

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

Submitters:	[Information confidential pursuant to NAAEC Article 11(8)(a)]
Party:	United Mexican States
Original submission:	3 October 2018
Revised submission:	21 February 2019
Date of determination:	8 May 2019
Submission no.:	SEM-18-003 (<i>Hydraulic Fracturing in Nuevo León</i>)

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 residing or established in the territory of Canada, the United States, or Mexico to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law (the “SEM” process). The Secretariat of the Commission for Environmental Cooperation (the “Secretariat” of the “CEC”)¹ initially considers submissions with reference to the requirements of NAAEC Article 14(1). Where the Secretariat finds that a submission meets these requirements, it then determines, pursuant to 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 Article 15(1). Where the Secretariat decides to the contrary, it then proceeds no further with the submission.²
2. On 3 October 2018, a person residing in Mexico who requested the confidentiality of his personal information under NAAEC Article 11(8)(a) (hereinafter, the “Submitter”) filed an NAAEC Article 14(1) submission with the CEC Secretariat through the online submissions platform (www.cec.org/submissions).³ The Submitter asserted that the government of Mexico is failing to effectively enforce its environmental law in connection with the restoration and abandonment of a site subsequent to hydraulic fracturing carried out in the community of Hacienda El Carrizo, municipality of Los Ramones, Nuevo León.
3. On 15 November 2018, the Secretariat found that the submission did not meet the requirements of Article 14(1) of the Agreement because the Submitter did not identify the legal provisions that the competent authorities are allegedly failing to enforce, nor did he include information as to how the matter was communicated to the competent

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

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-18-003 (*Hydraulic Fracturing in Nuevo León*), Article 14(1) Submission (3 October 2018).

- authorities of the Party.⁴ Pursuant to paragraphs 6.1 and 6.2 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”),⁵ the Secretariat notified the Submitter that he had 60 (sixty) working days in which to file a submission that met all the Article 14(1) requirements.⁶
4. On 21 February 2019, the Secretariat received a revised submission containing additional assertions and information in response to the issues raised in the determination of 15 November 2018.⁷ The revised submission included an additional submitter who also requested that his personal information be kept confidential under NAAEC 11(8)(a).
 5. Submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) asserts that *Petróleos Mexicanos* (Pemex) “has been exploring for hydrocarbons in the area of Los Ramones and at other locations in the state of Nuevo León” and that two wells were built in that area, Tangram-1 and Nerita-1, “to use hydraulic fracturing and look for hydrocarbons.”⁸ The Submitters assert that “the manner in which the Mexican authorities authorized hydraulic fracturing in this area illustrates the violation of Mexican environmental law,” contending that the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat) did not require Pemex to “comply with the requirement of producing an environmental impact statement”; or, if such a statement was indeed produced, that Semarnat did not monitor the application of the corresponding mitigation measures.⁹
 6. The Submitters assert that hydraulic fracturing “requires millions of liters of water;” that more than 750 chemicals are used in the process; that the wastewater produced by the process contains heavy metals and radioactive substances; that the wastewater is stored in disposal wells and tends to infiltrate into the water table, and that during fracturing, the geological formation is subjected to strong pressure, causing microseisms.¹⁰ In particular, they state that Tangram-1, completed in December 2013, was injected with 25,808 cubic meters (m³) of water and that a depth of 4,426 m was reached. Nerita-1, completed in August 2014, was injected with 13,039 m³ of water down to a depth of 4,100 m.¹¹ They further contend that the operations at both wells provoked seismic activity induced by hydraulic fracturing,¹² in addition to generating impacts on water, the environment, and agriculture in the community of Hacienda El Carrizo, municipality of Los Ramones, Nuevo León.
 7. The Submitters assert that Mexico is failing to effectively enforce **Article 28 of the Mexican General Act on Ecological Equilibrium and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA)** with regard to the obligation to file an environmental impact statement (EIS) before a project

⁴ SEM-18-003 (*Hydraulic Fracturing in Nuevo León*), Article 14(1) Determination (15 November 2018), §35 [Article 14(1) Determination].

