

**Secretariat of the Commission for Environmental Cooperation
of North America**

**Article 15(1) Notification to Council that Development of a Factual
Record is Warranted**

Submitter: Comité Pro Limpieza del Río Magdalena
Party: United Mexican States
Submission Number: SEM-97-002 (Rio Magdalena)
Date of Receipt: 15 March 1997
Date of this Notification: 5 February 2002

I. EXECUTIVE SUMMARY

Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (the “NAAEC”), the Secretariat of the Commission for Environmental Cooperation (the “Secretariat”) may consider submissions asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. If the Secretariat finds that the submission meets the requirements of Article 14(1), it shall then determine whether the submission warrants requesting a response from the Party named in the submission, in accordance with Article 14(2). The Secretariat may notify the Council under Article 15(1) that it considers that the submission, in light of any response from the Party, warrants developing an Article 15 factual record. By a two-thirds vote, the Council may instruct the Secretariat to prepare a factual record. The final factual record, again by a vote of two-thirds of the members of the Council, may then be made public.

This Notification contains the Secretariat’s Article 15(1) analysis with respect to the submission filed 7 April 1997, by Comité Pro Limpieza del Río Magdalena (the Submitter).

The Submitter asserts that Mexico is failing to effectively enforce its environmental law with respect to the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora, which allegedly is discharged into the Magdalena River without proper treatment.

On 7 April 1997, the Secretariat received the submission from Comité Pro Limpieza del Río Magdalena, in accordance with Article 14 of the NAAEC. On 2 June 1997, the Secretariat requested that the Submitter specify the chapters or provisions of law whose failure to enforce was alleged. In response to that request, the Secretariat received the additional filing to the submission on 18 July 1997.

On 6 October 1997, the Secretariat determined that the submission met the requirements of Article 14(1) of the NAAEC and, considering the criteria set forth in NAAEC Article 14(2), on 8 May 1998, it requested a response from the Party. The Secretariat received the Party's response on 29 July 1998, in accordance with NAAEC Article 14(3). Given the complexity of the matter, and to better understand some aspects of the legal and administrative framework referenced in Mexico's response, the Secretariat, relying on NAAEC Article 21(1)(b), requested but did not receive additional information from the Party. The requests were sent on 13 September 1999, 13 January 2000 and 23 October 2000.

In order to continue with the processing of this submission, the Secretariat proceeded with its analysis based on the available information. Having examined the submission in light of the Party's response, in accordance with NAAEC Article 15(1), the Secretariat hereby notifies Council that the submission warrants the development of a factual record with respect to some of the assertions, while others do not warrant further consideration in this process or the development of a factual record. The Secretariat sets forth the reasons for these determinations in the body of this document.

In summary, this submission warrants the development of a factual record in regard to the assertions of the Submitter relating to the alleged failure to effectively enforce provisions on the prevention and control of water pollution, with respect to the discharge of untreated wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora. Specifically, the development of a factual record is warranted on the effective enforcement, for the aforementioned municipalities, of Articles 88 paragraph IV, 89 paragraph VI, 92, 93, 117, 121, 122, 123, 124, 126 and 133 of the General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA), and Mexican Official Standard NOM-001.

II. SUMMARY OF THE SUBMISSION

The submission asserts that the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora discharge their wastewater into the Magdalena River without prior treatment, in contravention of Mexican environmental law. Comité Pro Limpieza del Río Magdalena asserts that it has undertaken efforts to prevent the pollution of the Magdalena River for the past 17 years, and describes the main relevant events occurring since then.

The Submitter states that:

...in the case of the water pollution in question, the procedures and standards that apply in this case have been in force since 1971, and basically show no major changes. All laws in this matter, issued to date, continue to impose on the Government full responsibility to demand the effective enforcement of the laws, at any social level, to minimize the problem, and the Towns or Municipalities have always been responsible for taking care of water pollution. This responsibility has

been diminished repeatedly, due to the six-year transitions in government administrations (*sexenios*), the name changes of the respective enforcement agencies, and the lack of political will to provide a concrete solution. The authorities do NOT (sic) want to see reality, they do NOT (sic) want to measure the damages we are inflicting upon our environment for this and future generations, they do NOT (sic) want to have any continuity over the six-year transitions, for programs and positive laws, and as a result the regulations have been enforced irregularly and ineffectively, without force. (translation from original)¹

The Submitter asserts that the pollution of the waters of the Magdalena River has caused harm to farmers and users of the Magdalena River's surface water, who have used such water for the irrigation of traditional crops and for regional family sustenance. The submission asserts that farmers and water users have even been fined by the National Water Commission (*Comisión Nacional del Agua*—CNA) under Mexican Official Standard NOM-CCA-033-ECOL/1993² (NOM-033), because those waters do not meet the specific parameters of the standard for use in crop irrigation. The Submitter also asserts that many fruit trees have been found to have irreversible rotting in their roots.

