat shall provide incentives for waste minimization when collaborating with "federal agencies and entities." The provisions cited here qualify as environmental law in the terms of NAAEC Article 45(2).

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<sup>55</sup> LGPGIR, Article 30 sections II, III and IV.

<sup>56</sup> LGPGIR, Article 64.

<sup>57</sup> Regulation to the LGPGIR, Article 16 sections I-b, II-b and III-b.

<sup>58</sup> Regulation to the LGPGIR, Article 17.

<sup>59</sup> Regulation to the LGPGIR, Article 20.

<sup>60</sup> Regulation to the LGPGIR, Article 22.

<sup>61</sup> Decree establishing the actions that the Federal Public Administration must carry out to make the transition to Digital Television Transmission a reality, DOF, 2 September 2010.

<sup>62</sup> Revised submission, *supra* note 6, fact 2.

<sup>63</sup> *Ibid.*, fact 14.

<sup>64</sup> *Ibid.*, facts 13 and 14.

31. The Secretariat deems that a response from Mexico on how it implemented strategies to minimize waste generation in the transition to DTT could provide more information on waste prevention and minimization, particularly in light of the presumed massive distribution of approximately ten million digital television sets to the Mexican population.

**iv. Communications, access to information and public participation**

32. The Submitters assert that during implementation of DTT transition, “no information was distributed among the population on the risks to health and the environment related to inadequate disposal of analog television waste”.<sup>65</sup> They argue that the the Federal Telecommunications Institute (*Instituto Federal de Telecomunicaciones*—IFT) press releases on “analog blackouts” did not provide information on the management of the analog television sets that would go out of use<sup>66</sup> and argue that during the launch of the [www.depositatutele.gob.mx](http://www.depositatutele.gob.mx) website “no strategy or any vast awareness campaign concerning the risks of improper management of analog television sets was presented on said website.”<sup>67</sup> The Submitters point out that pursuant to the cooperation guidelines between the SCT and Semarnat, the latter would be responsible for implementing “environmental education, communications and awareness campaigns.”<sup>68</sup>
33. The Submitters cite LGPGIR Article 2 section VII, which aims to encourage public access to information on waste management issues,<sup>69</sup> as well as Article 7 section XXIV, which establishes that the federal government is responsible for informing the public of the risks arising from waste generation. Furthermore, NOM-161 prescribes the implementation of information and outreach campaigns on waste management. The Secretariat determines that these provisions qualify as environmental law.
34. A response from Mexico can address the question of the measures that it has implemented to inform the public of the risks to the environment arising from the discarding of analog television sets, as well as the actions to mitigate them.

**v. Effective enforcement of the Stockholm Convention**

35. The Submitters cite provisions of the Stockholm Convention on Persistent Organic Pollutants, which was adopted on 22 May 2001 and ratified on 10 February 2003 by Mexico, one of the Convention’s 152 signatory countries.<sup>70</sup> Said instrument entered into effect in Mexico on 17 May 2004.<sup>71</sup> The Submitters cite Article 7(1), subparagraphs a and c, and Article 7(3) which read as follows:

Article 7. Implementation plans

1. Each Party shall:

- a. Develop and endeavor to implement a plan for the implementation of its obligations under this Convention; and

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<sup>65</sup> *Ibid.*, fact 39.

<sup>66</sup> *Ibid.*, facts 28 and 39.

<sup>67</sup> *Ibid.*, fact 37.

<sup>68</sup> *Ibid.*, fact 22.

<sup>69</sup> See also: Article 14(1) Determination, §16.

<sup>70</sup> Ministry of Foreign Affairs, International Treaties, Stockholm Convention on Persistent Organic Pollutants, <<http://goo.gl/BCujP7>> (viewed on 18 January 2016).

<sup>71</sup> Stockholm Convention on Persistent Organic Pollutants, DOF, 17 May 2004.