⁵ *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, at <www.cec.org/guidelines> [the Guidelines].

⁶ Article 14(1) Determination, §36.

⁷ SEM-18-003 (*Hydraulic Fracturing in Nuevo León*), Article 14(1) Submission (21 February 2019) [Revised Submission].

⁸ *Ibid.* at 2.

⁹ *Ibid.*

¹⁰ *Ibid.* at 3.

¹¹ *Ibid.* at 4.

¹² *Ibid.*

is approved; **LGEEPA Article 15**, concerning the obligation to repair the harm arising from work that affects the environment; **LGEEPA Article 122**, applicable to control of wastewater; **LGEEPA Article 170**, authorizing Semarnat to apply safety measures; **LGEEPA Articles 1, 15, and 88** in relation to sustainable water use; **Articles 7 and 10 of the Federal Environmental Responsibility Act (*Ley Federal de Responsabilidad Ambiental*—LFRA)** with regard to Pemex’s responsibility for environmental harms; **Articles 2 and 91 of the Regulation to the Mexican Waste Prevention and Management Act (*Reglamento de la Ley General de Prevención y Gestión Integral de Residuos*—LPGIR Regulation)**, with regard to wastewater discharges into stable geological formations, and **Articles 8, 16, and 18 of the Guidelines for the Protection and Conservation of National Waters during Hydrocarbon Exploration and Mining in Unconventional Deposits (*Lineamientos para la Protección y Conservación de las Aguas Nacionales en Actividades de Exploración y Extracción de Hidrocarburos en Yacimientos No Convencionales*)** (the “Mining Guidelines”), applicable to the prevention of subsoil and aquifer contamination.¹³

8. As discussed in detail in Section II of this determination below, the Secretariat considers that revised submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) meets all the eligibility requirements of Article 14(1) and that, pursuant to the criteria of Article 14(2), it merits a response from the government of Mexico in regard to the Submitters’ assertions. The reasons for this determination follow.

II. ANALYSIS

9. Where certain conditions are met, NAAEC Article 14 authorizes the Secretariat to consider submissions from any person or nongovernmental organization asserting that a Party to the Agreement is failing to effectively enforce its environmental law. As the Secretariat has stated in previous Article 14(1) determinations, this article is not intended to be an insurmountable screening device.¹⁴ The Secretariat reviewed the submission with this perspective in mind.

A. Opening paragraph of Article 14(1)

10. On 15 November 2018, the Secretariat corroborated that the submission included the original Submitter’s name, domicile, and sufficient information to contact him, and that it did not contain information suggesting that he is part of the government or under its direction.¹⁵ Concerning the new Submitter added in the revised submission, the Secretariat notes that he included his name and sufficient information to contact him (address, email, telephone) and that, similarly, there is no information in the submission to suggest that the new Submitter is part of the government or under its direction.
11. As to whether the submission makes reference to matters that are effectively ongoing, the Secretariat finds that the Submitters’ assertions meet the condition of referring to an existing situation, since the alleged failures of enforcement relate to harm to water and the environment in the community of El Carrizo, Nuevo León, as a result of the

¹³ *Ibid.* at 2.

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

¹⁵ Article 14(1) Determination, §7.

construction of the Nerita-1 and Tangram-1 wells, from which impacts are persisting after the closing of those wells.¹⁶

12. As to whether the legal provisions cited in the submission fit the NAAEC Article 45(2) definition of environmental law and whether the assertions in the submission refer to failures to effectively enforce the law, as per the submissions mechanism, the Secretariat analyzes the issue below.