Lastly, the submission denounces the failure of the three levels of government (federal, state and municipal) to attend to and solve the stated problem. The Submitter states:

Who controls whom? The municipalities do NOT (sic) have the official classification of a receiving body for the Magdalena River for this purpose, nor the defined parameters that by law must be had along with the official legal authorizations in order to dispose of such duly treated wastewater. However, without regard to law or authority, the municipalities of Imuris, Magdalena de Kino, and Santa Ana in Sonora, Mexico, continue to blatantly dump into the receiving body of the Magdalena River, illegally mixing polluted waters with water that has historically been used as a source of drinking water for human consumption, for the irrigation of farmlands, and as regional family sustenance. (translation from original)³

As stated above, the Secretariat requested that the Submitter indicate which environmental laws in particular were considered not to be effectively enforced, with respect to the facts stated in the submission. The Submitter responded to this request in an additional filing. In that filing, the Submitter cites various laws that are no longer in force, indicating that there have been laws for the prevention and control of water pollution for some time, and that in its opinion they have been modified every six-year term but they have not been enforced.⁴

¹ Additional filing to the submission, p. 10.

² Establishing the bacteriological conditions for the use of urban or municipal wastewater, or the mixture thereof in bodies of water, in crop irrigation and garden products. Note that the nomenclature of this Standard changed to NOM-033-ECOL-93, as of 30 November 1994.

³ Additional filing to the submission, p. 11.

⁴ Additional filing to the submission, p. 1, 10 and 11.

As for laws currently in force, the Submitter indicated that it considers, in this case, that Mexico is failing to effectively enforce the following provisions of law:

(i) The General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA): Article 1 paragraphs I, II, III, V, VI, VIII, IX and X; 4; 5 paragraphs I, II, III, V, VII, XVI, XVII, XVIII and XIX; 6; 7 paragraphs I, II, VIII, XIX, XI, XII, XIV, XV, XVIII, XIX and XXI; 8 paragraphs I, II, VII, IX, X, XI, XIII and XV; 10; 15; 16; 23 paragraph VII; 36; 88; 89 paragraphs II, VI and VII; 90; 91; 92; 93; 96; 98 paragraph IV; 104; 108 paragraph I; 109 BIS; 117; 118 paragraphs I, II, III, V and VI; 119; 119 BIS; 120; 121; 122; 123; 124; 126; 127; 128; 129; 133; 157; 159 BIS 3; 159 BIS 4; 159 BIS 5; 189; 190; 191; 192; 199; and 200.

(ii) The Law of Ecological Balance and Environmental Protection for the State of Sonora: Article 3 paragraphs I, IV, and V; 6 paragraphs II, III, VIII, X and XII; 7 paragraphs III and VII; 8 paragraphs II, VI and IX; 52, 95 paragraph IV; 96 paragraphs I and III; 97 paragraphs I and II; 98 paragraphs I, II and IV; 99, 101, 102, 104, 105, 163, 164, 165, 166, 167 and 168.

(iii) The Waters Law for the State of Sonora, Article 73 paragraph I.

(iv) The Health Law for the State of Sonora: Article 3 paragraph XI; 4 paragraph VI; 5 paragraph I; 6 paragraphs I and II; 8 paragraph V; 18 paragraph V; 86 paragraph III; 90, 91 paragraphs I and II; 94; 95; 194; 195; 196; 200 and 201.

III. SUMMARY OF THE RESPONSE OF MEXICO

The Party, in its response filed 29 July 1998, first claims that most of the facts set forth by the Submitter arose prior to the entry into force of the NAAEC, that is, before 1 January 1994, and thus it considers the application thereof in this particular case would be retroactive, to the Party's detriment. The response indicates that this would be contrary to the general principle of law that requires disputes to be evaluated according to previously established bodies and rules.

Secondly, the Party argues that the submission is inappropriate pursuant to NAAEC Article 14(2)(c). According to the Party, this article establishes that "the submitters must exhaust the remedies set forth in domestic law" before filing any submission.⁵ In this respect, the Party alleges that while the Submitter sent several communications to various federal, state and municipal authorities, these did not constitute the filing of legal actions as provided in the environmental laws. The Party asserts that the Submitter had several legal remedies available to it, such as appellate review, a nullification suit before the Federal Tax Court (now called the Federal Court for Tax and Administrative Justice (*Tribunal Federal de Justicia Fiscal y Administrativa*)) and a suit for an injunction.

