

18 December 2020

COUNCIL RESOLUTION 20-05

Instruction to the Secretariat of the Commission for Environmental Cooperation regarding Submission SEM-18-002 (*Metrobús Reforma*), in connection with the assertion that Mexico City authorities failed to effectively enforce the environmental laws applicable to the environmental impact assessment procedures, established in the Federal District Environmental Protection Act (*Ley Ambiental de Protección a la Tierra en el Distrito Federal*), and Environmental Impact and Risk Regulations (*Reglamento de Impacto Ambiental y Riesgo*) regarding construction of the public passenger transport corridor “Metrobús Reforma”.

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

AFFIRMING that the process provided for in Articles 14 and 15 of the NAAEC was established by the Parties of the NAAEC to provide an opportunity for residents of Canada, Mexico, and the United States to present their concerns regarding effective enforcement of environmental law and to bring facts to light regarding those concerns;

NOTING that the United States-Mexico-Canada Trade Agreement (USMCA) entered into force on 1 July 2020 and now governs the submissions on enforcement matters process;

FURTHER NOTING that the Environmental Cooperation Agreement (ECA) among the Governments of Canada, the United Mexican States, and the United States of America entered into force on 1 July 2020 and superseded the NAAEC on that date;

RECOGNIZING that Article 2(4) of the ECA provides that any submission made pursuant to the NAAEC and not concluded as of entry into force of the ECA shall continue in accordance with the procedures established under Articles 14 and 15 of the NAAEC, unless the Council decides otherwise;

RECOGNIZING that the Submissions on Enforcement Matters (SEM) process is designed to promote information-sharing between members of the public and the governments on matters concerning the effective enforcement of environmental law;

ACKNOWLEDGING that factual records are an important way to increase public participation, transparency, and openness on issues related to the enforcement of environmental law in the United States, Canada, and Mexico;

HAVING CONSIDERED the Submission 18-002, filed on 2 February 2018 by “Academia Mexicana de Derecho Ambiental” and “La Voz de Polanco,” as well as the response provided by the Government of Mexico on 25 July 2018 (the “Response”);

HAVING REVIEWED the 17 December 2018 Notification of the Secretariat recommending the development of a factual record with respect to alleged failure to effectively enforce Articles 44; 46 paragraphs IV(a), VIII, and IX; 47; and 53 of the Federal District Environmental Protection Act (*Ley Ambiental de Protección a la Tierra en el Distrito Federal* – LAPT), as well as Articles 6 paragraph D, section II (no. 131); 41; 44; 50; 52; 54; and 62 of the Environmental Impact and Risk Regulation (*Reglamento de Impacto Ambiental y Riesgo* – RIAR);

REAFFIRMING that the purpose of a factual record is to provide an objective presentation of the facts relevant to the assertion set forth in a submission and will generally outline the history of the environmental enforcement issue raised in the submission, the relevant legal obligation of the Party, and the actions of the Party in fulfilling those obligations;

TAKING INTO ACCOUNT Guideline 10.4 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* in relation to the preparation of a factual record, which states that “[t]he Council will provide its reason(s) for the instructions in writing and they will be posted on the [SEM] public registry.”

HEREBY UNANIMOUSLY DECIDES:

TO INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15(4) of the NAAEC, and with Section 10.4 of the Guidelines, on the following provisions:

- Articles 47 and 53 of the LAPT; and
- Articles 41, 44, 50, 52, 54, and 62 of the RIAR;

TO DIRECT the Secretariat to post the Council’s reasons for its vote on the SEM public registry;

TO DIRECT the Secretariat to conclude the preparation of the draft factual record, as provided in Section 19.5 of the Guidelines, and present it to the Council in accordance with Article 15(5) of the NAAEC; and

TO FURTHER DIRECT the Secretariat to provide the Council with its overall work plan for gathering the relevant facts; to keep the Council informed of any future changes or adjustments to such plan; and to promptly communicate with the Council in connection with any clarification required with respect to the scope of the factual record hereby authorized.

APPROVED BY THE COUNCIL:

Catherine Stewart
Government of Canada

Ivan Rico
Government of the United Mexican States

Jane Nishida
Government of the United States of America