

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

Submitter: Madín Dam Basin Commission
Party: United Mexican States
Date of submission: 26 October 2022
Date of determination: 25 November 2022
Submission No.: SEM-22-003 (*Madín Dam Basin*)

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA or “the Agreement”) and the Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada (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 the Commission for Environmental Cooperation (“CEC Secretariat”)¹ remains responsible for implementing the SEM process, as stipulated in the ECA.²
2. The SEM mechanism allows 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 USMCA 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, so informs the CEC Council and the Environment

¹ The Commission for Environmental Cooperation was created in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), signed by Canada, the United States, and Mexico (the “Parties”). Pursuant to ECA Article 2(3), the Commission for Environmental Cooperation (CEC) “will continue to operate under the modalities in place as of entry into force of [the ECA].” The constitutive bodies of the CEC are the Council, the Secretariat, and the Joint Public Advisory Committee (JPAC).

² While the provisions governing the SEM process are now in Chapter 24 of the USMCA, some related procedures are also set out in the ECA, namely: the role of the Secretariat in the implementation of the submissions process; the role of the Council in exchanging information with the Environment Committee; the preparation and publication of factual records; and the Council’s cooperative activities arising from such records. ECA, Articles 2(3), 4(1)(l), 4(1)(m), 4(4) and 5(5).

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 (“the Submitter”) filed a submission with the CEC Secretariat under Article 24.27(1) of the USMCA.⁵
4. Having examined submission SEM-22-003 (*Madín Dam Basin*) in accordance with Article 24.27 of the USMCA, the Secretariat determines that the submission *does not* meet all the eligibility criteria and notifies the Submitter accordingly in this document. In order to proceed, the Submitter needs to file a revised submission citing specific provisions of environmental law that Mexico is allegedly failing to effectively enforce. The Secretariat further requests that the revised submission not exceed 15 letter-size pages. Information supporting the Submitter’s assertions may be submitted by means of annexes or links to download documents.
5. The Submitter has 60 calendar days, i.e. until **26 January 2023**, to provide a revised submission including the requested information. If the Secretariat does not receive a revised submission by that date, it will terminate the processing of the submission SEM-22-003 (*Madín Dam Basin*). The Secretariat’s reasoning is set out in Section III ‘Analysis’ of this determination.

II. SUMMARY OF THE SUBMISSION

6. The Submitter asserts that Mexico is failing to effectively enforce its laws regarding the proper management of wastewater discharged into the waterways that feed the Madín Dam Basin in the Mexico City Metropolitan Area. The Submitter claims that this has led to the degradation of water quality and to levels of pollutants above those established in the current public health and water standards.⁶
7. In particular, the Submitter 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*—LGS); the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA); the National Waters Act (*Ley de Aguas Nacionales*—LAN); the General Human Settlements, Land Management and Urban Development Law (*Ley General de Asentamientos Humanos, Ordenamiento Territorial y Desarrollo Urbano*—LGAHOTDU); the General Sustainable Forestry Development Act (*Ley General de Desarrollo Forestal Sustentable*—LGDFS); the General Human Settlements Law (*Ley General de Asentamientos Humanos*—LGAH); the General Population Law (*Ley General de Población*—LGP); the General Climate Change Law (*Ley General de Cambio Climático*—LGCC); the General National Assets Law (*Ley General de Bienes Nacionales*—LGBN), the General Civil Protection Law (*Ley General de Protección Civil*—LGPC), the Federal

³ The Environment Committee was established by USMCA Article 24.26(2) and its role is to supervise the implementation of Chapter 24 of the Agreement.

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) [Submission], at: <<https://bit.ly/3WdsabZ>>.

⁶ Id. at pp. 5, 10 and 12-13.

Metrology and Standardization Law (*Ley Federal de Metrología y Normalización—LFMN*), and the Federal Environmental Responsibility Law (*Ley Federal de Responsabilidad Ambiental—LFRA*). The Submitter also cites several Mexican official standards (*normas oficiales mexicanas—NOM*) on water and health, as well as a decree of prohibition that covers most of the aquifer in the Mexico City Metropolitan Area.

III. ANALYSIS

8. 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 device⁷ and must therefore be given a broad interpretation consistent with the objectives of Chapter 24 of the Agreement.⁸ The Secretariat reviewed the submission with that perspective in mind.
9. As a preliminary point, and without prejudice to the Secretariat's analysis under USMCA Articles 24.27(2) and (3), it should be noted that the submission was filed in a 41-page document, which includes photographs, graphs, tables and various maps. The Secretariat asks the Submitter to file a new submission that complies with the limit of 15 letter-sized typed pages. While that page limit was established in Guideline 3.3 of the former *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*⁹ (“the Guidelines”), the Secretariat has clarified that the Guidelines are applicable to the extent these are consistent with the implementation of the Agreement, the Secretariat continues to take account of the criteria and procedures laid down in the Guidelines.¹⁰ In this regard, the Secretariat considers that the requirement to limit the length of a submission to 15 letter-sized typed pages is relevant to the filing of a submission under USMCA Article 24.27(1).
10. In view of the above, the Secretariat will wait for a revised submission within the limit of 15 typed, letter-size pages, or their equivalent in electronic format, excluding supporting information. Such supporting information may be presented in annexes or indicated by links for downloading the relevant documents, which may include graphic elements, tables, maps, outlines, studies, reports, complaints, and any other information the Submitter considers relevant.
11. The Secretariat now presents its analysis of the submission in order for the Submitter to address all the eligibility criteria that have not yet been met.