- c. Review and update, as appropriate, its implementation plan on a periodic basis and in a manner to be specified by a decision of the Conference of the Parties.
3. The Parties shall endeavor to utilize and, where necessary, establish the means to integrate national implementation plans for persistent organic pollutants in their sustainable development strategies where appropriate.
36. The objective of the Stockholm Convention “is to protect human health and the environment from persistent organic pollutants.”<sup>72</sup> Persistent organic pollutants “possess toxic properties, resist degradation, bioaccumulate and are transported, through air, water and migratory species, across international boundaries and deposited far from their place of release, where they accumulate in terrestrial and aquatic ecosystems.”<sup>73</sup> The provisions in question concern the implementation of the obligations incumbent on signatories to the Convention, which, the Submitters assert, are not being fulfilled in relation to the persistent organic compounds found in the analog television sets discarded due to the transition to digital television transmission.
37. Consistent with the CEC Council resolutions on implementing obligations emanating from international instruments,<sup>74</sup> the Government of Mexico’s position on the procedure for enshrining international law in its domestic law,<sup>75</sup> and the Secretariat’s determinations in connection with the applicability of the term “environmental law” to the international treaties adopted by Mexico,<sup>76</sup> the Secretariat determines that Articles 7(1), subparagraphs a and c, and 7(3) of the Stockholm Convention qualify as environmental law because these are consistent with the NAAEC definition of environmental law as they are “aimed at the control of environmentally hazardous or toxic chemicals, substances, materials and wastes”.<sup>77</sup> Furthermore, based on the reading of the provisions cited by the Submitters, said provisions may be implemented directly without further legislative or regulatory action, as the obligation in question consists of elaborating a plan for fulfilling and implementing the Convention’s requirements,

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<sup>72</sup> Stockholm Convention, Article 1. Objective.

<sup>73</sup> Stockholm Convention, Article 1. Preamble.

<sup>74</sup> SEM-99-002 (*Migratory Birds*), Council Resolution 01-10, 16 November 2001; SEM-04-006 (*Ontario Logging II*), Council Resolution 04-03, 12 March 2004.

<sup>75</sup> SEM-09-002 (*Wetlands in Manzanillo*), Article 14(3) Party Response, 12 October 2010, at 27 (“[...] the Ramsar Convention was incorporated into the domestic legal framework”); SEM-09-001 (*Transgenic Maize in Chihuahua*), Article 14(3) Party Response, 3 May 2010, at 13 (“[...] the Cartagena Protocol, as an international instrument arising under the Convention on Biological Diversity, was incorporated into the domestic legal framework”).

<sup>76</sup> SEM-97-005 (*Biodiversity*), Article 14(1) Determination, 26 May 1998, at 5 (“the Secretariat does not wish to exclude the possibility that future submissions may raise issues in respect of a Party’s international obligations [...]”), and SEM-00-006 (*Tarahumara*), Article 14(1)(2) Determination, 6 November 2001, at 10 (“[i]t is clear that ILO Convention 169 constitutes existing domestic law pursuant to Article 133 of the Political Constitution of the United Mexican States [...]”). See also: SEM-09-001 (*Transgenic Maize in Chihuahua*), Article 14(1)(2) Determination, §22 (in connection with the Cartagena Protocol), and SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination, 9 October 2009, §16 (in connection with the Ramsar Convention).

<sup>77</sup> NAAEC, Article 45(2)(a)-ii)

ensuring the periodic review thereof and implementing measures to incorporate the Convention into Mexico's sustainable development strategies.<sup>78</sup>

38. A response from the Government of Mexico can address the issue of whether a compliance plan has been elaborated, the extent to which such has been implemented in relation to analog television sets and whether, in any case, said plan has been updated in light of the transition to DTT. Furthermore, it may present information on the incorporation of national Stockholm Convention implementation plans into its sustainable development strategy, in particular with respect to analog television sets discarded due to the transition to digital television transmission.

### **B Requirements specified under NAAEC Article 14 (1)**

39. In its Article 14(1) determination, the Secretariat found that the submission satisfies the requirements prescribed in subparagraphs a, b, c, d, e and f. However, in light of new information presented in the revised submission, it was necessary to re-analyze certain subparagraphs, as detailed below.

