

19 November 2021

COUNCIL RESOLUTION: 21-05

Instructions to the Secretariat of the Commission for Environmental Cooperation regarding submission SEM-19-002 (*City Park Project*), which asserts that the environmental authorities of the municipality of León, Guanajuato, failed to effectively enforce various provisions of the General Ecological Equilibrium and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*), its environmental impact regulation (REIA), the Internal Regulation of the Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*), the Guanajuato State Environmental Protection and Preservation Act (*Ley para la Protección y Preservación del Ambiente del Estado de Guanajuato—LPPAEG*), the Environmental Impact Assessment Regulation to the LPPAEG (REIA-Guanajuato), the Environmental Management Bylaw of the municipality of León, Guanajuato (*Reglamento para la Gestión Ambiental—RGA-León*), and Mexican Official Standard NOM-059-SEMARNAT-2001 regarding approval of the “City Park” project, located in the municipality of León, Guanajuato.

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of Canada, the United Mexican States, and the United States of America entered into force on 1 July 2020 and superseded the NAAEC on that date;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 Canada, Mexico and United States;

HAVING CONSIDERED the Submission SEM-19-002 filed on 16 April 2019 by “Acción Colectiva Socioambiental, A.C”., as well as the response provided by the Government of Mexico on 25 March 2020 (the “Response”);

HAVING REVIEWED the 10 August 2020 Notification of the Secretariat recommending the development of a factual record with respect to the effective enforcement of LGEEPA Articles 4, 7 paragraph XVI, and 8 paragraph XIV; LPPAEG Articles 6 paragraph XVI, 7 paragraph XVII, and 8 paragraph I (with reference to the provisions of LPPAEG Article 44 and REIA-Guanajuato Articles 8 and 9); LPPAEG Article 31 second paragraph; REIA-Guanajuato Articles 19, 20, 21, 25, and 27, and RGA-León Articles 104, 105, and 120;

AWARE that Mexico’s response to the Secretariat’s determination concluded that a factual record should be prepared with respect to the effective enforcement of LGEEPA Articles 4, 7 paragraph XVI, and 8 paragraph XIV and LPPAEG Articles 6 paragraph XVI, 7 paragraph XVII, and 8 paragraph I (with reference to the provisions of LPPAEG Article 44 and REIA-Guanajuato Articles 8 and 9), in relation to the alleged lack of jurisdiction of the environmental authorities over environmental impact assessment and approval for the City Park Project, as well as RGA-León Articles 104, 105, and 120 with respect to the alleged failures to enforce the environmental law in relation to the documentation required during the EIA process and in relation to the public consultation and participation process; and

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 “The 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 consistent with Section 10.4 of the Guidelines, on the following provisions:

- LGEEPA Articles 4, 7 paragraph XVI, and 8 paragraph XIV;
- LPPAEG Articles 6 paragraph XVI, 7 paragraph XVII, and 8 paragraph I (with reference to LPPAEG Article 44 paragraph II),
- and RGA-León Articles 104, 105, and 120 in relation to the assertions made in the submission;

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

Miguel Ángel Zerón
Government of the United Mexican States

Jane Nishida
Government of the United States of America