⁷ SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998); SEM-98-003 (*Great Lakes*), Article 14(1) and (2) Determination (8 September 1999); SEM-20-001 (*Loggerhead Turtle*), Article 24.27(2) and (3) Determination (8 February 2021).

⁸ USMCA Article 24.2.

⁹ *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, Guideline 3.3, at: <<https://bit.ly/3tPcFu0>> [Guidelines].

¹⁰ See SEM-20-001 (*Loggerhead Turtle*), Determination under Articles 24.27(2) and (3) (8 February 2021), §§ 6-7, at: <<https://bit.ly/3gW7tBz>>.

i) Article 24.27(1)

12. Article 24.27(1) of the USMCA states that “any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws.”
13. Article 1.5 of the USMCA¹¹ defines the term *person of a Party* as “a national of a Party or an enterprise of a Party.” In turn, *national* means “a natural person who has the nationality of the Party...or a permanent resident of a Party.” An *enterprise* is defined as “an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization.”
14. The Madín Dam Basin Commission is an entity organized under Article 13 *bis* 1 of the LAN as an institutional body of mixed composition, with a scope “at the sub-basin level or group of sub-basins.”¹² The Madín Dam Basin Commission is an auxiliary body of the Valle de Mexico Basin Council (CCVM),¹³ and was recognized as such on 10 June 2014.¹⁴ The Madín Dam Basin Commission is not subordinate to the National Water Commission (*Comisión Nacional del Agua*—“Conagua”) nor to the basin agencies,¹⁵ which are entities administratively attached to the Conagua.¹⁶
15. The basin commissions have among their functions, “to promote the improvement of the quality of water and to promote its sanitation in the sub-basin, micro-basin or group of them in which they are installed.”¹⁷ The participation of the Madín Dam Basin Commission in the SEM process by filing of a submission under Article 24.27(1) of the USMCA is consistent with these functions.
16. The Secretariat considers that the Madín Dam Basin Commission qualifies as a *person of a Party* for the purposes of Article 24.27(1) of the USMCA.

b. Environmental laws in question

17. Article 24.1 of the USMCA provides that:

environmental law means a statute or regulation of a Party, or provision thereof, including any that implements the Party’s obligations under a multilateral

¹¹ The Secretariat is mindful of the adoption of the Amending Protocol to the Agreement between the United Mexican States, the United States of America and Canada (“the Protocol”), by which provisions were added to chapters 1 and 24, so that the numbering of some articles of the Protocol was revised. This is the case with Article 1.5, “General definitions”, initially Article 1.4, but then renumbered in accordance with the Protocol. Thus, in the case of the Spanish version, it is necessary to consult the USMCA and its Protocol.

¹² LAN, Article 13a I.

¹³ General Rules for the Integration, Organization and Operation of the Basin Council of the Valley of Mexico, Article 61(e), in: <<https://bit.ly/3sGNpWc>> [Rules of operation of the CCVM].

¹⁴ Minutes recording the third regular session of the Operation and Surveillance Committee (COVI) of the Council of Cuenca del Valle de México (June 10, 2014), ninth agreement.

¹⁵ LAN, Article 13a I.

¹⁶ LAN, article 3: fraction XXXIX:

Basin Agency: a specialized technical, administrative and legal unit, acting autonomously, attached directly to the holder of [Conagua], whose powers are established by this Law and its regulations, and whose specific resources and budget are determined by [that commission].

¹⁷ Rules of operation of the CCVM, Article 61(e).

environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

- a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;
- b) the control of environmentally hazardous or toxic chemicals, substances, materials, or wastes, and the dissemination of information related thereto; or
- c) the protection or conservation of wild flora or fauna,¹ including endangered species, their habitat, and specially protected natural areas,²

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources.¹⁸

¹ The Parties recognize that “protection or conservation” may include the protection or conservation of biological diversity.

² For the purposes of this Chapter, the term “specially protected natural areas” means those areas as defined by the Party in its law.

