

Secretariat of the Commission for Environmental Cooperation
Secretariat Determination in accordance with Articles 24.27(2) and (3) of the
United States-Mexico-Canada Agreement

Submitter:	Madín Dam Basin Commission
Party:	United Mexican States
Date of original submission:	26 October 2022
Date of revised submission:	17 January 2023
Date of determination:	6 February 2023
Submission No.:	SEM-22-003 (<i>Madín Dam Basin</i>)

Executive Summary

On October 26, 2022, the Madín Dam Basin Commission (“Submitter”) filed a submission before the Secretariat of the Commission for Environmental Cooperation. The Submitter asserts that Mexico is failing to effectively enforce provisions regarding management of wastewater discharges into the waterways that feed the Madín Dam Basin in the Mexico City Metropolitan Area.

The Submitter further asserts that Mexico is failing to effectively enforce various environmental laws and standards, including the Constitution of the United Mexican States (“the Constitution”); the General Health Law (*Ley General de Salud*); the General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*); the National Waters Law (*Ley de Aguas Nacionales*); the General Law of Human Settlements, Land Management and Urban Development (*Ley General de Asentamientos Humanos, Ordenamiento Territorial y Desarrollo Urbano*); the General Law of Sustainable Forestry Development (*Ley General de Desarrollo Forestal Sustentable*); the General Human Settlements Law (*Ley General de Asentamientos Humanos*); the General Population Law (*Ley General de Población*); the General Climate Change Law (*Ley General de Cambio Climático*); the General National Assets Law (*Ley General de Bienes Nacionales*), the General Civil Protection Law (*Ley General de Protección Civil*), the Federal Metrology and Standardization Law (*Ley Federal de Metrología y Normalización*), and the Federal Environmental Liability Law (*Ley Federal de Responsabilidad Ambiental*). The Submitter also cites several Official Mexican Standards (*normas oficiales mexicanas*) on water and health, as well as a decree of prohibition that covers most of the aquifer in the Mexico City Metropolitan Area.

On 25 November 2022, the Secretariat determined that submission SEM-22-003 (*Madín Dam Basin*) did not meet all the eligibility criteria in Article 24.27(2) of the USMCA and requested a revised submission. In particular, the Submitter does not cite specific, relevant provisions of the environmental laws it refers to in the submission.

On 17 January 2023, the Submitter submitted a revised submission. After analyzing the revised submission, the Secretariat determined that it does not meet all the eligibility criteria in USMCA Article 24.27(2) because it does not cite specific provisions of the laws listed in its submission.

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA) and the Environmental Cooperation Agreement (ECA) entered into force. After this date, the Submissions on Enforcement Matters (SEM) process originally established by Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) is governed by USMCA Articles 24.27 and 24.28. The Secretariat of Commission for Environmental Cooperation (“CEC Secretariat”)¹ remains responsible for implementing the SEM process, as stipulated in the ECA.²
2. Articles 24.27 and 24.28 of the USMCA provide a process for any national of a Party or entity organized under the laws of a Party to file a submission asserting that a Party to the USMCA is failing to effectively enforce its environmental laws. The CEC Secretariat initially reviews submissions based on the requirements set out in USCMA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements, it then determines, in accordance with the criteria of Article 24.27(3), whether the submission merits a response from the Party in question. In light of the Party’s response, the Secretariat then determines whether the matter warrants the preparation of a factual record and, if so, it informs the CEC Council and the Environment Committee,³ providing its reasons as prescribed by USMCA Article 24.28(1); otherwise, it terminates the review of the submission.⁴
3. On 26 October 2022, the Madín Dam Basin Commission (“Submitter”) filed a submission with the CEC Secretariat under Article 24.27(1) of the USMCA.⁵

¹ The Commission for Environmental Cooperation (CEC) 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).

² The Secretariat takes the view that although the provisions governing the SEM process are set forth in Chapter 24 of the USMCA, certain related procedures are also established under the Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada (ECA), namely: the Secretariat’s role in the implementation of the Submissions on Enforcement Matters process, the Council’s role in exchanging information with the Environment Committee, the preparation and publication of factual records, and the Council’s cooperation activities. The Secretariat is mindful of ECA Article 2(3) which states in part: “The Commission will continue to operate under the modalities in place as of entry into force of this Agreement, including its rules, policies, guidelines, procedures, and resolutions, to the extent these modalities are consistent with this Agreement.” Environmental Cooperation Agreement, Articles 2(3), 4(1)(l)-(m), 4(4), and 5(5).

³ The Environment Committee is established by USMCA Article 24.26(2) and its role is to “oversee the implementation” of USMCA Chapter 24.

⁴ More details on the various stages of the submissions on enforcement matters process, the public registry of submissions, and previous Secretariat determinations and factual records can be found on the CEC website at <<http://www.cec.org/submissions-on-enforcement/>>.

⁵ SEM-22-003 (*Madín Dam Basin*), Submission pursuant to USMCA Article 24.27(1) (26 October 2022), available at: <<https://bit.ly/3WdsabZ>>.

