

Secretariat of the Commission for Environmental Cooperation

**Secretariat determination in accordance with Articles 14(1) and (2)
of the North American Agreement on Environmental Cooperation**

Submitter: Name withheld pursuant to NAAEC Article 8(11)
Party: United Mexican States
Original submission: 22 January 2016
Revised submission: 29 April 2016
Date of determination: 13 June 2016
Submission no.: **SEM-16-001** (*Agricultural Waste Burning in Sonora*)

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 nongovernmental organization or person 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”)¹ initially 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.²
2. On 22 January 2016, a person [name withheld pursuant to NAAEC Article 8(11)] (the “Submitter”) filed a submission with the Secretariat in accordance with NAAEC Article 14(1). The Submitter asserts that each year approximately 100 tons of crop residues produced on nearly 13,000 ha of crop land located in the vicinity of Caborca, Sonora are burned.³
3. On 2 March 2016, the Secretariat found that submission SEM-16-001 (*Agricultural Waste Burning in Sonora*) did not meet the eligibility requirements of Article 14(1) of the Agreement and, pursuant to section 6.1 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*

¹ 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 published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) on 21 December 1993. The constituent bodies of the CEC are the Council, the Secretariat, and the Joint Public Advisory Committee.

² For detailed information on the various stages of the submission process, as well as on the Secretariat’s determinations and factual records, visit the submissions on enforcement matters page of the CEC website at <www.cec.org/submissions>.

³ SEM-16-001 (*Agricultural Waste Burning in Sonora*), NAAEC Article 14(1) Submission (22 January 2016) [Original Submission].

- (“Guidelines”),⁴ notified the Submitter that he had 60 working days in which to file a submission that met all the requirements of NAAEC Article 14(1).⁵
4. On 29 April 2016, the Submitter timely filed a revised submission with the Secretariat detailing his assertions and presenting additional information in response to the deficiencies noted by the Secretariat.⁶ The revised submission includes additional information about the environmental law cited in the original submission, includes communication of the matter to the relevant authorities and provides additional facts related to his assertions. In it, the Submitter further asserts that the municipal authority is not monitoring air quality and that it is therefore impossible to determine action measures;⁷ that the open-air burning of asparagus stems in the municipality of Caborca, Sonora is causing a negative impact on air quality;⁸ that the municipal authorities are not taking the measures necessary to prevent and control environmental contingencies;⁹ that open-air burning permits have not been issued;¹⁰ that the burning should be prohibited due to the human health harms it is causing;¹¹ that the specifications of NOM-015-Semarnat/Sagarpa-2007 are not being applied,¹² and that the hours established for the burning of crop residues are not being observed.¹³
 5. The Secretariat has found that revised submission SEM-16-001 (*Agricultural Waste Burning in Sonora*) now meets all the eligibility requirements of Article 14(1) and, with reference to the criteria of Article 14(2), warrants requesting a response from the Government of Mexico, for the reasons set out in this determination.

II. ANALYSIS

6. Article 14 of the NAAEC authorizes the Secretariat to consider submissions from any nongovernmental organization or person asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. As stated by the Secretariat in prior determinations made under NAAEC Article 14(1), this article is not intended to be an “insurmountable

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

⁵ SEM-16-001 (*Agricultural Waste Burning in Sonora*), Article 14(1) Determination (2 March 2016) [Article 14(1) Determination].

⁶ SEM-16-001 (*Agricultural Waste Burning in Sonora*), Article 14(1) Submission (29 April 2016) [Revised Submission].

⁷ Revised Submission, at 1: “this being an obligation of the municipality and farmers in regard to air quality, ... they are nonetheless failing to measure air quality (arts. 144, 146, and 172) and it is therefore impossible to know the extent to which the maximum allowable limits are being exceeded.”

⁸ *Ibid.*: “open-air burning (art. 151), which includes the prohibition on open-air burning, which can cause environmental instability or have an impact on air quality, as is in fact happening.”

⁹ *Ibid.*: “the necessary measures are not being taken to prevent and control air pollution (art. 167), and as this article states, the department ... must take the necessary measures to prevent and control environmental contingencies that affect the population.”

¹⁰ *Ibid.*: “when we asked to see the permits for previous years and 2015, to ascertain whether the standard was being complied with, I was informed in these very words that no one had ever applied for such permits.”