In addition, a **law or regulation** means:

b) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government.¹⁹

18. The Secretariat sets out its reasoning below regarding the eligibility of the legal provisions cited by the Submitter.
19. The submission cites Articles 4 and 27 of the Political Constitution of the United Mexican States (“the Constitution”). Reference is made to Article 4 of the Constitution with regard to the human right to food; health; a healthy environment; access to, provision of and sanitation of water; and decent housing. The Secretariat considers that only the fifth and sixth paragraphs of Article 4 have as their main purpose the protection of the environment. With regard to the fifth paragraph, which enshrines the human right to a healthy environment, the Supreme Court of Justice of the Nation has reiterated that “this human right entails the obligation of all State authorities to ensure the existence of a healthy environment conducive to human development and the well-being of individuals”.²⁰ With regard to the sixth paragraph, the Secretariat considers that it qualifies as environmental law since its main purpose is the protection of the environment through the recognition of the human right to water resources and their sanitation.
20. Article 27 of the Constitution establishes, among other concepts and guarantees, the original right of the Mexican State over the ownership of land and waters within the national territory; the right to impose on private property the modalities dictated by the public interest; and also the scope of the ownership of the Nation with respect to soils and waters of territorial seas, inland marine waters, lagoons and estuaries, inland lakes, rivers and their tributaries, constant or intermittent currents, rivers of lakes and inland currents, groundwater and other waters not

¹⁸ USMCA Article 24.1.

¹⁹ *Id.*

²⁰ “Right to a healthy environment: its content”, thesis 1a. CCXLVIII/2017 (10a.), *Journal of the Judicial Weekly of the Federation*, Tenth Epoch, Book 49, t. I, December 2017, p. 411.

listed there. The Secretariat considers that the above provision does not qualify as environmental law, as it does not have as its main purpose the protection of the environment or the prevention of a risk to human health in terms of Article 24.1 of the USMCA.

21. The submission also cites the following legal instruments: General Health Law (*Ley General de Salud—LGS*); General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*); National Waters Act (*Ley de Aguas Nacionales—LAN*); General Human Settlements, Land Management and Urban Development Law (*Ley General de Asentamientos Humanos, Ordenamiento Territorial y Desarrollo Urbano—LGAHOTDU*); General Sustainable Forestry Development Act (*Ley General de Desarrollo Forestal Sustentable—LGDFS*); General Human Settlements Law (*Ley General de Asentamientos Humanos—LGAH*); General Population Law (*Ley General de Población—LGP*); General Climate Change Law (*Ley General de Cambio Climático—LGCC*); General National Assets Law (*Ley General de Bienes Nacionales—LGBN*); General Civil Protection Law (*Ley General de Protección Civil—LGPC*); Federal Metrology and Normalization Law (*Ley Federal de Metrología y Normalización—LFMN*), and the Federal Environmental Responsibility Law (*Ley Federal de Responsabilidad Ambiental—LFRA*). However, the Submitter does not cite any specific articles in the aforementioned laws.
22. The Secretariat has already determined in the past that a submission should identify the specific provisions in the law that support an assertion about the lack of enforcement of environmental law.²¹ A revised submission should specifically cite those articles of environmental laws that are not being effectively implemented in respect of the concern raised by the Submitter.
23. The Submitter also cites a decree of prohibition that covers most of the aquifer in the Mexico City Metropolitan Area: the “Decree establishing an indefinite ban on the extraction of groundwater in the area known as the Basin or Valley of Mexico,” published in the *Diario Oficial de la Federación* (DOF) on 19 August 1954 and issued in accordance with the then Regulatory Law of the Fifth Paragraph of Article 27 of the Constitution on Subsoil Water Matters. The decree in question contains regulations that the federal authorities are responsible for enforcing and that was issued “in accordance with an act of Congress” of the United Mexican States, which qualifies it as an environmental law in terms of Article 24.1 of the USMCA. It acknowledges “the considerable increase in the demand for drinking water which has been met in large part with groundwater, thereby causing a growing underground hydrological imbalance.”
24. The Submitter also cites several Official Mexican Standards (*Normas Oficiales Mexicanas—NOM*) that set water and environmental health requirements and specifications. As a result of its analysis, the Secretariat concludes that not all of the cited NOMs qualify as environmental law, as set out below. It should be noted that a revised version of the submission may cite other NOMs to be reviewed under the SEM process.

With respect to water

25. NOM-004-Conagua-1996, *Requirements for the protection of aquifers during the maintenance and rehabilitation of water wells and for the closure of wells in general*, “is applicable to all exploration, monitoring or production wells that penetrate a whole or part of an aquifer, and

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

that are intended for any of the water extraction uses classified in [the same NOM], as well as those that were drilled for other uses, and that have been abandoned.”²² While this standard might qualify as an environmental law, there are no assertions in the submission regarding the drilling of wells or their abandonment in the area in question. Therefore, the Secretariat determines that it will not consider this standard for the purposes of analyzing submission SEM-22-003 (*Madín dam basin*).