⁵ Response of Mexico, p. 11.

Mexico's response describes the problems of the Magdalena River and the situation of the three municipalities in question. The response includes as exhibits copies of the construction or extension projects of the treatment systems of each municipality with which the treatment deficiencies of the three municipalities supposedly will be handled, among other documents.

Lastly, the Party dedicates a section of its response to refute the supposed failure by Mexico to effectively enforce Mexican environmental law, making reference to each of the provisions invoked by the Submitter. The Party argues that some of the provisions cited by the Submitter do not apply to the subject matter of the submission, and that those that do apply have been complied with.

The Party disputes the applicability of the environmental laws of the State of Sonora with regard to the submission, holding that the matter of wastewater discharge in nationally owned waters falls under federal jurisdiction.⁶ The Party asserts that the Magdalena River is national property in accordance with Declaration 207, dated 25 June 1924, published in the Official Gazette of the Federation (*Diario Oficial de la Federación*) on 22 August 1924.⁷ The Party concludes that only federal laws apply to the case at hand.⁸

IV. ANALYSIS

IV.1 Introduction

The process in regard to this submission is currently at the NAAEC Article 15(1) stage. To reach this stage, the Secretariat must first determine that a submission meets the requirements of Article 14(1) and that it merits a response from the Party, in consideration of the criteria of Article 14(2). At the time the Secretariat made its determination under these NAAEC articles, the *Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the "Guidelines") in force did not require the Secretariat to state the reasons of its determinations. Given that the Guidelines were revised in June 1999 and now do so require, the Secretariat states its reasons herein.

Second, the Secretariat addresses the Party's argument that the application of the NAAEC is retroactive to its detriment since, according to the Party, most of the facts addressed by the submission arose prior to the entry into force of the NAAEC.

Third, the Secretariat sets forth the reasons why some environmental provisions invoked in the submission do not warrant consideration in the processing of this submission nor in the development of a factual record.

⁶ Response of Mexico, p. 30 *et seq.*

⁷ Response of Mexico, p. 31.

⁸ Response of Mexico, p. 33, third paragraph.

Lastly, the Secretariat explains the reasons why it considers that, in light of the Party's response, the submission warrants the development of a factual record on the alleged failure to effectively enforce some of the provisions relating to water, due to the alleged discharge of untreated wastewater into the Magdalena River from the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora.

IV.2 NAAEC Article 14(1) and (2) Analysis of the Submission

In its 6 October 1997 determination,⁹ the Secretariat concluded that the submission met the requirements of NAAEC Article 14(1). The Submitter clearly identified itself in the submission as a nongovernmental organization located in Terrenate, Imuris Municipality, Sonora, Mexico.¹⁰ The submission was filed with the Secretariat in Spanish, the language designated by Mexico.

The Submitter asserts that Mexico is failing to effectively enforce various articles of the LGEEPA, as well as three laws of the state of Sonora: the Law of Ecological Balance and Environmental Protection, the Waters Law and the Health Law. The Secretariat considered that the submission referred to "environmental laws" pursuant to the definition contained in NAAEC Article 45(2), because the main purpose of the aforesaid laws is environmental protection or the prevention of a hazard to human health, principally through the prevention and control of pollutant releases.

The Secretariat determined that the information and documents provided by the Submitters are sufficient to allow the Secretariat to analyze the submission. The submission describes the pollution problems of the Magdalena River and the lack of adequate treatment of the discharged wastewater, in alleged violation of the laws prohibiting the release of pollutants into bodies of water and the obligations to prevent and control water pollution. The submission describes the efforts undertaken by Comité Pro Limpieza del Río Magdalena to protect the river over 17 years. Copies of the various communications sent to several authorities since 1989 and the answers thereto, relating to the situation of the river and the lack of adequate treatment of municipal wastewater, are attached to the submission, along with some samples of the propaganda used by Comité Pro Limpieza del Río Magdalena to promote the protection of the river. In its additional filing of 18 July 1997, the Submitter identified the provisions of law that it considers have not been effectively enforced. The Secretariat concluded that the submission is not aimed at harassing industry because it does not single out any particular industry, but rather seeks the enforcement of the environmental laws to prevent water pollution in Mexico. It also considered that the matter has been notified in writing to the pertinent authorities in Mexico, given that three citizen complaints have been filed in this regard, among other filings.¹¹

⁹ SEM-97-002 (Río Magdalena), Article 14(2) determination (6 October 1997).