¹¹ *Ibid.*, at 2: “which burning should be prohibited (art. 170), since, as we have stated ... much of the population complains of many days of burning eyes, scratchy throat, headaches, etc. during the burning season.”

¹² *Ibid.*: “attached is NOM 015 ... the document on which its statements [sic] are based, as well as its conduct in allowing continued indiscriminate burning ... in violation of its own precepts.”

¹³ *Ibid.*: “in points 2.4.3 [of NOM-015-Semarnat/Sagarpa-2007] in regard to hours, since these are not being observed.”

screening device”.¹⁴ The Secretariat reviewed the submission in question with that perspective in mind.

A Opening paragraph of Article 14(1)

7. In our Article 14(1) determination of 2 March 2016, the Secretariat found that the original submission contained sufficient information to contact the Submitter, who is a resident of North America, and that there is no information in the submission on the basis of which to conclude that the Submitter is part of the government of his country or is under its direction.¹⁵ With respect to whether Mexico is failing to effectively enforce its environmental law, the Secretariat found “that not all provisions cited in the submission qualify for analysis, and that in some cases a clarification by the Submitter is necessary. The Secretariat further identified several provisions that, while not expressly referenced in the submission, are marked in the documentation forwarded by the Submitter.”¹⁶
8. The revised submission asserts that Mexico is failing to effectively enforce Articles 144 (criteria for preventing and controlling air pollution), 146 (powers of the Urban Development and Ecology Department (*Dirección de Desarrollo Urbano y Ecología*)), 150 (prohibition on pollutant emissions in excess of the maximum allowable levels set out in the Mexican Official Standards [NOM]), 151 (general prohibition on open-air burning without a permit), 167 (measures to prevent and control environmental contingencies), 168 (conditions for agricultural burning), 169 (application for open-air burning permit), 170 (prohibition on burning and cancelation of permits), and 172 (air quality monitoring systems) of the Environmental Protection Bylaw (*Reglamento de Equilibrio Ecológico y Protección al Medio Ambiente—REEPMA*) for the municipality of Caborca, Sonora.¹⁷ In addition, the Submitter asserts a failure to effectively enforce NOM-015-Semarnat/Sagarpa-2007,¹⁸ particularly section 4 (provisions for the use of fire), paragraphs 4.1.3 (notice to neighbors concerning the use of fire) and 4.1.14 (sites for monitoring the effects of fire); section 4.2 (content and specifications for the notice on the use of fire); paragraphs 5.1.3 (verification of burning method), and 5.1.5 (ecosystemic justification for the use of fire); section 5.2 (specifications for the use of fire on agricultural land), paragraph 5.2.2 (training in the use of fire); sections 7 (observance of the standard) and 7.4 (sanctions), as well as the provisions of part III, paragraphs 2.4.3 (burning hours) and 2.4.6 (management of smoke dispersal) of the technical appendix on the application of the burning methods set out in NOM-015.¹⁹

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

¹⁵ Article 14(1) Determination, §7.

¹⁶ *Ibid.* § 8.

¹⁷ Environmental Protection Bylaw (*Reglamento de Equilibrio Ecológico y Protección al Medio Ambiente*), published in the Official Gazette of the State of Sonora, vol. CXCI, no. 14, section II (17 February 2014), online at < <http://goo.gl/RfMpHJ> > (viewed 5 May 2016).

¹⁸ NOM-015-Semarnat/Sagarpa-2007, *Establishing technical specifications for fire use methods on forested and agricultural land* [NOM-015], published in the DOF on 16 January 2009.

¹⁹ Although the Submitter did not cite verbatim the technical appendix detailing the burning methods set out in the standard, it is clear that he is making reference to part III of that appendix—paragraphs 2.4.3 and 2.4.6, cited in the submission—when he mentions burning hours and refers to smoke management.

9. The Secretariat now finds that the cited REEPMA provisions indeed qualify as environmental law under NAAEC Article 45(2)(a)(i), since their primary purpose is the protection of the environment through “the prevention, abatement or control of the release ... of pollutants or environmental contaminants.”²⁰ A response from Mexico may address how these provisions are implemented with respect to the burning of crop residues in Caborca, Sonora.

B NAAEC Article 14(1)

10. In our determination of 2 March 2016, the Secretariat indicated that the submission satisfies Article 14(1)(a), (b), (d), , and (f) criteria but did not meet criteria (c) and (e) . In relation to these two paragraphs of Article 14(1), the following analysis is now presented based on the additional information contained in the revised submission.

