

**Secretariat of the Commission for Environmental Cooperation
Determination pursuant to Article 14(1)(2)
of the North American Agreement on Environmental Cooperation**

Submitter: Asociación Colectiva Socioambiental, A.C.
Represented by: Carlos Gustavo Lozano Guerrero
Party: United Mexican States
Date filed: 16 April 2019
Date of the determination: 5 July 2019
Submission no.: SEM-19-002 (*City Park Project*)

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 non-governmental organization residing in or established in Canada, Mexico or the United States to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law (this process is referred to as the SEM process). As an initial step, the Commission’s Secretariat (“the Secretariat” of the “CEC”)¹ considers such submissions in accordance with the requirements specified in NAAEC Article 14(1). Should the Secretariat deem that a submission satisfies said requirements, it shall then determine whether, pursuant to the criteria specified in NAAEC Article 14(2), the submission merits a response from the concerned Party. In light of said Party’s response—if any—and in accordance with the NAAEC, the Secretariat determines whether the matter warrants the preparation of a factual record. If so, it shall notify the CEC Council and explain the reasons for its recommendation in adherence with Article 15(1); should the Secretariat determine that the preparation of a factual record is not warranted, it shall proceed no further with the submission.²
2. On 16 April 2019, the organization *Acción Colectiva Socioambiental, A.C.* (the “Submitter”) filed a submission with the Secretariat, in accordance with the provisions of NAAEC Article 14(1).³ The Submitter asserts that Mexico is failing to effectively enforce its environmental law in relation to the environmental impact authorization granted to the “City Park” project, located in the City of León, Guanajuato.
3. The Submitter argues that the municipal authorities of León, Guanajuato, are failing to effectively enforce the relevant environmental impact provisions. In effect, the Submitter

¹ The Commission for Environmental Cooperation was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), an instrument signed by Canada, Mexico and the United States (the “Parties”). The constituent bodies of the CEC are its Council, Secretariat and Joint Public Advisory Committee (JPAC). Notwithstanding the recent free trade treaty negotiations between the Parties, culminating in a new trade agreement, as well as, eventually, a new Environmental Cooperation Agreement, the NAAEC remains in force as these new instruments have yet to be ratified.

² For detailed information on the various stages of the SEM process, as well as on the Secretariat’s determinations and factual records, please consult the CEC website regarding submissions on enforcement matters <www.cec.org/peticiones>

³ SEM-19-002 (*City Park Project*), Article 14(1) Submission (16 April 2019) [Submission]. To consult this submission documentary’s record, see <www.cec.org/es/sem-peticiones/proyecto-city-park>.

makes the following assertions: the General Directorate for Environmental Management (*Dirección General de Gestión Ambiental—DGGA*) of the City of León, Guanajuato, “was not the competent authority to be seized of the environmental impact assessment process, ensure its soundness and adjudicate the resulting EIA”; the modality for the environmental impact assessment (EIA) assigned by the Environmental Regulation Department (*Dirección de Regulación Ambiental—DRA*) of the City of León “did not reflect the potential environmental impact of the project’s works and activities”; the DRA “took actions beyond the statutory procedures” prescribed under environmental impact law; and the DGGA “did not comply with due process in relation to ensuring the soundness of the environmental impact assessment process.”

4. Having reviewed the submission in accordance with Article 14 of the Agreement, and based on the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”), the Secretariat finds that some of the assertions made in submission SEM-19-002 (*City Park Project*) satisfy all Article 14(1) admissibility requirements and, pursuant to the criteria specified under Article 14(2), merit requesting a response from the Government of Mexico, for the reasons outlined hereafter.

II. ANALYSIS

5. Under the terms of NAAEC Article 14, the Secretariat may consider submissions asserting that a Party to the Agreement is failing to effectively enforce its environmental law. As the Secretariat has stated in previous Article 14 determinations, Article 14 is not intended to be an “insurmountable screening device” to submitters⁴ and should be broadly interpreted, in a manner consistent with the Agreement’s objectives.⁵ The Secretariat examined the present submission with this perspective in mind.