26. NOM-005-CONAGUA-1996, *Fluxometers: specifications and test methods*, sets out the characteristics that flushometers for toilet bowls and urinals must meet in order to ensure water savings in their use and operation.²³ While water savings have a positive environmental impact, allowing the standard to be qualified as environmental law, the submission does not contain any assertions about such devices in connection with the Madín dam basin. The Secretariat determines that it will not consider this standard for analysis.
27. NOM-006-CONAGUA-1997, *Prefabricated septic tanks: specifications and test methods*, “establishes the specifications and test methods of prefabricated septic tanks, for the preliminary treatment of domestic wastewater, in order to ensure their reliability and contribute to the preservation of water resources and the environment.”²⁴ While the law might qualify as environmental law, the submission does not contain any assertions about septic tanks in relation to the water resources of the Madín dam basin. The Secretariat determines that it will not consider this standard for analysis.
28. NOM-007-CONAGUA-1997, *Safety requirements for the construction and operation of water tanks*, sets out the safety requirements to be met in the construction and operation of tanks of 3,000 m³ or greater capacity, containing water and used in drinking water, sewage, and sanitation systems.²⁵ The Secretariat considers that the standard in question does not have as its main purpose the protection of the environment, or the prevention of a danger to human life or health, and therefore does not qualify as environmental law. In addition, the submission does not contain claims about water tanks in sanitation systems related to the Madín dam basin.
29. NOM-008-CONAGUA-1998, *Shower heads used for personal hygiene: specifications and test methods*, applicable to all types of shower heads for personal hygiene, of domestic manufacture or imported, the objective of which is to set the specifications that such devices must comply with in order to promote the efficient use and conservation of water,²⁶ so it could qualify as environmental law. The Secretariat determines, however, that it will not consider this standard for analysis since the submission does not address issues relating to the use of shower heads in the Madín dam basin.
30. NOM-009-CONAGUA-2001, *Toilets for sanitary use: specifications and test methods*, sets out the specifications and test methods that must be met by toilets, in order to ensure water savings in their use and operation.²⁷ While water conservation helps to protect the environment and this standard could therefore qualify as environmental law, the submission does not include claims related to toilets, so the Secretariat determines it will not consider it for analysis.

²² NOM-004-CONAGUA-1996, subsection 2) Field of enforcement.

²³ NOM-005-CONAGUA-1996, point 1) Objective.

²⁴ NOM-006-CONAGUA-1997, point 1) Objective.

²⁵ NOM-007-CONAGUA-1997, point 1) Objective.

²⁶ NOM-008-CONAGUA-1998, subparagraphs 1) Objective and 2) Field of application.

²⁷ NOM-009-CONAGUA-2001, point (1) Objective.

31. NOM-010-CONAGUA-2000, *Intake valve and flush valve for toilet tanks: specifications and test methods*, sets out the specifications and test methods that must be met by the valves and other elements of operation of toilet tanks, in order to ensure efficient water consumption.²⁸ While efficient water use is related to environmental protection, so the provision could qualify as environmental law, the submission does not raise issues related to the operation of toilet tanks. The Secretariat determines that it will not consider this standard for analysis.
32. NOM-013-CONAGUA-2000, *Drinking water distribution networks: specifications for sealing and test methods*, sets out the specifications and test methods to be met by the drinking water distribution network to ensure sealing and tightness, in order to preserve water resources and prevent contamination.²⁹ While the main purpose of the regulation is to protect the environment by establishing measures for the proper functioning of drinking water distribution networks, the central assertions of the submission refer to pollution in the Madín dam basin, but not to specific problems associated with drinking water distribution networks. The Secretariat determines that it will not consider this standard for analysis.
33. NOM-014-CONAGUA-2003, *Requirements for the artificial recharge of aquifers with treated wastewater*, regulates the use of wastewater in artificial groundwater recharge and sets out requirements for water quality, operation, and monitoring for the corresponding recharge systems.³⁰ The Secretariat considers that the main purpose of the standard is the protection of the environment through the establishment of water quality measures, and therefore it qualifies as an environmental law according to Article 24.1 of the USMCA.
34. NOM-015-CONAGUA-2007, *Artificial infiltration of water into aquifers: characteristics and specifications of works and water*, has the twofold objective of using rainwater and surface runoff to increase the availability of groundwater through artificial infiltration and to protect aquifer water quality.³¹ The Secretariat considers that the main purpose of the standard is the protection of the environment through the establishment of water quality measures, and therefore qualifies as an environmental law according to Article 24.1 of the USMCA.

In the field of health

35. NOM-127-SSA1-1994, *Environmental health: water for human use and consumption - Permissible limits of quality and treatments to which water must be subjected for purification*, establishes the acceptable quality standards and drinking water treatments for human use and consumption with which public and private water supply systems, or any individual or legal entity that distributes it, must comply throughout the national territory.³² The Secretariat considers that the main purpose of the standard is the protection of human health through the establishment of water quality measures, and therefore it qualifies as an environmental law according to Article 24.1 of the USMCA.
36. The NOM-013-SSA1-1993, *Sanitary requirements to be met by a tank vehicle for the transport and distribution of water for human consumption and use*, sets out the sanitary requirements to be met by a public or private tank vehicle for the transport and distribution of drinking

²⁸ NOM-010-CONAGUA-2000, item 1) Objective.