1) Environmental law in question

13. The revised submission cites provisions of the LGEEPA, the LFRA, the LGPGIR Regulation, and the Mining Guidelines. After a review of the provisions cited in the submission, the Secretariat finds that some of them are not eligible under Article 14 since they either do not coincide with the definition of “environmental law” found in Article 45(2)(a)¹⁷ or are insufficiently tangible for their enforcement to be reviewed in isolation from other provisions.

i) LGEEPA and LFRA

14. The revised submission cites LGEEPA Articles 1, 15, 28, 88, 122, and 170 and LFRA Articles 7 and 10.
15. LGEEPA Article 1 provides that the Act emanates from the constitutional provisions relating to environmental protection and the preservation and restoration of ecological equilibrium; that its provisions are matters of public order and the social interest, and that its purpose is to promote sustainable development and to lay the foundations for guaranteeing the right of all persons to live in a healthy environment, *inter alia*. LGEEPA Article 15 stipulates that the principles enumerated therein shall be observed in the formulation and administration of environmental policy.
16. The Secretariat finds that while these provisions have to do with the definition of the object of Mexico’s environmental law and refer to general principles guiding environmental policy, in practice they require additional, tangible provisions for their implementation. Therefore, they are only retained for review insofar as they harmonize with other enforceable provisions for purposes of analysis.¹⁸
17. LFRA Article 7, for its part, sets out the obligation to issue Mexican official standards establishing the minimum levels of deterioration, loss, change, harm, impact,

¹⁶ Revised Submission at 5–6.

¹⁷ NAAEC Article 45 defines “environmental law” as follows:

2. For purposes of Article 14(l) and Part Five:

a) “environmental law” means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through

i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,

ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or

iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party’s territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

b) For greater certainty, the term “environmental law” does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

¹⁸ See SEM-15-002 (*Management of Analog TV Waste*), Article 14(1)(2) Determination (1 March 2016).

- modification, and contamination of the environment that must exist in order for the impacts to be considered adverse and harmful. The Secretariat finds that the failure to publish regulatory provisions cannot be reviewed under NAAEC Article 14(1); therefore, this article is not retained for further review.
18. The Submitters assert that Mexico is failing to effectively enforce LFRA Article 10, which establishes responsibility for environmental harm and the obligation to repair it; they further contend that this provision should be implemented with reference to LGEEPA Article 15 [numbered] clauses II and IV, which provide that ecosystems must be used in a manner that ensures their optimal and sustainable productivity (clause II) and that anyone who carries out work or activities that affect or may affect the environment is obligated to bear the costs arising from the repair of any harm caused (clause IV). The Secretariat finds that LFRA Article 10 qualifies as environmental law when considered with reference to LGEEPA Article 15 clauses II and IV.
 19. LGEEPA Article 28 establishes the obligation to file an environmental impact statement (EIS) as part of the assessment and approval process prior to the performance of a work or activity. In this regard, the Submitters contend that they conducted a fruitless search for an EIS corresponding to the works described in the submission on web portals and sites where such documents are published, finding nothing that fits this description.¹⁹ They further assert that the environmental impact of the activities of Pemex in the community of El Carrizo has been negative and that no authority has done anything about it to date.²⁰ The Secretariat has previously found that this provision qualifies as environmental law;²¹ however, in this case, only clauses I and XIII [of the first paragraph] are retained for review, since the activities to which the submission refers relate to the petroleum industry and correspond to matters under federal jurisdiction. Thus, the second and third paragraphs of LGEEPA Article 28 are retained for review.
 20. LGEEPA Article 88 sets out the criteria to be observed by the state for the sustainable use of water. The provision qualifies as environmental law, but the Secretariat is only considering clause III, which relates to the carrying capacity of aquifers (a central assertion of the submission).²² This provision is taken into consideration with reference to the rest of the provisions relating to sustainable water use cited in the submission, these being LGEEPA Article 122 and Articles 8, 16, and 18 of the Mining Guidelines.
 21. LGEEPA Article 122 provides that wastewater from industrial uses that infiltrates into the subsoil, and wastewater deposited onto soils in general, must meet the conditions necessary to avoid the contamination of receiving bodies; interference with water treatment processes; and disruption, impediment, or alteration of water use, the operation of systems, or the hydraulic capacity of watersheds. In this regard, the Submitters contend that Mexico is failing to prevent the contamination of receiving bodies; and that alleged activities interfered with water treatment processes, and impeded the normal operation of hydraulic capacity in the watershed where the wastewater generated was deposited. The Secretariat finds that LGEEPA Article 122 qualifies as environmental law.
 22. As regards LGEEPA Article 170—which establishes that where there is an imminent risk of ecological disequilibrium or of serious harm to or deterioration of natural

¹⁹ Revised Submission, at 7.