A. Article 14(1) admissibility requirements

6. Article 14(1) authorizes the Secretariat to “consider a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law” provided certain conditions are met. In effect, submission SEM-19-002 (*City Park Project*) specifies the Submitter’s name, provides information on his representative and sufficient information to establish contact. Based on the information provided, the Submitter is a legally constituted civil association under Mexican law, established in the City of León, Guanajuato.⁶ There is no information to suggest that the Submitter is part of the government or under its direction.
7. The Submitter affirms that Mexico is failing to effectively enforce the provisions of the following laws and regulations: the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*); the LGEEPA Regulation on Environmental Impact Assessment (*Reglamento*

⁴ 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).

⁵ SEM-01-002 (*AAA Packaging*), Article 14(1) Determination (24 April 2001), at 2: “Article 14(1) should be given a large and liberal interpretation, consistent with the objectives of the NAAEC.”

⁶ Submission, at 1.

de la LGEEPA en materia de Evaluación del Impacto Ambiental—REIA); the General Wildlife Act (*Ley General de Vida Silvestre—LGVS*); the Internal Regulation of the Ministry of the Environment and Natural Resources (*Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales—RI-Semarnat*); the Environmental Protection and Preservation Act of the State of Guanajuato (*Ley para la Protección y Preservación del Ambiente del Estado de Guanajuato—LPPAEG*); the LPPAEG Regulation on Environmental Impact Assessment (*Reglamento de la LPPAEG en materia de Evaluación del Impacto Ambiental—REIA-Guanajuato*); the Regulation for Environmental Management of the City of León, Guanajuato (*Reglamento para la Gestión Ambiental—RGA-León* or “Municipal Regulation”); and Official Mexican Standard NOM-059-SEMARNAT-2010, *Environmental protection—Native species of flora and wildlife of Mexico-Risk categories and specifications for species inclusion, exclusion or amendments—List of species at risk* (NOM-059).

8. The Submitter makes the following assertions: the City Park project is adjacent to the Los Cárcamos Ecological Park⁷ which comprises an 11 ha section, located a few meters from the Metropolitan Park, where the El Palote dam is found; NOM-059 listed migratory birds travel to both bodies of water (Los Cárcamos and the El Papalote reservoir);⁸ according to the technical documentation enclosed with the submission, the site “constitutes an ‘ecosystemic island,’ within the El Palote-Los Cárcamos Park complex, consistent with the concept of ‘archipelago reserves’ [...] with wetlands characteristics”;⁹ the body of water in Los Cárcamos is fed by groundwater flows from the El Palote reservoir;¹⁰ the Los Cárcamos Ecological Park “is a habitat typical of the water runoff areas found in the Laja River’s upper basin” and “should be preserved as a precautionary measure”;¹¹ the listed species travel back and forth between the parks;¹² the project in question presents risks of collision for birds due to travel between the two bodies of water;¹³ and, in conclusion, the León Metropolitan Park’s Master Plan and the Comprehensive Study on the Conservation of Los Cárcamos Park both attest to the interrelationship between these two ecological areas.¹⁴
9. According to the Submitter, the DGGA of the City of León was not the competent authority for granting an environmental impact authorization to the City Park project, as the responsibility for analyzing and, if appropriate, authorizing environmental impacts falls to the federal or state authorities. The Submitter asserts that although Article 1 section II and Article 5 section XVI of the Municipal Regulation establish provisions on environmental impact assessment, the rules governing the distribution of powers stipulated in LGEEPA and the LPPAEG do not vest the municipal authorities with powers in this regard; thus, although the latter may *participate* in an environmental impact assessment, they are not empowered to authorize such a proceeding, as this

⁷ *Ibid.*, at 8.

⁸ *Estudio integral para la conservación del parque Los Cárcamos*, in: Submission, at 10.

