

Secretariat of the Commission for Environmental Cooperation

GENERAL REQUEST FOR INFORMATION for preparation of a factual record concerning submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*)

I. The factual record process

The Commission for Environmental Cooperation (CEC) is an international organization created by the North American Agreement on Environmental Cooperation (NAAEC or the “Agreement”), signed by Canada, Mexico, and the United States in 1994. The Agreement on Environmental Cooperation (ECA), signed by the governments of Canada, the United Mexican States, and the United States of America, came into force on 1 July 2020, as of which date it supplanted the NAAEC. The CEC is composed of three operational bodies: the Council, composed of the highest federal-level environmental authorities of the three countries; the Joint Public Advisory Committee, made up of five citizens of each country, and the Secretariat, headquartered in Montreal, Canada.¹

Articles 14 and 15 of the NAAEC provided for a process allowing any person or nongovernmental organization to file a submission asserting that a Party to the Agreement is failing to effectively enforce its environmental law. However, the submissions on enforcement matters process is now governed by chapter 24 of the new trade agreement signed by the three countries, the United States-Mexico-Canada Agreement (USMCA), in force as of 1 July 2020. The ECA, signed by the governments of Canada, the United States, and Mexico, came into force on the same date and now supplants the NAAEC for any submission brought to the CEC as of that date. However, ECA Article 2(4) provides that any submission made pursuant to the NAAEC and not concluded as of the entry into force of the ECA shall continue to be processed in accordance with the procedures established under NAAEC Articles 14 and 15, unless the Council decides otherwise.

The Secretariat initially considers such submissions to determine whether they meet the criteria contained in NAAEC Article 14(1). When the Secretariat finds that a submission meets these criteria, it then determines, pursuant to the provisions of NAAEC Article 14(2), whether the submission merits a response from the concerned Party. In light of any response from the concerned Party, and in accordance with the NAAEC, the Secretariat may notify the Council that the matter warrants the development of a factual record, providing its reasons for such recommendation in accordance with NAAEC Article 15(1). Where the Secretariat decides to the contrary, or where certain circumstances obtain, it then proceeds no further with the submission.

The introduction to the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”) gives guidance as to the contents of a factual record:

¹ For detailed information on the various stages of the 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.

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 to allow the readers to draw their own conclusions regarding a Party's environmental law enforcement. Although a factual record is not to contain conclusions or recommendations, it is expected to generally outline the history of the environmental enforcement issue raised in the submission, the relevant legal obligations of the Party, and the actions of the Party in fulfilling those obligations; as such, it is another valuable outcome of this information sharing-process...²

Pursuant to NAAEC Article 15(4) and section 11.1 of the Guidelines, in preparing factual records, the Secretariat will consider any relevant technical, scientific or other information that is publicly available; submitted by the Joint Public Advisory Committee (JPAC) or by interested nongovernmental organizations or persons, or developed by the Secretariat or independent experts.³

On 3 October 2018, a person residing in Mexico (the "Submitter") filed submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) in accordance with NAAEC Article 14(1). The Submitter asserts that the government of Mexico is failing to effectively enforce its laws in connection with site restoration and abandonment subsequent to hydraulic fracturing carried out in the community of Hacienda El Carrizo, municipality of Los Ramones, Nuevo León. On 8 April 2020, the government of Mexico submitted its response to the submission. After reviewing the submission in light of the Party's response, the Secretariat recommended the production of a factual record with respect to the effective enforcement of LGEEPA Articles 28 paragraphs I and XIII, 88 paragraph III, and 170.

On 5 October 2023, in Council Resolution 23-05, the CEC Council instructed the Secretariat to prepare a factual record for submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) as per the Secretariat's recommendation in its notification of 17 December 2018. The Secretariat is therefore requesting relevant information relating to the matters to be addressed in the factual record.

² CEC, *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, p. 3, available at <www3.cec.org/islandora/en/item/10838-guidelines-submissions-enforcement-matters-under-articles-14-and-15-north>.

³ Guideline 11.1.

II. Examples of relevant factual information

Examples of information of a technical, scientific or other nature necessary for the preparation of the factual record are given below. You are kindly requested to send this information in electronic format to facilitate its management and integration. Information sent to the CEC Secretariat is understood to be subject to no limitations as regards confidentiality.

1. Information related to safety measures applied in response to the effects of the Tangram-1 and Nerita-1 wells.
2. Letters and documentation relating to the authorities' jurisdiction over the application of safety measures with respect to the Tangram-1 and Nerita-1 wells.
3. Information comprising the application of safety measures to preserve the integrity and equilibrium of the water cycles of rivers, lakes, and other bodies of water in the vicinity of the Tangram-1 and Nerita-1 wells.
4. Information describing matters posing any imminent risk of ecological disequilibrium resulting from the possible effects of the construction and/or, as applicable, the maintenance and operation of the Tangram-1 and Nerita-1 wells.
5. Information describing matters posing possible serious harm to or degradation of natural resources due to the construction and, as applicable, the maintenance and operation of the Tangram-1 and Nerita-1 wells.
6. Information describing matters relating to possible cases of contamination with dangerous repercussions for ecosystems, their components, or public health as a result of construction and, as applicable, the maintenance and operation of the Tangram-1 and Nerita-1 wells.
7. Reports by the federal, state, or municipal authorities concerning matters relating to the Tangram-1 and Nerita-1 wells.
8. Any other technical, scientific, or other information that may be relevant for inclusion in the factual record.

III. Additional background information

The submission, Mexico's response, the Secretariat's determinations, Council Resolution 23-05, and other information corresponding to submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) is available in the registry of submissions on the CEC website at <http://www.cec.org/submissions/registry-of-submissions/>. These documents may also be requested from the Secretariat at sem@cec.org.

IV. Where to send the information

Relevant information for the preparation of the factual record should preferably be sent by e-mail to <sem@cec.org>. It may also be sent via cloud storage platforms such as SkyDrive, Google Drive, or Dropbox.

Where the information is not available in electronic format, please send it to the Submissions on Enforcement Matters Unit (the SEM Unit) at the following address:

CEC Secretariat
Legal Affairs and SEM Unit
700, rue de la Gauchetière ouest, suite 1620
Montréal, QC H3B 5M2
Canada

Please mention submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) in your correspondence.