²⁰ *Ibid.*

²¹ See SEM-05-001 (*Crushed Gravel in Puerto Peñasco*), Article 14(1)(2) Determination (16 February 2005); SEM-18-004 (*Chileno Bay Club*), Article 14(1)(2) Determination (22 January 2019).

²² Revised Submission at 8.

resources, or where there exist cases of contamination with dangerous repercussions for ecosystems, Semarnat may order any of the safety measures enumerated therein—the Secretariat has found on previous occasions that this provision qualifies as environmental law,²³ since its primary purpose is the protection of the environment.

ii) LGPGIR Regulation

23. The revised submission cites Articles 2 and 91 of the LGPGIR Regulation.
24. Article 2 of the LGPGIR Regulation lists the definitions of terms used in the act. While such definitions may prove useful in reviewing the provisions cited in the submission, it alone does not qualify as environmental law.
25. Concerning Article 91 of the LGPGIR Regulation, which provides that final disposal of hazardous waste may take the form of controlled containment (clause I) or containment in geologically stable formations (clause II), the Secretariat finds that it qualifies as environmental law. However, only clause II is retained for review, since only it relates to the Submitters' assertion that wastewater from the hydraulic fracturing process should not have been deposited without first verifying whether the formations at the site where the drilling was done were indeed geologically stable.

iii) Mining Guidelines

26. The Mining Guidelines, published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) on 30 August 2017 establish requirements concerning the protection and conservation of national waters that must be fulfilled during exploration and mining of unconventional deposits.
27. The Submitters assert that Mexico is failing to effectively enforce Article 16 of the Mining Guidelines, which provides that “[d]uring the stages of the process of exploring for and mining hydrocarbons from unconventional deposits, regulated parties [i.e., Pemex] shall prevent infiltration of contaminating substances into the subsoil and aquifers.” The article stipulates that geomembranes must be installed so that there is no leakage into the ground from the drilling sites. Concerning Articles 8 and 18 of the Mining Guidelines, to which the submission also refers, the first establishes the information that must be presented in order to exploit national waters, while the second provides that before such exploitation commences, a network of regional and local monitoring wells must be established in order to determine the “water baseline.”
28. The Secretariat finds that Articles 8, 16, and 18 of the Mining Guidelines qualify as environmental law, since their primary purpose is the protection of the environment through provisions for the preservation of water quality. All the same, the Secretariat bears in mind that Mexico may inform on the retroactive application of such provisions that Mexico may present in its response, as the regulation was published on August 2017.

B. The six requirements of Article 14(1)

29. In its Article 14(1) determination, the Secretariat found that original submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) satisfied NAAEC Article 14(1)(a), (b), (c), (d), and (f). However, because the Submitters present additional information to support their assertions, the Secretariat acknowledges the information in this determination and finds that it adds to its previous conclusion that the submission meets Article 14(1)(c) requirement. In addition, the Secretariat proceeded to assess whether the

²³ SEM-98-007 (*Metales y Derivados*), Article 15 Notification (6 March 2000).

revised submission satisfies subparagraph (e), since information was added in regard to the communication of the matter to the Party in question.

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*

30. The revised submission presents documentary evidence serving to support the Submitters' assertions. In addition to the information in the original submission, the revised submission includes the 2013 annual report of Pemex, with relevant information on the characteristics and the results obtained from the drilling of the Tangram-1 and Nerita-1 wells;²⁴ a technical and legal report on hydraulic fracturing in Argentina, which provides information on the environmental risks and impacts of this practice;²⁵ a document published by the National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos*) including data on oil and gas exploration and mining in lutites, which discusses the Tangram-1 and Nerita-1 wells;²⁶ and a study on seismicity induced by hydraulic fracturing in the state of Nuevo León, Mexico.²⁷

31. The Secretariat finds that the revised submission contains sufficient information and documentary evidence to support the Submitters' assertions, and therefore meets the requirement of NAAEC 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*