⁹ *Idem* (underlined in the original, we omitted footnotes).

¹⁰ *Ibid.*, at 11.

¹¹ *Idem*.

¹² *Estudio de aves*, in: Submission, at 12.

¹³ *Idem*.

¹⁴ Submission, at 12.

- responsibility falls solely to the federal government and the states.¹⁵ In particular, the Submitter cites LGEEPA Articles 4, 5, 6, 7 and 8, as well as LPPAEG Articles 6, 7 and 8.
10. Regarding the implementation of the environmental impact assessment process, the Submitter argues that the City of León's DRA "took actions beyond the statutory procedures" in that it failed to comply with the mechanism provided for under Article 104 of the Municipal Regulation. According to the Submitter, although this regulation stipulates that the project evaluation process initiates with the filing of a formal request with the authority, the DRA allegedly carried out a "public consultation" on 7 April 2017, i.e., 131 days prior to the filing of a formal request for an environmental assessment of the City Park project. According to the Submitter, said "consultation" consisted of the DRA internal posting of a project summary extract; said action, moreover, occurred without the DGGA or even the DRA itself taking receipt of the environmental impact application, which didn't take place until 16 August 2017.¹⁶
 11. Moreover, the Submitter states that it received contradictory information from the municipal authorities. In effect, whereas, the DRA noted that the project included works and activities that may significantly alter environmental conditions, the DGGA argued that the project would not significantly impact the environment.¹⁷ The Submitter asserts that, according to the DGGA, the project developer published the project summary extract to ensure the assigning of a project assessment modality. However, in reality, according to the DRA, said action concerned a land use request and not a request for an environmental impact assessment.¹⁸
 12. Furthermore, according to the Submitter, the "general" modality assigned to the EIA by the León municipal authorities does not reflect the significant potential environmental impact of the project's works and activities. As such, this decision contravenes LGEEPA Article 30 and REIA Article 10 in that —according to the analysis of the documents enclosed with the submission— a "regional" modality would have been appropriate.¹⁹ According to the Submitter, LPPAEG Article 31 and REIA-Guanajuato Articles 19, 20, 21 and 25 detail "the respective circumstances when a project must file a general modality EIA (type 'A', 'B' or 'C') or an intermediate or specific modality EIA."²⁰
 13. Regarding the alleged violation of due process, the Submitter argues that the municipal DGGA and DRA violated the right of access to information and citizen participation by failing to ensure proper dissemination of the project summary extract, which was only posted on the DGGA's internal platforms rather than published in a periodical with wide circulation. According to the Submitter, this constitutes a violation of the right to information and citizen participation, guaranteed under LGEEPA Article 34 section I, which should have applied on a supplementary basis in light of the RGA-León's lack of precision in this regard.²¹ The Submitter affirms that "the object of publishing

¹⁵ *Ibid.*, at 5.

¹⁶ *Ibid.*, at 6.

¹⁷ *Idem.*

¹⁸ *Idem.*

¹⁹ *Ibid.*, at 7.

²⁰ *Idem.*

²¹ *Ibid.*, at 9.

information on works or activities is not only to guarantee the right to information, but also to enable stakeholders to come forward and express their views regarding projects subject to assessment.”²²

14. The Submitter further asserts that the project developer did not obtain proper authorization for the “City Park Project Management Program for four priority species listed in NOM-059-SEMARNAT-2010,” in accordance with the provisions of LGVS Article 9 section XIII and RI-Semarnat Article 32 section VI. Such authorization would have been an indispensable requirement prior to the implementation of said program.²³

B. Environmental law at issue

15. On previous occasions, the Secretariat has maintained that the term “environmental law,” as defined in NAAEC Article 45(2)(a), should be broadly interpreted, as a restrictive vision of what constitutes a law or regulation whose primary purpose is protection of the environment or human health would be inconsistent with the Agreement.²⁴ Upon analysis, the Secretariat found that some of the provisions and instruments cited in the submission qualify as environmental law, for the purposes of the SEM process. The Secretariat’s reasoning is detailed in the paragraphs hereafter.