¹⁰ Submission, p. 1.

¹¹ Additional filing to the submission, p. 2, 3 and 8.

Having complied with all Article 14(1) requirements, the Secretariat proceeded to evaluate the submission taking account of the criteria of NAAEC Article 14(2). The Submitter asserts that there are damages and harmful effects to the environment and health. It states that fruit trees, such as plum, quince and pomegranate trees, show irreversible levels of rotting,¹² that in 1991 “the results of bacteriological analyses performed on waters of the Magdalena de Kino Irrigation District showed a high number of fecal coliforms in several agricultural samples,”¹³ and that these results appear again in bacteriological analyses reported in 1996.¹⁴

The submission addresses the remedies available under the laws of the Party that were pursued, and the Secretariat considers that a reasonable effort has been made to use them. As stated above, the Submitter filed a citizen complaint three times under the LGEEPA to make the authorities aware of the alleged violations of environmental law, with respect to the pollution of the Magdalena River.¹⁵ The last one was made by means of a statement filed 10 October 1996.¹⁶ As indicated in other determinations, in the Secretariat’s opinion, for purposes of NAAEC Article 14, the citizen complaint is a remedy contemplated by the Party’s laws and available to the Submitter to be used before filing a submission.¹⁷ The submission further states:

¹² Submission, p. 1, and additional filing to the submission, p. 8 and 9.

¹³ Additional filing to the submission, p. 2.

¹⁴ Additional filing to the submission, p. 3.

¹⁵ Mexico’s objection to this point, set forth in its response, should be noted. The Party considers that the submission is inappropriate and that NAAEC Article 14(2)(c) has been contravened because, according to the Party, that article “states that submitters must exhaust the remedies provided in domestic law before preparing any submission” (p. 11 of the Party’s response). The Party alleges that while the Submitter sent various communications to several federal, state and municipal environmental authorities, these do not constitute the legal remedies set forth in law. According to the Party, the Submitter had several legal remedies available to it under Mexican law, such as the appellate review, the nullification suit before the Federal Tax Court, and the injunction suit. The Party also argues that the Submitter should have waited for a ruling on the citizen complaint filed in 1996 (p. 11 of Mexico’s response). As stated elsewhere, the Article 14(2) criteria are *considerations that guide the Secretariat* in deciding whether a submission warrants a response from the Party, in contrast to Article 14(1), which establishes the requirements to be met by the submissions in order for the Secretariat to proceed with its review. Among these considerations, Article 14(2)(c) includes the question of “whether private remedies available under the Party’s law have been pursued.” Furthermore, sections 5.6(c) and 7.5(b) of the Guidelines state, respectively, that “the submission should address [...] the actions, including private remedies, available under the Party’s law that have been pursued,” and that in evaluating the matter, “the Secretariat will be guided by whether ... reasonable actions have been taken to pursue such remedies prior to initiating a submission ...”

¹⁶ Additional filing to the submission, p. 9 and exhibits to the submission.

¹⁷ The citizen complaint provided in LGEEPA Articles 189 through 204 allows any person to approach the environmental authority to denounce presumed violations of the environmental laws or regulations, or environmental damages. The authority must consider the complaint and, as applicable, take the pertinent measures and inform the complainant of any ruling made in regard thereof. Thus, the citizen complaint appears to be a remedy contemplated by the Party and available to the Submitter before that Party, prior to filing an Article 14 submission. See the following determinations: SEM-98-006 (Grupo Ecológico Manglar) NAAEC Article 15(1) determination (4 August 2000), and SEM-97-007 (Instituto de Derecho Ambiental) NAAEC Article 15(1) determination (14 July 2000).

For now, we are pages away from recording all our activities in these years of struggle, in visits, work meetings, different types of actions, awareness campaigns, chats and exchanges with school students, etc., at all levels of government and with society in general, and in the end doing everything within our reach to let us give rise to positive actions to save our River from pollution, but to date there is no indication of a concrete solution from the persons and authorities responsible for effectively enforcing the law in Mexico. (translation from original)¹⁸

The Secretariat considers that further study in this process of the alleged failure to effectively enforce the laws on water pollution control and prevention to which this submission refers would contribute to furthering the objectives of the NAAEC, particularly the promotion of environmental protection and the improved observance and enforcement of laws and regulations to attain higher levels of environmental protection, as established in Articles 1 and 2 of the Agreement. The submission does not appear to be based exclusively on media reports, but rather the Submitter seems to have broad, direct knowledge of the matter. The submission states that the members of the submitting organization have been fighting 17 years for the clean-up of the Magdalena River, without success.¹⁹ On the basis of all of this, in the Determination of 8 May 1998,²⁰ the Secretariat requested a response to the submission from the Party, which Mexico presented to the Secretariat 29 July 1998.