*(b) is filed by a person or organization residing or established in the territory of a Party*

40. The revised submission includes now new Submitters and the Secretariat determines that it continues to satisfy the requirements of Article 14(1)(b), as the submission includes sufficient contact information (name, address and other contact details) to enable the Secretariat to clearly identify the Submitters and establish communication. Upon request from certain Submitters, and in accordance with NAAEC Article 11(8)(a), the Secretariat keeping confidentiality on certain Submitters' names and personal data.

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

41. In its determination of 22 September 2015, the Secretariat determined that the original submission contained sufficient information for further consideration.<sup>79</sup> However, as the revised submission further details its assertions, it therefore encloses additional information requiring the Secretariat's analysis.
42. In addition to the information included in the original submission, the revised submission references the environmental law cited in the submission<sup>80</sup> and the National Plan to Implement the Stockholm Convention (*Plan Nacional de Implementación del Convenio de Estocolmo*).<sup>81</sup> The submission includes two quarterly reports on how the resources appropriated for the Transition to DTT Program were spent, as well as a list of beneficiaries and rules on the distribution of digital televisions to low-income households, as defined by the Ministry of Social Development (*Secretaría de*

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<sup>78</sup> E. Trejo García *et al.* (2006), *Sistema de recepción de los tratados internacionales en el derecho mexicano*, Mexican Congress, 59th Legislative Session, Research and Analysis Service, <<http://goo.gl/eOcgJI>> (viewed on 18 January 2016).

<sup>79</sup> See: Article 14(1) Determination, *supra* note 5, §36.

<sup>80</sup> Annexes containing the relevant provisions of the Political Constitution of United Mexican States and the amendments thereto published in DOF on 1 June 2013, the Basel Convention, LFRA, LGEEPA, LGPGIR, the Regulation to the LGPGIR, NOM-161, NOM-052, the Federal Social Development Act, the Federal Health Act, the Stockholm Convention and the Planning Act.

<sup>81</sup> Semarnat (2007), National Plan to Implement the Stockholm Convention.

*Desarrollo Social*) to ensure compliance with the General Law on Institutions and Electoral Procedures (*Ley General de Instituciones y Procedimientos Electorales*).<sup>82</sup>

43. The Submitters also enclosed the following scientific studies on the potential harm to the public health and the environment from exposure to polybrominated diphenyl ethers (PBDEs), cathode ray tubes (CRTs) and brominated flame retardants (BFRs):
  - a. Various studies on CRT recycling, which shed light on the issue in other countries.<sup>83</sup>
  - b. A study on BFRs contained in the plastic components of television sets and monitors in informal recycling sites and electronic waste dumps in Nigeria,<sup>84</sup> as well as a study on brominated and chlorinated flame retardants.<sup>85</sup>
  - c. A paper on the organobromine, organochlorine and organofluorine endocrine disrupters contained in everyday products.<sup>86</sup>
  - d. Guidance on best available techniques and best environmental practices for the recycling and waste disposal of articles containing polybrominated diphenyl ethers (PBDEs) listed in the Stockholm Convention.<sup>87</sup>
  - e. Conclusions drawn from research studies on the brominated flame retardants contained in electrical and electronics waste and the adverse health effects thereof.<sup>88</sup>
44. In relation to the assertion regarding the lack of efficiency and effectiveness in the implementation of the TV waste management plan and recourse to alternatives which generate less waste, or no waste, the following documents were enclosed in the revised submission:
  - a. The Coordination Agreement on the implementation of the Work Program signed by Semarnat, on behalf of the federal government, and the executive branch of the Government of the State of Coahuila de Zaragoza.<sup>89</sup>
  - b. Guidelines for the comprehensive management of analog television sets discarded due to the transition to digital television transmission.<sup>90</sup>

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<sup>82</sup> Quarterly Reports on the spending of resources appropriated for the Transition Program to DTT for January-March 2015 and April-June 2015.

<sup>83</sup> Blake Thomas (2013), *A Look Through the Leaded Glass*, and Toxics Link (2014), *Looking Through Glass CRT Glass Recycling in India*.

<sup>84</sup> 12<sup>th</sup> IHPA Forum and Selected Studies on POPs (2014), *Polybrominated diphenyl ethers listed as Stockholm Convention POPs, other brominated flame retardants and heavy metals in e-waste polymers in Nigeria*, 27 July 2014.