²⁹ NOM-013-CONAGUA-2000, item 1) Objective.

³⁰ NOM-014-CONAGUA-2003, subparagraphs 0) Introduction and 1) Objective.

³¹ NOM-015-CONAGUA-2007, point 1) Objectives.

³² NOM-127-SSA1-1994, subsection 1) Objective and scope.

water.³³ The Secretariat considers that although the regulation is intended to protect human health and could qualify as environmental law, the submission does not contain assertions about the effective enforcement of tank vehicle standards in relation to the Madín dam basin, so it is not considered for analysis.

37. NOM-014-SSA1-1993, *Sanitary Procedures for Sampling Water for Human Use and Consumption in Public and Private Supply Systems*, sets out sanitary procedures for sampling drinking water in supply networks, including bacteriological and physio-chemical aspects, as well as criteria for handling, preservation, and transport of samples.³⁴ Although the regulation could qualify as an environmental law, the submission does not contain assertions on the sanitary procedures for the sampling of drinking water in supply networks in the Madín dam basin, so it is not considered for analysis.
38. NOM-179-SSA1-1998, *Monitoring and evaluation of quality control of water for human consumption and use distributed in public supply systems*, sets out the requirements and specifications to be observed in drinking water quality control activities in public supply networks.³⁵ The Secretariat considers that the main purpose of the standard is the protection of human health through the establishment of water quality measures, and therefore it qualifies as an environmental law according to Article 24.1 of the USMCA.
39. The NOM-230-SSA1-2002, *Environmental health: water for human use and consumption - Health requirements to be met in public and private water supply systems during water management - Health procedures for sampling*, establishes the sanitary measures (requirements and procedures) to be met by organizations operating supply networks and individuals or legal entities managing drinking water, in order to preserve water quality for use and consumption.³⁶ The Secretariat considers that the main purpose of the standard is the protection of human health through the establishment of water quality measures, and therefore it qualifies as an environmental law in accordance with Article 24.1 of the USMCA.

Other standards cited in the submission

40. The submission lists the following Mexican standards:
 - i) NMX-AA-149/1-SCFI-2008, *Drinking water, drainage and sanitation - Efficiency - Methodology for evaluating the efficiency of service providers - Guidelines for the provision and evaluation of wastewater services*
 - ii) NMX-AA-149/2-SCFI-2008, *Drinking water, drainage and sanitation - Efficiency - Methodology for evaluating the efficiency of service providers - Guidelines for the provision and evaluation of drinking water services*
 - iii) NMX-AA-120-SCFI-2006, *Which sets the requirements and specifications of beach quality sustainability*
 - iv) NMX-AA-147-SCFI-2008, *Drinking water, drainage and sanitation services - Tariff - Tariff evaluation methodology*

³³ NOM-013-SSA1-1993, subsection 1) Objective and field of enforcement.

³⁴ NOM-014-SSA1-1993, subsection 1) Objective and field of enforcement.

³⁵ NOM-179-SSA1-1998, item 1) Objective and field of enforcement.

³⁶ NOM-230-SSA1-2002, point 1) Objective and scope.

- v) NMX-AA-148-SCFI-2008, *Drinking water, drainage and sanitation - Efficiency - Methodology for evaluating the quality of services - Guidelines for evaluating and improving service to users*

41. According to the Federal Metrology and Standardization Law, Mexican standards (NMX) establish the “common and repeated use of applicable standards, specifications, attributes, test methods, guidelines, characteristics or requirements”³⁷ for a variety of products, systems, activities, and facilities, among others. NMXs are not mandatory as they are “of voluntary compliance” under Article 51-A of the LFMN. The Secretariat determines that they do not qualify as environmental law according to Article 24.1 of the USMCA and that analyzing them in connection with submission SEM-22-003 (*Madín dam basin*) would be inappropriate.

c. USMCA Article 24.27(2) requirements

42. Article 24.27(2) of the USMCA provides five requirements that a submission must meet to be admissible. Having examined submission SEM-22-003 (*Madín Dam Basin*), in accordance with the provisions of USMCA Article 24.27(2), the Secretariat concludes that it meets some, but not all, of the requirements listed below.

- a) *is in writing in English, French, or Spanish*

43. The submission is written in Spanish and therefore satisfies the requirement of Article 24.27(2)(a) of the USMCA.

- b) *clearly identifies the person making the submission*

44. The submission specifies the name of the submitting organization, including its address, e-mail address, and telephone number. The information is sufficient to enable the Secretariat to identify and communicate with the Submitter representative. The Secretariat therefore finds that the submission satisfies Article 24.27(2)(b) of the USMCA.