1) Environmental impact assessment

16. All of the provisions on environmental impact assessment related matters (issues of jurisdiction, EIA modalities and process) cited by the Submitter are consistent with the definition established in NAAEC Article 45(2)(a). In effect, an environmental impact assessment is a process whose primary purpose is environmental protection through the establishing of “conditions governing the execution of works and activities, which may cause ecological imbalances or exceed the limits and conditions prescribed in the applicable provisions for environmental protection and ecosystems preservation and restoration, in order to avert or minimize their negative effects on the environment.”²⁵
17. The Secretariat did not, however, determine in every case that said provisions would be considered in its analysis, for the reasons detailed hereafter.

a) Regarding jurisdiction over implementation of the environmental impact assessment process

18. The Submitter cites LGEEPA provisions which establish the rules governing the distribution of powers between the federal government, the states, Mexico City and the municipal governments (Articles 4, 5, 6, 7 and 8) and the environmental impact assessment process (Article 28). In addition, the Submitter cites the LPPAEG provisions which establish the allocation of responsibilities between the state of Guanajuato, the municipal governments and the State Ecology Institute (Articles 6, 7 and 8).

²² *Idem.*

²³ *Ibid.*, at 13.

²⁴ SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998), at 4: “Consistent with Article 14(1), the Secretariat is of the view that the term ‘environmental law’ should be interpreted expansively.”

²⁵ LGEEPA, Article 28 section I.

19. Among the LGEEPA provisions cited in the submission, the Secretariat has determined that grounds only exist for considering in its analysis Articles 4, 5 section X, 6, 7 section XVI and 8 section XVI, as they establish the respective areas of responsibility of the federal, state and municipal authorities in respect of environmental impact assessment and clearly qualify as environmental law. As for LGEEPA Article 28, although it does qualify as environmental law, it is unrelated to the assertions regarding the authority's jurisdiction or to the assertions around EIA modality issues; consequently, does not qualify as environmental law. As for the LPPAEG, the Secretariat considers in its analysis Article 6 section XVI, which vests in the state authority the power to assess environmental impacts, Article 7 section XVII, which permits municipal government participation in environmental impact assessment, and Article 8 section I, which vests in the Ecology Institute of the state of Guanajuato the authority to make environmental impact assessments. The other sections of the provisions cited by the Submitter do not qualify for analysis as they have no bearing on the matter raised in the submission.

b) Regarding the modality applicable to the project's EIA

20. The Submitter cites LGEEPA Article 30, which identifies the information that must be included in an EIA and stipulates that the regulation thereto (the REIA) shall establish which modalities are applicable in given environmental impact assessments. As a matter of fact, the submission mentions the provisions of the REIA that establish the two possible modalities which environmental impact assessments must take: regional or particular (Article 10) and the applicable cases where a regional EIA must be filed (Article 11 section IV). Furthermore, the submission cites LPPAEG Article 31, which establishes that the modality of an environmental impact assessment—in the event one is necessary— “may be general, intermediate and specific,” in the terms of the regulation to said law. The submission also cites REIA-Guanajuato Articles 19, 20, 21, 25 and 27, which establish the grounds for filing the different modalities of EIAs prescribed.

21. It is the Secretariat's view that LGEEPA Article 30 qualifies as environmental law, as its aim is to ensure environmental protection through the environmental impact assessment process. As for the REIA, Articles 10 and 11 section IV are considered for analysis, as they establish the types and modalities of MIAs that may be filed with the authorities. These same provisions also establish the obligation to file an MIA for projects where, due to their interaction with different regional environmental subsystems, “cumulative, synergistic or residual impacts are foreseeable, which may result in the destruction, isolation or fragmentation of ecosystems.”²⁶ LPPAEG Article 31 is considered for analysis due to the Submitter's assertion that the City Park project should have been subject to one of environmental impact assessment modalities: general, intermediate or specific. As for REIA-Guanajuato Articles 19, 20, 21, 25 and 27, these provisions are only considered for the purposes of determining the EIA modality applicable to the project under state law.

c) Regarding the procedures followed during the environmental impact assessment process

²⁶ REIA, Article 11 section IV.