32. The revised submission includes information demonstrating that the matter was communicated to the relevant authorities of Mexico. The Submitters present correspondence sent to the Semarnat office in the state of Nuevo León,²⁸ the head office of the Río Bravo Watershed Agency of the National Waters Commission (*Comisión Nacional del Agua—Conagua*),²⁹ and the head office of Monterrey Water and Sewer Services (*Servicios de Agua y Drenaje de Monterrey*),³⁰ essentially reporting the work done on the Tangram-1 and Nerita-1 wells, asserting the existence of environmental harm, and requesting action vis-à-vis the company responsible, *Petróleos Mexicanos*.

33. Also attached to the submission is an administrative decision issued by the legal affairs unit of the National Industrial Safety and Environmental Protection Agency for the Hydrocarbons Sector (*Agencia Nacional de Seguridad Industrial y Protección al Medio Ambiente del Sector Hidrocarburos—ASEA*) allowing a complaint filed by one of the Submitters.³¹

²⁴ *Petróleos Mexicanos, Informe anual 2013* (Mexico, March 2014).

²⁵ Center for Human Rights and Environment and Ecojure, *Fracking Argentina*, technical and legal report on hydraulic fracturing in Argentina, October 2013.

²⁶ *Comisión Nacional de Hidrocarburos, Seguimiento a la exploración y extracción de aceite y gas en lutitas* (Mexico, November 2016); produced with information taken from Pemex-BDI, "Información de reservas enviada a la Comisión Nacional de Hidrocarburos," and information from the institutional database portal of *Petróleos Mexicanos*, Mexico.

²⁷ Rodríguez, Juan M., *et al.*, "Sismicidad inducida por la fractura hidráulica en el estado de Nuevo León," XV Congreso Colombiano de Geología, Bucaramanga, Colombia, 31 August–5 September 2015.

²⁸ Submitter, letter to Semarnat officer in Nuevo León (27 November 2018).

²⁹ Submitter, letter to executive director, Río Bravo Watershed Agency of Conagua (27 November 2018).

³⁰ Submitter, letter to executive director, Monterrey Water and Sewer Services (27 November 2018).

³¹ ASEA, decision to allow complaint in file DP-ASEA/UAJ/DGCT/139-18, National Industrial Safety and Environmental Protection Agency for the Hydrocarbons Sector (12 December 2018).

34. Based on the new information presented, the Secretariat finds that the matter raised in the submission has been communicated in writing to the authorities responsible for enforcement of the environmental law in question, and the submission therefore meets the requirement of 14(1)(e).

C. Criteria of NAAEC Article 14(2)

35. Having found that the submission meets all the requirements of NAAEC Article 14(1), the Secretariat proceeded to determine whether it merits a response from the Party in accordance with NAAEC Article 14(2).

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

36. The Submitters assert that the works and activities arising from the operation of the Tangram-1 and Narita-1 wells have caused harm to the environment and also to the houses of the residents of the community of El Carrizo. In particular, they contend that hydraulic fracturing operations of the kind carried out in the area of their community require “millions of liters of water, which affects its availability for human use and any other activity, such as grazing”; that “more than 750 different chemicals” are used in drilling operations; that the wastewater is augmented by “heavy metals and radioactive substances”; that the wastewater infiltrates into the water table; and that during the fracturing process, “the geological formation is subjected to strong pressure, causing cracks in the rock.”³²
37. The Submitters assert that after the Tangram-1 and Nerita-1 wells were constructed, they began to notice that household wells were drying up; that the drought was going on longer than usual; that it was no longer possible to plant the crops they usually grew in the area nor give the animals water to drink; that the water in many wells was “clearly polluted, with a fetid odor that made it impossible to drink”; in sum, that the water taken from household wells in the community of Hacienda El Carrizo, in the municipality of Los Ramones, was no longer fit to drink.³³
38. Concerning the matters raised in the submission, the Submitters assert that, “the authority that evaluates environmental impact studies and approves or denies environmental permits did not require effective compliance with national environmental legal provisions.”³⁴
39. Paragraph 7.4 of the SEM Guidelines provides that when determining whether a submission alleges harm, the Secretariat must consider whether “the alleged harm is due to the asserted failure to effectively enforce environmental law.” The Secretariat finds that the submission meets this criterion, since the Submitters assert that the alleged harm to water quality and availability in the community of El Carrizo, municipality of Los Ramones, Nuevo León is an effect of the failure to effectively enforce the cited provisions.