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

11. In addition to the documents included in the original submission,²¹ the revised submission contains photographs showing air emissions presumably deriving from the burning of crop residues, and the alleged air quality conditions in Caborca, Sonora.

12. Attached to the submission is a copy of an administrative order issued by the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) that cites verbatim a complaint filed by the Submitter asserting that:

each year more than 13,000 ha of asparagus is burned in the Caborca agricultural region, causing the emission of large quantities of CO₂ and M₁₀ [*sic*] particles, which are highly harmful to human health and the environment, among other things.²²

13. The Secretariat now finds that the revised submission contains sufficient information to allow the Secretariat to review it and therefore satisfies Article 14(1)(c).

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

14. In addition to the documentation included in the original submission,²³ the revised submission includes a complaint dated 3 January 2014 filed by “residents of Caborca and nearby villages” asserting that asparagus residues are burned in the municipality,²⁴ as well as an administrative decision issued by Profepa on 2 December 2015 concluding that, pursuant to Articles 115 and 124 of the Political Constitution of the United Mexican States and Articles 6, 7, and 8 of the Mexican Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA), it is the responsibility of the Office of the Environmental Attorney of the State of Sonora (*Procuraduría Ambiental del Estado de Sonora*—Proaes) and the municipal council of Caborca to address the matter,²⁵ and it is stated that the complaint is to be referred to Proaes. The revised submission includes the document in which Profepa notifies the Submitter

²⁰ See NAAEC Article 45(2)(a).

²¹ For a description of these documents, see Article 14(1) Determination, §§15-19.

²² Profepa, “Acuerdo de conclusión por incompetencia en el expediente no. PFPA/32.7/2C.28.4.1/0016-15,” Federal Attorney for Environmental Protection (2 December 2015).

²³ Article 14(1) Determination, §23.

²⁴ Profepa, “Sistema de administración de denuncias realizadas por Internet,” Federal Attorney for Environmental Protection (3 January 2014).

²⁵ Profepa, “Acuerdo de conclusión por incompetencia...,” note 21 *supra*.

of the decision to refer the matter to Proaes and the municipal council of Caborca, Sonora,²⁶ as well as a letter to the Urban Development and Ecology Department of Caborca requesting information on permits for burning of asparagus stems.²⁷

15. The Secretariat now finds that the submission meets the requirement of having communicated the matter to the relevant authorities of the Party.
16. Having found that the revised submission does in fact meet all the requirements of NAAEC Article 14(1), the Secretariat continues its analysis in order to determine whether the submission merits requesting a response from the Party pursuant to Article 14(2) NAAEC.

C NAAEC Article 14(2)

a) Whether the submission alleges harm to the person or organization making the submission;

17. The Submitter asserts that the burning of crop residues is causing harm to health and the environment,²⁸ and that the population is affected when such burning is carried out.²⁹ In the information attached to the submission it is asserted that the public health impacts of burning crop residues are “worrying,” since the burning generally takes place in populated areas. It is also stated that due to the seasonality of these activities, very high concentrations of pollutants are the result.³⁰ It is further stated that these are non-point sources and that burning is generally carried out over extensive areas.³¹ Finally, it is maintained that the conditions under which the burning takes place may involve the presence of pesticides.³² The Submitter asserts that the harm to health and the environment is due to the failure to enforce the environmental law cited in the submission.³³
18. The Secretariat finds that the harm asserted in the submission is a consequence of the alleged failure to effectively enforce the environmental law and, pursuant to section 7.4 of the Guidelines, finds that the submission meets this criterion.

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;

19. The submission centers around the negative impacts arising from the alleged failure to enforce the environmental law during the burning of crop residues in Caborca, Sonora. The Secretariat finds that submission SEM-16-001 (*Agricultural Waste Burning in Sonora*) raises matters whose further study in this process would advance the goals of the NAAEC, specifically Article 1(a), (b), (c), (f), (g), and (h).³⁴

²⁶ Profepa, “Notificación al denunciante por incompetencia en el expediente no. PFPA/32.7/2C.28.4.1/0016-15,” Federal Attorney for Environmental Protection (2 December 2015).

²⁷ Sonora Transparente, A.C., letter to Urban Development and Ecology Department (10 December 2015).