22. The Submitter cites RGA-León provisions establishing the following: requests for an environmental impact assessment (EIA) shall be filed with the municipal environmental authority, i.e., the DGGGA (Article 104); the documents which must be enclosed with an EIA request (Article 104); the documents and information to be included in the resulting file (Article 105); deadlines for effecting technical visits (Article 106); the contents of an EIA ruling (Article 107); cases where an EIA process may be suspended (Articles 108 to 113); and deadlines for compliance with the requirements imposed on a project developer by the environmental authority (Article 114).
23. Regarding these provisions, the Secretariat finds that only RGA-León Articles 104 and 105 bear on the Submitter's assertions regarding the formalities to be observed in the environmental impact assessment process.
24. The Submitter also cites RGA-León provisions in relation to public information on environmental impact assessments, in particular: the compiling and publication of a list of the EIAs filed with the DGGGA for its analysis (Article 120); requests for additional prevention, mitigation or compensatory measures (Article 122); and the holding of public information meetings (Article 123).
25. Regarding these provisions, the Secretariat considers that RGA-León Articles 104, 105, 106, 107, 108 to 113, 120 and 123 qualify as environmental law since its purpose is the protection of the environment through administrative provisions applicable during the environmental impact assessment process, only RGA-León Article 120 pertains to the Submitter's assertions concerning the alleged failure to publish a project summary extract in a periodical with wide circulation in the state of Guanajuato.²⁷

2) Wildlife issues

26. The Submitter cites LGVS Article 9 section XIII, which vests in the federal government the power to “grant, suspend and revoke authorizations and other administrative proceedings in connection with the conservation, transfer, importing, exporting and domestic transit of wildlife,” as well as RI-Semarnat Article 32 section VI, which vests in the General Wildlife Directorate (*Dirección General de Vida Silvestre*—DGVS) the authority to issue, suspend, amend, annul, nullify or revoke, totally or partially, permits for the capture, recovery and collection of wildlife specimens. Both provisions are consistent with the NAAEC's definition of environmental law, as their aim is environmental protection through the protection of wildlife. As such they are considered in the Secretariat's analysis.
27. The Submitter cites NOM-059 in relation to the species at risk present on the project site. On previous occasions, the Secretariat has determined that this Official Mexican Standard qualifies as environmental law, as its principal objective is to protect wildlife species native to Mexico, through the establishment of risk categories and specifications governing the inclusion or exclusion of species in the list of species at risk.²⁸

²⁷ Submission, at 9.

²⁸ SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination (9 October 2009), §23.

C. The six Article 14(1) requirements

28. The Secretariat evaluated submission SEM-19-002 (*City Park Project*) in terms of its compliance with the six requirements specified under NAAEC Article 14(1) and found the submission to be in full compliance. The Secretariat's reasoning is detailed in the paragraphs hereafter.

a) is in writing in a language designated by that Party in a notification to the Secretariat

29. The submission is written in Spanish, one of the languages designated by the Parties for submissions, in accordance with paragraph 3.2 of the Guidelines.²⁹ Accordingly, the Secretariat finds the submission in compliance with Article 14(1)(a).

b) clearly identifies the person or organization making the submission

30. The submission provides the Submitter's name and address, as well as contact information which enables communication with him through his representative. The submission therefore satisfies Article 14(1)(b).³⁰

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

31. The submission contains sufficient information to enable it for the Secretariat's consideration, as it encloses information and documents supporting the Submitter's assertions. In addition, it provides links to information cited by the Submitter,³¹ including *inter alia*: a summary of the facts regarding the matter raised by the submission;³² the project's EIA;³³ and ancillary studies on the conservation of the Los Cárcamos Ecological Park,³⁴ the species of birds frequenting the relevant bodies of water,³⁵ soil mechanics,³⁶ geohydrology³⁷ and a program for the management of four priority species.³⁸

32. The information cited in the submission also encompasses documentation on the project's EIA process formalities, including: the request for the assigning of an EIA modality;³⁹ the

²⁹ Guidelines, paragraph 3.2: "Submissions may be made in English, French or Spanish, which are the languages currently designated by the Parties for submissions."