4. On 25 November 2022, the Secretariat determined that the submission SEM-22-003 (*Madín Dam Basin*) did not meet all the eligibility criteria following the analysis of the submission in accordance with Article 24.27 of the USMCA. The Secretariat requested a revised submission citing specific provisions of environmental law that Mexico is allegedly failing to effectively enforce. In addition, the Secretariat requested that the submission should not exceed 15 letter-sized, typed pages.⁶
5. On 17 January 2023, the Secretariat received the revised submission⁷ which does not include the information requested and, consequently, the Secretariat decides to terminate submission SEM-22-003 (*Madín Dam Basin*).

II. ANALYSIS

6. The CEC Secretariat may consider any submission asserting that a Party to the USMCA is failing to effectively enforce its environmental laws. The Secretariat reiterates that the requirements of USMCA Articles 24.27(1), (2), and (3) are not intended to be an insurmountable procedural screening device⁸ and must therefore be given a broad interpretation consistent with the objectives of Chapter 24 of the Agreement.⁹ The Secretariat reviewed the submission with that perspective in mind.
7. In its determination of 25 November 2022, the Secretariat requested that the Submitter file a revised submission that met the limit of 15 letter-sized, typed pages.¹⁰ The revised submission, filed on 17 January 2023, is 19 letter-sized, typed pages, and includes information related to the assertions that Mexico is failing to effectively enforce its environmental laws regarding pollution of the Madín Dam basin.
8. Nevertheless, the Secretariat examined the submission to determine whether it met the eligibility requirements and criteria of the USMCA.
9. In its determination from 25 November 2022, the Secretariat requested that the revised submission specifically cite the provisions of environmental laws that are allegedly not being effectively enforced.¹¹
10. In the revised submission, the Submitter lists the titles of the laws, the dates of their publication in the Federal Registry (*Diario Oficial de la Federación*—DOF) and their last amendment. However, the Submitter fails to cite the article, paragraph, or section number

⁶ SEM-22-003 (*Madín Dam Basin*), Determination pursuant to Articles 24.27(2) and (3) of the USMCA (25 November 2022), § 4.

⁷ SEM-22-003 (*Madín Dam Basin*), Revised Submission pursuant to USMCA Article 24.27(1) (17 January 2023), available at: <bit.ly/3I4HhQI>.

⁸ SEM-97-005 (*Biodiversity*), Determination pursuant to Article 14(1) of the NAAEC (26 May 1998); SEM-98-003 (*Great Lakes*), Determination pursuant to Articles 14(1) and (2) of the NAAEC (8 September 1999); SEM-20-001 (*Loggerhead Turtle*), Determination in accordance with Articles 24.27(2) and (3) of the USMCA (8 February 2021).

⁹ USMCA Article 24.2.

¹⁰ SEM-22-003 (*Madín Dam Basin*), Determination pursuant to Articles 24.27(2) and (3) of USMCA (25 November 2022), § 9.

¹¹ *Id.* at § 22.

of any the environmental laws referenced in the submission. The Secretariat has already determined that a submission should identify the specific provisions in the law that support an assertion of the failure to effectively enforce environmental law.¹²

11. While the Submitter cited the fifth and sixth paragraphs of Article 4 of the Constitution — which qualify as an environmental law — the rest of the submission does not cite specific provisions for analysis. As the Secretariat has previously determined¹³ and as Mexico has stated,¹⁴ such constitutional provisions may be considered if supplemented by an analysis of the environmental law in question. In this case, these constitutional provisions cannot be considered because there is not sufficient analysis of environmental law to support their consideration.
12. The Secretariat finds that submission SEM-22-003 (*Madín Dam Basin*) does not meet the requirements of USMCA Article 24.27(1) because it does not precisely identify the environmental law in question.

III. DETERMINATION

13. For the reasons set out above, the Secretariat determines that submission SEM-22-003 (*Madín Dam Basin*) does not satisfy the requirements in Article 24.27(1) of the USMCA.
14. Therefore, the Secretariat terminates the submission SEM-22-003 (*Madín Dam Basin*).

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation

(*original signed*)

By: Paolo Solano
Director of Legal Affairs and Head of the SEM Unit

cc: Miguel Ángel Zerón, Alternate Representative of Mexico
Stephen de Boer, Alternate Representative of Canada
Jane Nishida, Alternate Representative of the United States
Environment Committee Points of Contact
Jorge Daniel Taillant, CEC Executive Director
Submitter

¹² SEM-21-003 (*North Atlantic right whale*), Determination in accordance with Articles 24.27(2) and (3) of the USMCA (4 November 2021), §18 (“A revised submission shall cite specific provisions supporting the [...] assertions raised and not large segments of laws and regulations.”).

¹³ SEM-18-002 (*Metrobús Reforma*), Determination pursuant to Articles 14(1) and (2) of the NAAEC, §12.

¹⁴ SEM-09-009 (*Transgenic maize in Chihuahua*), Response pursuant to Article 14(3) of the NAAEC (3 May 2003), pp. 11-13; available at: <http://www.cec.org/wp-content/uploads/wpallimport/files/09-1-rsp-unofficial_translation_en.pdf>.