²⁸ Revised Submission, at 1; see note 8 *supra*.

²⁹ *Ibid.*, at 2; see note 11 *supra*.

³⁰ CEC, *Burning Agricultural Waste: a Source of Dioxins* (Montreal: Commission for Environmental Cooperation, 2014), at 1-2.

³¹ *Ibid.*

³² *Ibid.*

³³ Revised Submission; see notes 9 and 11 *supra*.

³⁴ NAAEC Article 1:

The objectives of this Agreement are to:

c) Whether private remedies available under the Party's law have been pursued;

20. The Secretariat finds that the Submitter and others have taken reasonable steps by filing complaints with Profepa. In addition, with reference to section 7.5 of the Guidelines, the Secretariat finds that requesting a response from the Government of Mexico does not duplicate efforts or interfere with the processing of the complaints filed, especially since, at least in one case, Profepa found that it lacked jurisdiction to hear the complaint and, in the case of Proaes, there is no information indicating that this government agency is implementing enforcement measures under NAAEC Article 45(3)(a).³⁵
21. A response from the Government of Mexico could shed light on remedies pursued in relation to the burning of crop residues in Caborca, Sonora and, in any case, on the procedural status of these remedies.

d) Whether the submission is drawn exclusively from mass media reports.

22. While the Submitter attaches various press releases indicating that the burning of crop residues in Caborca, Sonora, is a matter of concern in the locality,³⁶ the Secretariat does not find that the submission is based primarily on news published in the media, but rather on the facts cited by the Submitter, which is evident from a perusal of the information presented in the appendices to both the original submission and the revised submission.
23. The Secretariat therefore finds that the submission meets the criterion of NAAEC Article 14(2)(d).

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

³⁵ NAAEC Article 45(3):

For purposes of Article 14(3), "judicial or administrative proceeding" means:

- a) 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; and...

³⁶ Revised Submission, at 2.

III. DETERMINATION

24. For the reasons set out herein, the Secretariat finds that submission SEM-16-001 (*Agricultural Waste Burning in Sonora*) satisfies the eligibility requirements of NAAEC Article 14(1) and, in conformity with Article 14(2), that a response from the Government of Mexico is warranted in regard to the assertions in the submission relating to the effective enforcement of the following provisions:
- i. REEPMA Articles 144, 146, and 172 in relation to the implementation of air quality measurement systems and the corresponding action measures;³⁷
 - ii. REEPMA Article 151 in regard to the prohibition on emitting contaminants in excess of the maximum allowable levels applicable to the burning of crop residues (if such provisions in fact exist);³⁸
 - iii. REEPMA Article 167 in regard to the implementation of the measures necessary to prevent and control air pollution-related environmental contingencies;³⁹
 - iv. REEPMA Articles 168 and 169 in reference to the issuance of the permits corresponding to the burning of crop residues;⁴⁰
 - v. REEPMA Article 170 in relation to alleged public health alteration, harm, or nuisance during the open-air burning;⁴¹
 - vi. NOM-015-Semarnat/Sagarpa-2007, in regard to the implementation of the specifications set out in sections and paragraphs 4.0, 4.1.3, 4.1.14, 4.2, 5.1.3, 5.1.5, 5.2, 5.2.2, 7, and 7.4,⁴² as well as in part III paragraphs 2.4.3 and 2.4.6 of the technical appendix on the application of the burning methods described in NOM-015.⁴³
25. Pursuant to the provisions of NAAEC Article 14(3), the Party may provide a response to the submission within the 30 working days following the receipt of this determination, or, by **25 July 2016**. In exceptional circumstances, the Party may notify the Secretariat in writing of the extension of this period to 60 working days from the date of this determination, or **5 September 2016**.

³⁷ *Ibid.*, at 1; see note 7 *supra*.

³⁸ *Ibid.*; see note 8 *supra*.

³⁹ *Ibid.*; see note 9 *supra*.

⁴⁰ *Ibid.*: "... unauthorized open-air combustion (art. 168 and 169) ... when we asked to see the permits for previous years and 2015, to ascertain whether the standard was being complied with, I was informed in these very words that no one had ever applied for such permits."

⁴¹ *Ibid.*, at 2; see note 11 *supra*.

⁴² *Ibid.*; see note 12 *supra*.

⁴³ On the citation of the technical appendix, see note 19 *supra*.

Secretariat of the Commission for Environmental Cooperation



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