<sup>85</sup> Environmental Health Perspectives Organization Online (2010), "San Antonio Statement on *Brominated and Chlorinated Flame Retardants*", 28 October 2010.

<sup>86</sup> MedLab, No. 3, Year 7, Elvia Mercedes Cabañas Cortés, July 2015.

<sup>87</sup> UNEP, "Guidance on best available techniques and best environmental practices for the recycling and waste disposal of articles containing polybrominated diphenyl ethers (PBDEs) listed under the Stockholm Convention on POPs," July 2012 draft.

<sup>88</sup> Laboratorio de Género, Salud y Ambiente, opinion letter from Dr. Leticia Yáñez Estrada, San Luis Potosí, Mexico, 23 November 2015.

<sup>89</sup> Government of Coahuila-Semarnat, Coordination agreement on the implementation of the Work Program for the Transition to DTT, 15 September 2015.

<sup>90</sup> Semarnat, Subsecretaria de Fomento y Normatividad Ambiental, Dirección General de Fomento Ambiental Urbano y Turístico (undated), "Lineamientos para la Gestión Integral de Televisores

- c. Two quarterly reports on how the budgetary resources appropriated for the Transition Program to DTT were spent, including a list of beneficiaries and the rules for the distribution of digital televisions to low-income households.<sup>91</sup>
- d. A table showing the percentage of analog television sets contemplated by the public tenders compared with the total number of analog television sets in Mexico, which indicates that said public tenders entail contracting the capacity to manage 37,193.59 televisions, i.e., just 0.1082% of the total number of analog television sets extant in Mexico;<sup>92</sup> another table indicates the maximum number of televisions that could be collected based on the contract award recommendation.<sup>93</sup>
- e. Various SCT invitations to bid in relation to the procurement of digital televisions<sup>94</sup> and the contracting of a comprehensive collection service, including the picking up of analog TVs already collected in authorized and installed collection centers, as well as the transport, disassembly, recycling and final disposal of analog televisions discarded as a result of the transition to digital television transmission (DTT).<sup>95</sup> Other related documents were enclosed, such as the minutes of a public tender clarifications meeting,<sup>96</sup> an opening of bid proposals announcement<sup>97</sup> and a contract award recommendation.<sup>98</sup> In addition, the submission enclosed documentation on a public tender to contract the weighing, labeling, identification and wrapping in plastic required during the pickup of previously collected analog television sets,<sup>99</sup> including the opening of bid proposals announcement<sup>100</sup> and the contract award recommendation.<sup>101</sup>

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Analógicos Desechados por la Transición a la TDT” (Guidelines on the Comprehensive Management of Analog Television Sets Discarded due to the Transition to DTT).

<sup>91</sup> Quarterly Reports on the spending of resources appropriated for the Transition Program to DTT for January-March 2015 and April-June 2015.

<sup>92</sup> INEGI (2014), Statistical information on the percentage of analog televisions contemplated in public tender LA-009000987-T77-2015 compared to the total number of analog televisions in Mexico.

<sup>93</sup> Table indicating the maximum number of television sets that can be collected as per the contract award decision for public tender LA-009000987-T77-2015 (undated).

<sup>94</sup> SCT, Oficialía Mayor (Secretariat), Dirección General de Recursos Materiales (Procurement Department), Invitation to Bid made to at least three joint parties for the procurement of “digital televisions,” public tender no. IA-009000987-N3-2014 (31 January 2014), public tender no. LA-009000987-N73-2014 (2 September 2014), public tender no. LA-009000987-N19-2015 (31 March 2015), and public tender no. LA-009000987-T67-2015 (30 July 2015).

<sup>95</sup> SCT, Secretariat, Procurement Department, International call for tenders subject to joint free trade agreements, tender no. LA--009000987-T77-2015 (20 October 2015).

<sup>96</sup> SCT, Secretariat, Procurement Department, Minutes of the clarifications meeting on international call for tenders no. LA--009000987-T77-2015 (29 October 2015).

<sup>97</sup> SCT, Secretariat, Procurement Department, Announcement of bid submissions and bid openings for international public tender no. LA-009000987-T77-2015, a public tender subject to joint free trade agreements (6 November 2015).