IV.3 Claims by the Party relating to the alleged retroactive application of the NAAEC

The Party states that most of the facts set forth by the Submitter arose before 1 January 1994, when the NAAEC entered into force, and thus the application of the NAAEC would be retroactive to the Party's detriment. It indicates that this would be contrary to the general principle of law that requires disputes to be evaluated according to previously established bodies and rules.²¹

Based on the *Vienna Convention on the Law of Treaties*,²² the Secretariat considers that NAAEC Article 14 allows the review of an alleged failure to effectively enforce environmental laws that occurs, or the effects of which persist, during the effective period of the NAAEC, even if the facts to which this alleged failure refers arose before the entry into force thereof. The facts to which NAAEC Article 14 applies are not those underlying the violation for which there was an alleged failure to effectively enforce, but rather those

¹⁸ Additional filing to the submission, p. 11.

¹⁹ Submission, p. 1.

²⁰ SEM-97-002 (Río Magdalena), Article 14(2) determination (8 May 1998).

²¹ Response of Mexico, p. 8 and 9.

²² Article 28 of the Vienna Convention on the Law of Treaties provides that "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

underlying the alleged failure to effectively enforce the environmental laws.²³ In other words, the fact that must be after the entry into force of the NAAEC is the alleged failure to effectively enforce the environmental laws.

The Submitter describes the pollution problems of the Magdalena River that have arisen from 1988, six years prior to the entry into force of the NAAEC, to the April 1997 filing date of the submission. However, the submission clearly indicates that the failures to effectively enforce the environmental laws regarding the alleged discharges of untreated wastewater into the Magdalena River, by the municipalities of Imuris, Magdalena de Kino and Santa Ana, continued as of the time the submission was filed. Because the alleged violations were continuing at the time the submission was filed, the application of NAAEC Article 14 is not retroactive with respect to the alleged failure to effectively enforce the environmental laws. It does not matter that the alleged discharges of untreated municipal wastewater into the Magdalena River and other facts mentioned in the submission began to occur prior to 1 January 1994.

IV.4 Are the provisions invoked by the Submitter applicable to the facts stated in the submission?

As stated above, the Submitter asserts that Mexico is failing to effectively enforce its environmental laws with respect to the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana into the Magdalena River, and it invokes 82 legal provisions, although it does not relate them individually to those facts. In its response to the submission, Mexico argues that the Submitters should have specified "... which norms actually apply and what aspects thereof were not enforced; in this perspective it is impossible to establish any relationship between the environmental problems claimed in the submission and the law that actually applies to the case at hand."²⁴ Notwithstanding this objection, Mexico's response addresses these provisions one by one, indicating how they have been enforced in the case in question and further indicating which provisions the Party deems inapplicable to the facts set forth in the submission.²⁵ Following is a summary of the analysis of applicability of the provisions cited to the facts set forth in the submission, in light of Mexico's response. This analysis took into account the fact that while the submitters' arguments on the specific provisions facilitate an analysis of the submission, neither the NAAEC nor the Guidelines require the submitters to specify the actual provisions of law whose failure to effectively enforce is alleged. In the case of the LGEEPA, it suffices to indicate the applicable chapter.²⁶

²³ See SEM-96-01 (Cozumel) Article 14 and 15 recommendation (7 June 1996) and SEM-98-001 (Guadalajara) Article 14(1) determination (11 January 2000).

²⁴ Response of Mexico, p. 30.

²⁵ Response of Mexico, p. 29 *et seq.*

²⁶ See Section 5.2 of the Guidelines.

IV.4.1 Provisions not applicable by reason of jurisdiction

The submission asserts that Mexico is failing to effectively enforce several provisions of three state laws: the Law of Ecological Balance and Environmental Protection for the State of Sonora, the Waters Law for the State of Sonora, and the Health Law for the State of Sonora. Mexico's response denies that these state laws are applicable to the facts under the submission.²⁷ The Party states that pollution prevention and control for national waters, and specifically the control of wastewater discharges into national rivers, corresponds to the federal authority through the CNA, in accordance with the Political Constitution of the United Mexican States, the National Waters Law (*Ley de Aguas Nacionales*—LAN) and the LGEEPA. The response indicates that the Magdalena River is a national property, pursuant to Declaration 207 dated 25 June 1924, published in the Official Gazette of the Federation on 22 August of that year, and thus the discharge of wastewater into that river falls under federal jurisdiction.