³⁰ Submission, at 1-2.

³¹ To consult the submission's supporting documents see:

<https://drive.google.com/drive/folders/1fUNlojzAwfsKzovZrZx9D81COrJVYImZ> (viewed 14 May 2018).

³² <https://drive.google.com/drive/folders/1fUNlojzAwfsKzovZrZx9D81COrJVYImZ>

³³ Eco Group, *Manifestación de Impacto Ambiental, modalidad general, proyecto City Park, Primera Etapa*, (August 2017).

³⁴ CIATEC, A.C., *Estudio Integral para la Conservación del Parque Cárcamos*, (January 2017).

³⁵ Eco Group, *Estudio de aves: proyecto City Park*, (June 2017).

³⁶ MKE Ingeniería de Suelos, S.A. de C.V., *Estudio de mecánica de suelos* (August 2015).

³⁷ Soluciones Geotécnicas Integrales, S.A. de C.V. (6 September 2017).

³⁸ Eco Group, "Programa de manejo para cuatro especies prioritarias y en la NOM-059-SEMARNAT-2010 derivado del proyecto City Park."

³⁹ Mexico Retail Properties, Request for the assigning of an EIA modality, addressed to the DGGA (27 March 2017).

public notice on the first phase of the City Park project, supposedly posted in the DGRA's offices;⁴⁰ the DGRA's determination on the applicable EIA modality;⁴¹ the call for technical opinions, addressed to the General Directorate for Public Works (*Dirección General de Obras Públicas*) of the City of León,⁴² the Ecology Institute of the State of Guanajuato⁴³ and the León College of Engineers,⁴⁴ on the project's soil mechanics, along with the resulting technical opinions;⁴⁵ the decision to extend the deadline for the project's EIA;⁴⁶ and the ruling on the project's environmental impact, which enabled the project's authorization to proceed.⁴⁷

33. In conclusion, the Secretariat considers the submission in compliance with NAAEC Article 14(1)(c).

d) appears to be aimed at promoting enforcement rather than at harassing industry

34. Based on subparagraph 5.4 of the Guidelines, the Secretariat finds the submission in compliance with Article 14(1)(d), as it appears to be aimed at promoting enforcement of the law and not at harassing industry. As is evident upon consulting it, the submission's focus is on enforcement of environmental impact laws in the City Park project. Moreover, the Submitter is not a business rival of the project that might stand to benefit commercially from filing the submission.

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

35. The Submitter affirms that the matter was communicated in writing to the relevant governmental authorities and that it attended a meeting with the Semarnat federal delegation in Guanajuato, during which it raised its concerns around the project.⁴⁸ The Submitter also encloses a Mexican Senate bill, which includes a point of agreement, that exhorts various authorities to undertake actions to halt the alleged harm to the Los Cárcamos Ecological Park. It likewise includes the text of a Senate point of agreement urging the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) to take action.⁴⁹

⁴⁰ Dirección de Regulación Ambiental, File no. DGGG-DRA-290-2017 (5 April 2017).

⁴¹ Dirección de Regulación Ambiental, File no. DGGG-DRA-310-2017 (12 April 2017).

⁴² Dirección General de Gestión Ambiental, File no. DGGG-DRA/670/2017 (10 October 2017).

⁴³ Dirección General de Gestión Ambiental, File no. DGGG-DRA/672/2017 (10 October 2017).