<sup>98</sup> SCT, Secretariat, Procurement Department, Contract award recommendation for an international public subject to joint free trade agreements, tender no. LA-009000987-T77-2015 (20 November 2015).

<sup>99</sup> SCT Secretariat, Procurement Department, Minutes of the clarifications meeting on international call for tenders no. LA-009000987-T79-2015 (30 October 2015).

<sup>100</sup> SCT, Secretariat, Procurement Department, Announcement of bid submissions and bid openings for international public tender no. LA-009000987-T79-2015, a public tender subject to joint free trade agreements (9 November 2015).

45. Concerning communication and outreach efforts on the potential risks of improper disposal of analog television sets, the submission enclosed various press releases from the IFT announcing decisions on the termination of analog TV broadcasting in different localities.<sup>102</sup>
46. Finally, concerning the assertion regarding the effective and efficient implementation of the Stockholm Convention, the Submitters enclosed a copy of the National Plan to Implement the Stockholm Convention.<sup>103</sup>
47. The Secretariat determines that the revised submission includes sufficient documentation to support the Submitters' assertions, thereby satisfying the requirement stipulated in subparagraph c) of NAAEC Article 14(1).

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

48. The submission states that one of the Submitters brought the matter to the attention of the authorities in Mexico. In effect, the Mexican Society of Solid Waste Science and Applied Technology (*Sociedad Mexicana de Ciencia y Tecnología Aplicada a Residuos Sólidos*—SOMERS) addressed a letter to the President's Office (copies were also sent to and received by the SCT and Semarnat). Said letter, which was enclosed with the submission, highlighted the Submitter's central concerns, which the Secretariat considers were communicated in writing to the relevant authorities of the Party:

[...] the collateral effects of the Work Program for the Transition to Digital Television Transmission [...] the delivery of free digital television sets to 13.8 million households [...] the environmental implications of making millions of analog television sets obsolete [...]<sup>104</sup>

49. This letter requested that the authorities publicly release the management plan, which, in fact, should have been done back in May 2014.<sup>105</sup> This missive also observed that in the absence of a management plan:

old televisions will end up in the hands of scrap dealers [...] who will disassemble them on a piece-meal basis to extract easy to sell materials (e.g., metals like copper) and discard the rest in the general urban solid waste stream or dispose of or bury said remaining waste in an indiscriminate and uncontrolled manner.<sup>106</sup>

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<sup>101</sup> SCT, Contract award recommendation for an SCT international public tender subject to joint free trade agreements, tender no. LA-009000987-T79-2015 (24 November 2015).

<sup>102</sup> IFT, IFT press releases numbers 66/2015 (26 August 2015), 81/2015 (1 October 2015), 94/2015 (6 November 2015), 99/2015 (19 November 2015) and 22 December 2015; as well as the IFT administrative decision on termination of analog television transmission in the areas covered by various TV stations, DOF, 26 and 27 November 2015.

<sup>103</sup> Semarnat, National Plan to Implement the Stockholm Convention, Mexico, October 2007.

<sup>104</sup> SOMERS, letter addressed to the President of Mexico, the SCT and Semarnat requesting the management plan's publication, 13 October 2014 at 1.

<sup>105</sup> *Idem.*

<sup>106</sup> *Ibid.* at 2.

50. The submission enclosed the reply from the President's Office, which informed the Submitters that the SCT would attend to the request within 15 working days.<sup>107</sup> The submission also enclosed the SCT's reply, which explained that Semarnat, via its Department of Development and Environmental Regulations (*Subsecretaría de Fomento y Normatividad Ambiental*), is presently developing an analog television collection and confinement plan, which would be applied and made known to the entire population in due course.<sup>108</sup>
51. The revised submission documents the correspondence with the competent authorities regarding the absence of a waste management plan, which eventuated in the filing of an appeal for an administrative review (see paragraphs 56, 57 and 59).
52. The Secretariat has determined that the matter raised in the submission was communicated to the relevant authorities in Mexico.