LGEEPA Article 5 paragraph XI and Article 86 paragraph III of the National Waters Law clearly establish such an allocation of jurisdictions.²⁸ Therefore, the Secretariat determines that further review of the submission's claims, with respect to the state provisions invoked, is unwarranted.

IV.4.2 Provisions not applicable by reason of the subject matter

The submission asserts that Mexico is failing to effectively enforce its environmental laws by allowing the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora to discharge wastewater into the Magdalena River without prior treatment.

The provisions cited by the Submitter refer to various aspects of the regulatory framework regarding water: they establish jurisdictions, general principles, criteria, obligations and prohibitions for the sustainable use of water, and the prevention and control of water pollution. However, not all are directly applicable to the facts in the submission, even though they are all generally related thereto. Considering the arguments set forth in Mexico's response, and given the lack of concrete arguments from the Submitter as to the reason the Party is deemed to have failed to effectively enforce each of the cited provisions, the Secretariat considers that the following provisions of the LGEEPA are not directly applicable to the subject matter of the submission:

²⁷ Response of Mexico, p. 31 through 33.

²⁸ LGEEPA Article 5.- The following are powers of the Federation:

...XI. The regulation of sustainable use, the protection and preservation of forestry resources, the soil, national waters, biodiversity, flora, fauna and all other natural resources under its jurisdiction; ...

LAN Article 86.- "The Commission" (the CNA) shall be responsible for:

...III. Establishing and ensuring compliance with the particular discharge conditions to be met by wastewater generated in properties and zones under federal jurisdiction; of wastewater run off directly into national waters and properties, or onto any land when such discharges may pollute the subsoil or aquifers; and in all other cases set forth in the LGEEPA.

- Article 1 paragraphs I, II, III, V, VI, VIII, IX and X, regarding the regulatory nature of the LGEEPA;
- Articles 4; 5 paragraphs I, II, III, V, VII, XVI, XVII, XVIII and XIX; 6; 7 paragraphs I, II, VIII, XIX, XI, XII, XIV, XV, XVIII, XIX and XXI; 8 paragraphs I, II, VII, IX, X, XI, XIII and XV; and 10, regarding the allocation of jurisdictions and coordination among authorities;
- Articles 15 and 16, regarding environmental policy;
- Article 23 paragraph VII, regarding the regulation of human settlements;
- Articles 36, 90 and 119, regarding the issuance of Mexican official standards;
- Article 88 paragraphs I through III, containing criteria for the use of aquatic ecosystems and the hydrological cycle;
- Article 89 paragraphs II and VII, regarding the consideration of sustainable water use criteria in the granting of permits, concessions and authorizations that may affect the hydrological cycle, and in the governing program for the urban development of the Federal District;
- Article 91, regarding the granting of authorizations to affect the course or currents of waterways;
- Article 96, referring to aquatic ecosystems;
- Articles 98 paragraph IV and 104, regarding the preservation and sustainable use of the soil;
- Article 108 paragraph I, regarding the exploration and exploitation of nonrenewable resources;
- Article 109 BIS, regarding the inventory of releases and discharges to be kept by the Ministry;
- Article 118 paragraphs I, II, III, V and VI, indicating the governmental activities in which the prevention and control of water pollution should be considered;
- Article 119 BIS, regarding the powers and obligations of the state and municipal governments, relating to the prevention and control of water pollution;
- Article 120, establishing that certain activities are subject to federal or local regulation, in order to prevent water pollution;
- Article 126, providing that urban wastewater treatment systems must comply with the requirements established in the Mexican official standards;
- Article 127, regarding industrial wastewater purification facilities;
- Article 128, providing that wastewater from urban drainage and sewer systems may be used in industry and farming if it is treated as provided in the Mexican official standards;
- Article 129, requiring the treatment of waters used in economic activities likely to pollute them;
- Article 134, establishing criteria for the prevention of soil contamination;
- Article 157, referring to citizen participation in environmental policy;
- Articles 159 BIS 3, 159 BIS 4 and 159 BIS 5, regarding the right to environmental information; and
- Article 200, providing that state laws must allow for citizen complaints.

These articles of the LGEEPA and the cited provisions of the state laws on environmental protection, water and health will not be further analyzed in this process, and it is not deemed necessary to analyze them in respect of the factual record warranted for this submission.