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

³² Revised submission at 3.

³³ *Ibid.* at 5–6.

³⁴ *Ibid.* at 2.

40. Submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) focuses on the effective enforcement of provisions relating to environmental impact assessment, prevention and control of water pollution and pollution of aquatic ecosystems, adequate management of wastewater discharges from hydraulic fracturing operations, hazardous waste management, and the establishment of safety measures and sanctions.³⁵
41. The Secretariat finds that the further study of this submission would help advance the goals of the NAAEC and that it satisfies the criterion of Article 14(2)(b).

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

42. The revised submission states that a complaint was filed with ASEA, the entity in charge of enforcing the environmental provisions relating to hydrocarbon sector activities in Mexico. According to the information accompanying the submission, on 7 December 2018, one of the Submitters filed “a complaint of environmental impacts relating to the drilling of wells using the hydraulic fracturing technique” with ASEA.³⁶
43. Guided by paragraph 7.5 of the Guidelines and in the light of NAAEC Article 6(3)(c), the Secretariat finds that the competent authorities have been requested 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 therefore concludes that reasonable steps have been taken to pursue the remedies available in Mexico and that the submission meets the criterion of Article 14(2)(c).

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

44. The Secretariat finds that the submission is not based exclusively on mass media reports but on the facts set out by the Submitters; this is obvious from a reading of the information presented in the appendices to the revised submission. The Secretariat therefore concludes that the submission meets the criterion of NAAEC Article 14(2)(d).

III. DETERMINATION

45. For the foregoing reasons, the Secretariat finds that submission SEM-18-003 (*Hydraulic Fracturing in Nuevo León*) meets the eligibility requirements of NAAEC Article 14(1) and that, pursuant to Article 14(2), a response from the government of Mexico is warranted in relation to several of the Submitters’ assertions.

³⁵ “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;
- 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;
- i) promote economically efficient and effective environmental measures;...”

³⁶ ASEA, decision to allow complaint in file DP-ASEA/UAJ/DGCT/139-18, National Industrial Safety and Environmental Protection Agency for the Hydrocarbons Sector (12 December 2018).

46. The Secretariat respectfully requests to the Party information on the effective enforcement of the following provisions:

Concerning responsibility for environmental harm and the establishment of safety measures:

- LFRA Article 10 and LGEEPA Article 15 clauses II and IV in relation to the alleged responsibility of Pemex for environmental harm, and
- LGEEPA Article 170 authorizing Semarnat to apply safety measures.

Concerning water quality:

- LGEEPA Article 88 clause III on sustainable water use;
- LGEEPA Article 122, applicable to control of wastewater;
- Article 91 of the LGPGIR Regulation, requiring wastewater to be discharged into geologically stable formations, and
- Articles 8, 16, and 18 of the Mining Guidelines, applicable to prevention of the contamination of subsoil and aquifers.

Concerning environmental impact assessment:

- LGEEPA Article 28 clauses I and XIII, concerning the obligation to file an EIS before a project is approved.

47. In accordance with NAAEC Article 14(3), the Party may provide a response within the 30 (thirty) working days following the receipt of this determination, or by **19 June 2019**. In exceptional circumstances, the Party may notify the Secretariat in writing of the extension of this period to 60 (sixty) days, or until **31 July 2019**.

Secretariat of the Commission for Environmental Cooperation

(signature in original)

Robert Moyer
SEM and Legal, Head of Unit

(signature in original)

Paolo Solano
Legal Officer, SEM Unit

cc: Norma Munguía Aldaraca, alternate representative, Mexico
Isabelle Bérard, alternate representative, Canada
Jane Nishida, Interim Alternate representative, United States
César Rafael Chávez, Executive Director, CEC
Submitters