### C NAAEC Article 14(2) criteria

*(a) [whether] the submission alleges harm to the person or organization making the submission*

53. The Submitters allege harm to the environment due to the failure to implement an effective management plan for the transition to DTT in Mexico. Moreover, they present supporting documentation concerning the effects on the environment and public health should the toxic components in analog television sets be released (see paragraph 43 on the information included in the revised submission).
54. Guideline 7.4 of the Guidelines stipulates that in considering whether a submission alleges harm, the Secretariat shall consider if "the alleged harm is due to the asserted failure to effectively enforce environmental law." The Secretariat determines that the submission satisfies this criterion, as the Submitters argue that the effect of the failure to enforce the provisions cited in the submission is the improper disposal of analog television sets in Mexico.

*(b) [whether] the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Agreement*

55. The submission focuses on the effective enforcement of provisions bearing on the following issues: proper management of analog television sets, waste classification issues, the implementation of a management plan, waste minimization, informing the public regarding risks and implementing the obligations undertaken upon signing the Stockholm Convention. The Secretariat finds that the revised submission raises matters whose further study in this process would contribute to advancing the NAAEC's aims, specifically those stipulated in subparagraphs a), b), c), f), g) and h) of Article 1.<sup>109</sup>

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<sup>107</sup> Office of the President of Mexico, Response to the petition submitted by the SOMERS, 30 October 2014.

<sup>108</sup> SCT (undated), Response to the petition submitted by the SOMERS.

<sup>109</sup> "The objectives of this Agreement are to:

- (a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;



(c) [whether] private remedies available under the Party's law have been pursued

56. The revised submission indicates that remedies available under the Party's law were pursued, with the goal of obtaining the analog TV waste management plan and its implementation timetable. In this regard, the Submitters argue that the actions intended to ensure proper management of TV waste were initiated after an individual who had made an information request pursued the available remedies in Mexico.<sup>110</sup> The Secretariat considers these actions are reasonable in order to address their primary concern which is the implementation of the waste management plan and its implementation timetable.
57. The submission enclosed a letter in which it requested information from Semarnat on the work plan and management schedule in connection with the analog television sets discarded due to the transition to DTT.<sup>111</sup> In its response to this information request, Semarnat argued that the "[SCT] is the competent authority" in relation to the information requested and that, in any case, said information would be available for public consultation on the SCT's website.<sup>112</sup> Semarnat's response led the applicant to file an appeal for a review with the then Federal Institute for Access to Governmental Public Information and Personal Data Protection (*Instituto Federal de Acceso a la Información Pública Gubernamental y Protección de Datos Personales*—IFAI). In effect, in the applicant's view, the work program for the transition to DTT mentions in its "Lines of action" for Strategy 2.1 the "elaboration of a Management Plan for analog television sets discarded due to DTT which contemplates the collection and recycling thereof." Moreover, paragraph 5.3 of the same document stipulates that said strategy shall be the responsibility of the SCT and Semarnat. The applicant considers Semarnat responsible for the management plan's modalities and implementation timetable.
58. The documentation indicates that Semarnat confirmed that no "Work Plan" existed and that no management schedule was ever planned.<sup>113</sup> On this point, the IFAI's ruling observed that although the particulars of the Transition Program to DTT did not utilize those exact terms, they did however refer to a Management Plan (rather than a work plan) and to an implementation timetable. As a consequence, IFAI revoked Semarnat's

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- (b) promote sustainable development based on cooperation and mutually supportive environmental and economic policies;
  - (c) increase cooperation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna;
  - [...]
  - (f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
  - (g) enhance compliance with, and enforcement of, environmental laws and regulations;
  - (h) promote transparency and public participation in the development of environmental laws, regulations and policies;
  - [...]

<sup>110</sup> Revised submission, fact 19.

<sup>111</sup> Infomex, Information request no. 001600042215 sent to the Semarnat Liaison Unit, 9 February 2015.

<sup>112</sup> Semarnat Liaison Unit, Response to Infomex request no. 001600042215, 25 February 2014.

<sup>113</sup> Semarnat, Ruling no. 139/2015 of the Semarnat Information Committee on RDA file 0920/15, 8 April 2015.

response and warned the obligated party—Semarnat—of its obligation to search its files for the management plan and the implementation timetable.<sup>114</sup> The Secretariat notes too that there has been requests to authorities in Mexico to implement actions in order to avoid environmental harm due to the DTT transition (paragraphs 48-49).