IV.4.3 Provisions relevant to the facts under the submission

Contrarily, also having considered the arguments set forth in Mexico's response, the Secretariat finds that LGEEPA Articles 88 paragraph IV, 89 paragraph VI, 93, 117, 121, 122, 123, 124, 133, 189, 190, 191, 192 and 199 are directly applicable to the subject matter of the submission.

Article 88 paragraph IV establishes that water users are responsible for preserving it and using it in a sustainable manner.²⁹ Article 89 paragraph VI establishes that the criteria for the preservation and sustainable use of water (as mentioned in Article 88 paragraph IV, among others) must be considered in the operation and administration of drinking water and sewer systems serving population centers and industries.³⁰ The municipalities of Imuris, Magdalena de Kino and Santa Ana, all users of the Magdalena River as receiving bodies for their wastewater discharges, are responsible for considering these criteria for the sustainable use of the water.

Article 92 refers to the treatment of wastewater, among the actions that the authorities must promote in order to ensure the availability of water and to reduce levels of waste.³¹ LGEEPA Articles 93, 117, 121, 122, 123, 124 and 133 establish obligations, prohibitions, criteria and measures for the prevention and control of water pollution, all of which are applicable to the discharge of wastewater and to the assertions of the submission.³²

²⁹ Article 88.- The following criteria shall be considered for the sustainable use of water and aquatic ecosystems:

...IV.- The preservation and sustainable use of water, as well as of aquatic ecosystems, is the responsibility of the users thereof and of anyone undertaking works or activities affecting such resources.

³⁰ Article 89.- The criteria for the sustainable use of water and aquatic ecosystems shall be considered in:

...VI.- The operation and administration of drinking water and sewer systems serving population centers and industries;

³¹ Article 92.- In order to ensure the availability of water and to reduce the levels of waste, the competent authorities shall promote the saving and efficient use of water and the treatment and reuse of wastewater.

³² Article 93.- The Secretariat shall undertake the necessary actions to avoid, and as applicable control, the eutrophication, salinization and any other pollution process in national waters.

Article 117.- The following criteria shall be considered for the prevention and control of water pollution:

- I. The prevention and control of water pollution is fundamental to avoid the reduced availability thereof and to protect the country's ecosystems;
- II. The State and society have shared responsibility for preventing the pollution of rivers, basins, vessels, sea waters and other water deposits and currents, including subsoil waters;
- III. The use of water in production activities susceptible to producing the pollution thereof implies the responsibility for treating discharges, returning it to appropriate conditions for use in other activities, and maintaining the balance of ecosystems;
- IV. Urban wastewater must receive treatment before being discharged into rivers, basins, vessels, sea waters and other water deposits and currents, including subsoil waters; and

Likewise, LGEEPA Articles 189, 190, 191, 192 and 199 are relevant to the subject matter of the submission, as they regulate the citizen complaint procedure.³³ The Submitter used this remedy to denounce the pollution of the Magdalena River from discharges of wastewater by the municipalities in question.

IV.5 Does the submission warrant the development of a factual record?

The submission asserts that Mexico is failing to effectively enforce its environmental laws by not preventing the pollution of the Magdalena River with the discharge of untreated wastewater by the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora. Taking account of the applicable provisions, the assertions of the submission that should be examined are:

V. The participation and responsibility of society is an indispensable condition to prevent water pollution. Article 121.- Wastewater containing pollutants may not be discharged or leaked into any body or current of water or into the soil or subsoil, without prior treatment or without the permit or authorization from the federal authority, or from the local authority in cases of discharges into waters under local jurisdiction or into the drainage and sewer systems of population centers.

Article 122.- Wastewater arising from urban public uses and from industrial or agricultural uses, discharged into the drainage and sewer systems of population centers or into basins, rivers, waterways, vessels and other water deposits or currents, as well as waters leaked into the subsoil by any means, and in general waters spilled into the soil, must meet the necessary conditions in order to prevent:

- I. Pollution of the receiving bodies;
- II. Interference in water filtering processes; and
- III. Disorders, impediments or alterations in the correct uses or in the appropriate functioning of the systems, and in the hydraulic capacity of the basins, waterways, vessels, water tables and other deposits in the national domain, as well as of the sewer systems.

Article 123.- All discharges into the collection networks, rivers, aquifers, basins, waterways, vessels, sea waters and other water deposits and currents, and spills of wastewater into soils or the leakage thereof onto lands, must meet the Mexican official standards issued for such purpose and, as applicable, the particular discharge conditions thereof determined by the Secretariat or the local authorities. The person generating said discharges shall be responsible for the required prior treatment.

Article 124.- When wastewater affects or may affect water supply sources, the Secretariat shall notify the Secretariat of Health and deny or revoke the corresponding permit or authorization, as the case may be, and as applicable order the suspension of the supply.