- c) *provides sufficient information to allow for the review of the submission including any documentary evidence on which the submission may be based and identification of the environmental law of which the failure to enforce is asserted*

45. The submission is based on various technical and scientific documents attached to it, among which is a pilot study that carried out an evaluation of liver dysfunction and levels of oxidative stress in the population as a result of environmental pollution in the Madín dam basin.³⁸ The results of the study show that the contamination of the site in question generates oxidative stress and affects the health of people who consume water or fish in the Madín dam, it also underlines the need to implement appropriate policies for the cleanup and restoration of the area in order to improve the quality of life of the people who live there.³⁹

³⁷ Federal Metrology and Standardization Act, article 3: fraction X.

³⁸ K. Ruiz Lara *et al.* (2022), ‘The evaluation of liver dysfunction and oxidative stress due to urban environmental pollution in Mexican population related to Madín dam, State of Mexico: a pilot study’, *Environmental Science and Pollution Research*, 26 August 2022, Springer, at: <<https://doi.org/10.1007/s11356-022-22724-3>>.

³⁹ *Id.*

46. The Submitter also attached a study on the chronic exposure of common carp (*Cyprinus carpio*) to existing contaminants in the Madín dam basin. The common carp is a species that inhabitants of the region regularly consume.⁴⁰ This study concludes that the water of Madín dam basin is contaminated with xenobiotics that alter some biological functions of *C. carpio*, and that the presence of metals and various anti-inflammatories in the water of the reservoir induces oxidative stress and affects the texture of carp tissues.⁴¹
47. It should be noted that after the submission was filed, the Submitter sent several documents by e-mail which the Secretariat could not assess for the purposes of this determination as they should have been sent at the same time as the submission. The Secretariat will analyze those additional documents if the Submitter files a revised submission and includes them, either by including the link for download or by attaching them as supporting material.
48. The submission contains sufficient information and satisfies the requirement of Article 24.27(2)(c) of the USMCA. However, a revised submission may include a copy of the electronic versions of other documents, or corresponding links for download.

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

49. The Secretariat finds that the submission satisfies USMCA Article 24.27(2)(d) since it is apparent from the information and documents included in the submission and its annexes that it is not aimed at harassing an industry but seeks the effective enforcement of applicable environmental laws regarding water quality in the Madín dam basin.

e) indicates whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any

50. The Submitter includes documents to demonstrate that the matter has been communicated to the relevant governmental authorities in Mexico:
- i) Letter dated 5 April 2021, submitted to the Directorate-General of the National Water Commission, stating that in 2014, metals, emerging pollutants (e.g. acetaminophen, diclofenac and ibuprofen) and persistent organic pollutants, as well as polychlorinated biphenyls were found in the water from the Madín dam.⁴²
 - ii) Letter dated 7 July 2020, submitted to the General Directorate of the *Agua Valle de Mexico* Basin Agency, stating that in 2014 and 2015, metals, emerging pollutants, and persistent organic pollutants were found in water samples from the Madín dam, and pointing out the associated damage to human health.⁴³
 - iii) Letter dated April 5, 2021, addressed to the President of the United Mexican States, which states that metals, emerging pollutants, and persistent organic pollutants were found in the reservoir water in 2014 and 2015.⁴⁴

⁴⁰ G. Morachis Valdez *et al.* (2015), "Chronic exposure to pollutants in Madín reservoir (Mexico) alters oxidative stress status and flesh quality in the common carp *Cyprinus carpio*", *Environmental Science and Pollution Research*, vol. 22, No. 22, p. 9159-9172, initially published January 14, 2015, Springer, at: <https://link.springer.com/article/10.1007/s11356-014-4061-7>.

⁴¹ *Id.*

⁴² Madín Dam Basin Commission, Office No. CCPM-GO/PRE-05/04/2021-78 (5 April 2021).

⁴³ Madín Dam Basin Commission, Office No. CCPM-GO/PRE-07/07/2020-58 (7 July 2020).

⁴⁴ Madín Dam Basin Commission, Office No. CCPM-GO/PRE-05/04/2021-79 (5 April 2021).

- iv) Letter dated 6 January 2020 addressed to various authorities, including the Director General of the *Aguas Valle de México* Basin Agency.⁴⁵
- v) Letter dated July 8, 2020, addressed to the General Directorate of the *Aguas Valle de México* Basin Agency, which notes that in 2014 and 2015 metals, emerging pollutants, and persistent organic pollutants were found in water samples.⁴⁶
- vi) Letter dated July 8, 2020, addressed to the executive spokesperson of the Water Commission of the State of Mexico (CAEM), which notes that in 2014 and 2015 metals, emerging pollutants and persistent organic pollutants were found in water samples.⁴⁷
- vii) Letter dated April 5, 2021, addressed to the General Directorate of the National Water Commission, which references the water problem in the formulation process for the Municipal Urban Development Plan of the municipality of Naucalpan de Juárez, State of Mexico.⁴⁸
- viii) Letter dated December 18, 2017, addressed to the Director General of the *Aguas Valle de México* Basin Agency, in which the Submitter expresses concern about the growth of the city around the Madín dam basin, which has a widespread impact throughout the area.⁴⁹
- ix) Letter dated August 19, 2019, addressed to the Director General of the *Aguas Valle de México* Basin Agency, which states that, according to various studies, the presence of metals has been detected and that they may come from the purification process at the Madín water treatment plant.⁵⁰
- x) Letter dated August 19, 2019, addressed to the Director General of the *Aguas Valle de México* Basin Agency, which states that in 2014 and 2015 metals, emerging pollutants, and persistent organic pollutants were found in water samples and requests information on the plans of the municipal sewage network showing wastewater discharges.⁵¹
- xi) Letter dated August 19, 2019, addressed to the Director General of the *Aguas Valle de México* Basin Agency, in which various actions taken in relation to the Madín dam problem were presented and a working meeting was requested with the participation of authorities of different levels of government.⁵²