59. In light of Guideline 7.5 and NAAEC Article 6(3)-c) the Secretariat finds that requests have been filed to the competent authorities “to take appropriate action to enforce that Party’s environmental laws and regulations in order to protect the environment or to avoid environmental harm.” The Secretariat thus concludes that reasonable actions were taken to pursue the remedies available in Mexico to seek the implementation of a management plan for the analog television sets discarded due to the transition to digital television transmission. In light of Guidelines 7.5 (b), the Secretariat bears in mind that procedural barriers may exist to pursuit a judicial or administrative injunction, on a national scale, with respect to the implementation of the DTT program.

*(d) [whether] the submission is drawn exclusively from mass media reports*

60. Concerning Article 14(2)(d), the Secretariat judges that the submission is not based on news from the mass media, but rather on the facts presented by the Submitters, as is evident upon consulting the information presented in the annexes of the submission’s original and revised versions.

### **III. DETERMINATION**

61. For the reasons detailed herein, the Secretariat finds that submission SEM-15-002 (*Management of Analog TV Waste*) satisfies the admissibility requirements specified in NAAEC Article 14(1) and further finds, in light of Article 14(2), that said submission meets these criteria and therefore warrants a response from the Government of Mexico concerning its assertions.
62. The Party may provide, in any response, information on the following:
- a. Effective enforcement of LGPGIR Article 2 sections I, II, III, IV, V, VI, VIII and X, and Article 31 sections VII and X, and of Official Mexican Standard NOM-052, with respect to the DTT transition, the classification of television waste, as well as, if appropriate, enforcement of hazardous waste provisions in relation to television set components with hazardous waste properties, as defined by Mexican regulatory standards;
  - b. Effective enforcement of LGPGIR Articles 1 sections I, II, III, IV, V, VI, VII, VIII and X, 2 sections I, II, III, IV, V, VI, VII, VIII and X, 7 section XXIV, 9 sections III and IV, 19 section VIII, 20, 27 section I, 28 sections I and III, 30 sections II, III and IV, 32, 34 and 64, and RLGPGIR Articles 16 sections I-b, II-b and III-a, 17, 20 and 22, as well as NOM-161, in relation to the elaboration and implementation of a management plan for analog television sets discarded as a result of the transition to digital television transmission;
  - c. Effective enforcement of LGPGIR Articles 2 section III and 20 section II, and of RLGPGIR Article 22 in relation to minimizing the generation of TV waste due to the transition to digital television transmission;

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<sup>114</sup> IFAI, Ruling on RDA file 0920/15, 25 March 2015.

- d. Effective enforcement of LGPGIR Articles 2 section VII and 7 section XXIV and NOM-161 in connection with the circulation of information on the risks caused by the alleged improper disposal of analog television sets; and
  - e. Effective enforcement of Article 7(1), subparagraphs a and c, and Article 7(3) of the Stockholm Convention on Persistent Organic Pollutants with respect to the implementation and updating of a plan to implement the Convention's obligations on controlling and minimizing the persistent organic compounds resulting from the discarding of analog television sets.
63. Mexico's response may also provide information concerning whether there are ongoing proceedings in connection with the matter raised by the Submitters.
64. In accordance with NAAEC Article 14(3), the Party may provide a response to the submission within 30 (thirty) days of receipt of the present determination, i.e., by **15 April 2016**. In exceptional circumstances, the Party may notify the Secretariat in writing that it is extending the deadline to 60 (sixty) days, i.e., until **30 May 2016**.

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

*(signature in original)*

Per: Robert Moyer  
Director, Submissions on Enforcement Matters Unit

*(signature in original)*

Per: Paolo Solano  
Legal Officer, Submissions on Enforcement Matters Unit

cc: Enrique Lendo, alternate representative of Mexico  
Louise Métivier, alternate representative of Canada  
Jane Nishida, interim alternate representative of the United States  
César Rafael Chávez, Executive Director, CEC Secretariat  
Submitters