⁴⁴ Dirección General de Gestión Ambiental, File no. DGGG-DRA/694/2017 (20 October 2017).

⁴⁵ Colegio de Ingenieros Civiles de León, A.C., Expert opinion on soil mechanics (13 November 2017), and Dirección General de Obras Públicas, File no. DGOP/PROY/3484/2017 (21 November 2017).

⁴⁶ Dirección General de Gestión Ambiental, File no. DGGG-DRA/1146/17 (13 October 2017).

⁴⁷ Dirección General de Gestión Ambiental, File no. MIA-MG-506-2017 (15 November 2017).

⁴⁸ Semarnat, Federal delegation in Guanajuato, Minutes of the follow-up meeting on the City Center project [*sic*], (21 February 2019) https://drive.google.com/file/d/1V-4Y8VwQ4qo6B8A727Vqb_mwW_41c84m/view

⁴⁹ Senado de la República, LXIV Legislature, *Dictamen de la Comisión de Medio Ambiente, Recursos Naturales y Cambio Climático al punto de acuerdo por el que exhorta a diversas autoridades a realizar diversas acciones para detener los daños ambientales irreversibles que está sufriendo el humedal del Parque Ecológico "Los Cárcamos" ubicado en León, Guanajuato* (27 March 2019).

36. The Secretariat finds that the matter was communicated in writing to the authorities charged with enforcing the environmental law in question. The submission therefore satisfies the requirement stipulated in Article 14(1)(e).

f) is filed by a person or organization residing or established in the territory of a Party

37. The Submitter produces the founding documents of the organization *Acción Colectiva, A.C.*, as well as information indicating that it is established in the City of León, Guanajuato. This information demonstrates that the Submitter is established in Mexico, thereby satisfying the requirement specified under Article 14(1)(f).

D. NAAEC Article 14(2)

38. Having found the submission in compliance with all NAAEC Article 14(1) requirements, the Secretariat then analyzed whether the submission warrants requesting a response from the Party, pursuant to NAAEC Article 14(2).

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

39. The Submitter asserts that the authorities of the city of León “did not comply with due process formalities in terms of ensuring a sound environmental impact assessment process, as a result of which damages to the environment, natural resources [and] wildlife may ensue.”⁵⁰ Moreover, the Submitter argues that the failure to effectively enforce the provisions cited in the submission “in itself causes harm to the environment, natural resources, wildlife and public health, thereby affecting the right to a healthy environment.”⁵¹

40. In the Secretariat’s view, the alleged harm mentioned in the submission is a consequence of the alleged failure to effectively enforce environmental law and, based on paragraph 7.4 of the Guidelines, finds that the submission satisfies the criteria specified in NAAEC Article 14(2)(a).

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

41. The Secretariat finds that submission SEM-19-002 (*City Park Project*) raises matters whose further study in this process would advance the NAAEC’s goals, specifically those identified in sections a), b), c), f), g) and h) of Article 1.⁵² The submission, therefore, is in compliance with NAAEC Article 14(2)(b).

⁵⁰ Submission, at 8.

⁵¹ *Ibid.*, at 4.

⁵² NAAEC Article 1:

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; [...]

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

42. The submission includes information on the appeal for annulment filed on 4 June 2018, which, with the ruling of 20 June 2018, rendered by the Fourth Chamber of the Court of Administrative Justice of the State of Guanajuato,⁵³ led to the definitive suspension of the City Park project. Information is also provided on the dismissal rendered by the same court following the plaintiff's withdrawal.⁵⁴ In addition, the Submitter includes documentation on a citizen complaint lodged with Profepa on 12 February 2019 concerning the alleged "depletion of the water table and [...] the construction activities (for a shopping centre and buildings) in an area bordering on a body of water frequented by bird species..."⁵⁵ This complaint was accepted by the Profepa delegation in Guanajuato on 25 February 2018.⁵⁶ Furthermore, the submission also enclosed an administrative complaint lodged with the city of León's DGGa, in which the Submitter requested that the appropriate authorities take the necessary steps to determine whether the project developer had complied with the conditions imposed in the project's environmental impact authorization.⁵⁷
43. In addition to the foregoing, the submission provides the links to the information requests addressed to the León Municipal Transparency Unit (*Unidad de Transparencia Municipal de León*),⁵⁸ as well as the links corresponding to the remedies pursued by the Submitter in this matter.⁵⁹
44. Consequently, the Secretariat finds that the submission satisfies the criteria specified in NAAEC Article 14(2)(c).