51. The Secretariat finds that the submission satisfies the requirement of Article 24.27(2)(e) because it includes information to demonstrate that the matter has been communicated in writing to the relevant authorities of the Party.

⁴⁵ Madín Dam Basin Commission, Office No. CCPM-GO/PRE-27/12/2019-50 (6 January 2020).

⁴⁶ Madín Dam Basin Commission, Office No. CCPM-GO/PRE-08/07/2020-55 (8 July 2020).

⁴⁷ Madín Dam Basin Commission, Office No. CCPM-GO/PRE-08/07/2020-56 (8 July 2020).

⁴⁸ Madín Dam Basin Commission, Office No. CCPM-GO/PRE-05/04/2021-77 (5 April 2021).

⁴⁹ Madín Dam Basin Commission, Office No. CCPMVC-GO/RCCPM/035/12/18/2017 (18 December 2017).

⁵⁰ Madín Dam Basin Commission, Office No. CCPMVC-GO/PRE-19/08/2019-46 (19 August 2019).

⁵¹ Madín Dam Basin Commission, Office No. CCPM-GO/PRE-19/08/2019-45 (19 August 2019).

⁵² Madín Dam Basin Commission, Office No. CCPM-GO/PRE-19/08/2019-48 (19 August 2019).

d. Criteria set out in USMCA Article 24.27(3)

52. Article 24.27(3) of the Agreement sets out four additional criteria that are part of the Secretariat's review process:

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

53. The submission alleges harm to water quality in the Madín dam basin. The dam was built mainly to supply water to the surrounding towns. The Submitter maintains that the rivers and streams that flow into the Madín dam are contaminated, which has a direct impact on the reservoir's water quality.⁵³ It also alleges that the situation caused the death of one and a half tons of fish in 2021;⁵⁴ that the damage to public health is documented in scientific publications attached to the submission;⁵⁵ that the environment of the basin shows environmental degradation that is endangering the well-being of the population in nearby towns,⁵⁶ and that the overexploitation of the aquifer in the Mexico City Metropolitan Area increases water stress and forces the population to resort to external sources for drinking water supply.⁵⁷

54. The Secretariat has found in previous determinations that, when considering the question of harm, it must determine whether the harm asserted is due to the alleged failure to effectively enforce the environmental law and whether the harm is related to environmental protection.⁵⁸ Consistent with its practice in implementing the SEM process, the Secretariat determines that the submission meets the criterion set out in Article 24.27(3)(a) of the USMCA.

b) the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter

55. USMCA Article 24.2(2) states that the goals of Chapter 24 are "to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation, in the furtherance of sustainable development."

56. The submission raises questions about environmental issues like water quality in the Madín dam basin that are documented in the submission and the accompanying technical information. Exploring the matters raised in the submission could promote high levels of environmental protection and effective enforcement of environmental laws to further sustainable development.

57. The Secretariat therefore determines that the submission satisfies the criterion of Article 24.27(3)(b) of USMCA.

⁵³ Submission, p. 5.

⁵⁴ Id. at p. 10.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ See SEM-19-004 (*Barred Owl*), Determination pursuant to Articles 14(1) and (2) (21 November 2019), § 28; SEM-11-002 (*Sugar Cannon II*), Determination pursuant to Articles 14(1) and (2) (6 September 2012), § 36; SEM-13-001 (*Gulf of California Tourism Development*), Determination pursuant to Articles 14(1) and (2) (23 November 2013), § 62. Cf. Guidelines, point 7.4.

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

58. The submission encloses copies of the following remedies that have been attempted under Mexican law:

- i) A class action lawsuit dated 14 March 2018, filed before the district court in turn of the Second Circuit, State of Mexico, against the Director General of Conagua, among other authorities and real estate developers.⁵⁹ This action, demands the right to a healthy environment, health and water, which is asserted to be violated by the pollution of the Madín dam. It also calls for the restoration of environmental damage; it demands that the issuance of permits and authorizations be prohibited due to the overexploitation of aquifers in the area; it requests that proceedings be initiated to cancel water permits, and it calls for appropriate safety measures to be imposed, among other demands.⁶⁰
- ii) Class action lawsuit dated 20 August 2021, filed before the district court of the Second Circuit, State of Mexico, against Club Lomas Verdes, S.A. de C.V., and others.⁶¹ The action states that “there is the presence of organic contamination associated with the discharges of domestic wastewater, fecal matter, emerging contaminants such as diclofenac, naproxen and acetaminophen, among others, in addition to carcinogenic compounds such as anthracene and phenanthrene.”⁶² It also demands the repair of the damage to the environment in the Madín dam basin, the implementation of wastewater treatment, and the installation of a hydraulic network to prevent the Madín dam from continuing to receive discharges, among other demands.⁶³
- iii) Complaint dated 18 December 2017, filed with the General Directorate of the *Aguas Valle de México* Basin Agency, stating that since 2006 the Madín dam has been considered a eutrophicated reservoir and that its waters contain metals, as well as emerging pollutants (such as acetaminophen, diclofenac, and ibuprofen), and persistent organic pollutants (such as anthracene, phenanthrene, and benzopyrene).⁶⁴
- iv) Supplement to a complaint dated 19 August 2019, filed with the General Directorate of the *Aguas Valle de Mexico* Basin Agency. This supplement reports the presence of trash dumps and the discharge of domestic wastewater at unspecified points, affecting the water of the Madín dam.⁶⁵
- v) Complaint dated 11 March 2019, filed with the Office of the Deputy Attorney General for Environmental Crimes, expressing concern about the environmental

⁵⁹ Collective action brought before the district court in turn of the Second Circuit, *La Colectivity v. General Directorate of the National Water Commission and others*, Naucalpan de Juárez, State of Mexico, March 14, 2018.

⁶⁰ *Id.* at p. 14.

⁶¹ Collective action brought before the district court in turn of the Second Circuit, *La Colectivity v. Club Lomas Verdes, S.A. de C.V., and others*, Naucalpan de Juárez, State of Mexico, August 20, 2021.

⁶² *Id.* at p. 8.

⁶³ *Id.* at p. 11.

⁶⁴ Madín Dam Basin Commission, Office No. CCPMVC-GO/RCCPM/036/12/18/2017 (18 December 2017).

⁶⁵ Madín Dam Basin Commission, Office No. CCPMVC-GO/RCCPM/036/19/08/2019 (19 August 2019).

deterioration of the Madín dam basin, especially the decrease in the amount of water available and the pollution and filling of the Barranca IV section of Lomas Verdes.⁶⁶

vi) Supplement to a complaint dated 7 July 2020, filed with the Office of the Deputy Attorney General for Environmental Crimes.⁶⁷

59. The Secretariat requests the Submitter to include—in a revised submission—the complete electronic versions of the complaints filed with the General Directorate of the *Aguas Valle de Mexico* Basin Agency and the Office of the Deputy Attorney General for Environmental Crimes.

60. Regardless, the materials attached to the submission related to the remedies that have been attempted are sufficient for the Secretariat to determine that USMCA Article 24.27(3)(c) is satisfied.

d) the submission is not drawn exclusively from mass media reports

61. Regarding USMCA Article 24.27(3)(d), the Secretariat finds that the submission is *not* based on mass media reports. The submission is based on documents and information on the environmental situation which the Submitter collected, and in large part, from technical documents.

62. The Secretariat therefore concludes that the submission satisfies the criterion in Article 24.27(3)(d) of the Agreement.

IV. DETERMINATION

63. For the reasons set out above, the Secretariat finds that submission SEM-22-003 (*Madín Dam Basin*) *does not* meet all the eligibility criteria set out in Article 24.27(2) and that additional information is required for the submission to proceed and to request a response from the Government of Mexico under Article 24.27(3). Therefore, a revised submission is requested that meets the following requirements:

- i. File a submission not exceeding 15 letter-size pages, excluding annexes or links to download information.
- ii. Cite specific articles of federal laws and regulations that the Party is allegedly failing to effectively enforce.
- iii. Include information on citizen complaints or appeals filed in connection with the matters raised in the submission and, if applicable, electronic copies of the relevant documents or corresponding links for download.
- iv. Include, either in the body of the submission or in the annexes attached to it, any other information deemed relevant, to support the assertions of the alleged lack of effective enforcement of Mexico's environmental law with respect to the pollution of the Madín dam basin.

64. The Submitter has 60 calendar days — that is, until **26 January 2023** — to submit a revised submission containing the requested information.

⁶⁶ Madín Dam Basin Commission, Office No. CCPMVC-GO/RCCPM01/036/03/05/2019 (11 March 2019).

⁶⁷ Madín Dam Basin Commission, Office No. CCPMVC-GO/RCCPM01/056/07/07/2020 (7 July 2020).

Secretariat of the Commission for Environmental Cooperation

(original signed)

Per: Paolo Solano
Director of Legal Affairs and Submissions on Enforcement Matters

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