d) the submission is drawn exclusively from mass media reports

45. The Secretariat observes that the submission is not based on mass media reports and is instead based on facts asserted by the Submitter and the documentary evidence provided to support said assertions. The Secretariat therefore concludes that the submission satisfies the criteria stipulated in NAAEC Article 14(2)(d).

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- 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; [...]

⁵³ Fourth Chamber of the Court of Administrative Justice of the state of Guanajuato, Ruling in case 861/4^a Sala/18 (4 June 2018).

⁵⁴ Fourth Chamber of the Court of Administrative Justice of the state of Guanajuato, Ruling of dismissal in case 861/4^a Sala/18 (28 November 2018).

⁵⁵ Profepa, Guanajuato Delegation, Decision on admissibility for investigation in File no. PFPA/18.7/2C.28.2/00021-19 (25 February 2018).

⁵⁶ *Idem*.

⁵⁷ Submitter, Administrative complaint lodged with the General Directorate for Environmental Management (DGGa) of the City of León, Guanajuato (1 April 2019).

⁵⁸ Unidad de Transparencia del municipio de León, Guanajuato, File no. UT-0646/2019 (11 March 2019).

⁵⁹ Legal remedies pursued and register of complaints filed <https://drive.google.com/drive/folders/16-TmIp6b1ywIUtblz1pxKhSLCcPU9F> (viewed 14 May 2019).

III. DETERMINATION

46. For the reasons detailed herein, the Secretariat finds submission SEM-19-002 (*City Park Project*) in compliance with the admissibility requirements stipulated in NAAEC Article 14(1) and, pursuant to Article 14(2), that it merits a response from the Government of Mexico concerning the effective enforcement of the following provisions:
- a. LGEEPA Articles 4, 5 section X, 6, 7 section XVI and 8 section XVI, as well as LPPAEG Articles 6 section XVI, 7 section XVII and 8 section I, regarding whether the DGGA of the City of León, Guanajuato is the competent body for authorizing the City Park project's environmental impact.
 - b. LGEEPA Article 30, REIA Articles 10 and 11 section IV, LPPAEG Article 31 and REIA-Guanajuato Articles 19, 20, 21, 25 and 27 regarding the EIA modality applicable to the City Park project.
 - c. RGA-León Articles 104, 105 and 120 regarding the procedure followed during the environmental impact assessment process.
 - d. LGVS Article 9 section XIII and RI-Semarnat Article 32 section, as well as NOM-059, concerning the authorization of the "Program for the management of four priority species listed in NOM-059-Semarnat-2010, arising from the City Park project."
47. In accordance with NAAEC Article 14(3), the Party may provide a response to the submission within 30 (thirty) working days of the date of this determination, i.e., by **16 August 2019**, at the latest. In exceptional circumstances, the Party may notify the Secretariat in writing that it is extending the deadline to 60 (sixty) working days following the date of this determination, i.e., until **1 October 2019**.

Secretariat of the Commission for Environmental Cooperation

(original signed)

Robert Moyer
Director, Submissions on Enforcement Matters Unit

(original signed)

Paolo Solano
Legal Officer, Submissions on Enforcement Matters Unit

cc: Norma Munguía, Alternate Representative of Mexico
Isabelle Bérard, Alternate Representative of Canada
Chad McIntosh, Alternate Representative of the United States
César Rafael Chávez, CEC Executive Director
The Submitter