Article 133.- With the corresponding participation of the Secretariat of Health, applicable pursuant to other provisions of law, the Secretariat shall perform a systematic and ongoing monitoring of water quality, in order to detect the presence of pollutants or excesses of organic wastes, and apply the appropriate measures. In the case of waters under local jurisdiction, such actions shall be coordinated with the authorities of the states, the Federal District and the municipalities.

³³ Article 189.- Any person, social group, nongovernmental organization, association and society may denounce, before the Office of the Federal Attorney General for Environmental Protection or other authorities, any fact, act or omission that leads to or may lead to ecological imbalance or damages to the environment or to natural resources, or which contravene the provisions of this Law and all other provisions regulating matters related to environmental protection and the preservation of ecological balance...

Articles 190, 191, 192 and 199 establish the requirements and procedures applicable to citizen complaints.

Article 200.- The state laws shall establish the procedure for attending to citizen complaints in the case of acts, facts or omissions that lead to or may lead to ecological imbalance or environmental damages, due to violations of the local environmental laws.

1. the alleged failure to effectively enforce Articles 93, 117 and 122 of the LGEEPA, with respect to the general obligation to prevent and control water pollution in the case of the Magdalena River;
2. the alleged failure to effectively enforce Article 88 paragraph IV and Article 89 paragraph VI of the LGEEPA, with respect to the responsibility of the municipalities of Imuris, Magdalena de Kino and Santa Ana, as users of the (national) waters of the Magdalena River, to use them sustainably;
3. the alleged failure to effectively enforce Articles 92, 117 paragraph IV, 121 and 123 of the LGEEPA, with respect to the discharges of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana into the Magdalena River, regarding the obligation of any person discharging wastewater to give prior treatment to the discharges in order to prevent the pollution of the receiving bodies;
4. the alleged failure to effectively enforce Articles 121 and 124 of the LGEEPA, with respect to the granting and cancellation of the wastewater permits for the municipalities of Imuris, Magdalena de Kino and Santa Ana;
5. the alleged failure to effectively enforce Article 123 of the LGEEPA, with respect to the wastewater discharges into the Magdalena River, regarding compliance with the applicable Mexican official standards;
6. the alleged failure to effectively enforce Article 133 of the LGEEPA, by not performing an ongoing and systematic monitoring of the water quality of the Magdalena River; and
7. the alleged failure to effectively enforce Articles 189 through 192 and 199 of the LGEEPA, with respect to the citizen complaints filed on the pollution of the Magdalena River.

Following is an examination of these assertions in light of Mexico's response, and an explanation of the reasons why the Secretariat considers that the submission warrants the development of a factual record.

IV.5.1 Alleged failure to effectively enforce the general obligation to prevent and control water pollution (LGEEPA Articles 93, 117 and 122)

Article 93 provides that the federal authority shall undertake the necessary actions to prevent or control the pollution of national waters. Article 117 provides that for preventing and controlling water pollution, criteria must be considered that, in essence, establish the principles of prevention and control of water pollution, of the prior treatment of wastewater discharges, and of the State's and society's shared responsibility to prevent water pollution. Article 122 of the LGEEPA requires that wastewater arising from urban public uses meet the necessary conditions to prevent the pollution of the receiving bodies.

In Chapter IV of Mexico's response, the Party describes the environmental problems of the Magdalena River at that time. Mexico's response asserts: "According to the water quality monitoring performed by the CNA for the classification thereof, it can be seen that the waterway has the capacity to assimilate or attenuate the impact of the wastewater discharges it receives."³⁴ However, the party did not provide more information on the classification of the waters of the Magdalena River, nor did its response specify the parameters used to characterize the wastewater referenced therein.³⁵ The Party confirms that the municipalities of Imuris, Magdalena de Kino and Santa Ana discharge their wastewater into the aforesaid river, but it clarifies that in the case of Imuris and Magdalena de Kino the discharges are treated in oxidation lagoons,³⁶ and further recognizes that these systems show deficiencies.³⁷ Mexico's response indicates:

It should be mentioned that the treatment of wastewater from the country's various population centers is a goal that the Mexican government has not been able to fully attain, and that the progress in this area is subject to the availability of budgetary resources. Given the foregoing, it should be noted that, despite the existence of a general obligation to treat wastewater from the population centers under both federal and state laws, the economic limitations faced by the country still make it impossible to fully enforce this provision, while the corresponding government plans now set a clear strategy for the gradual solution of the nationwide problem of wastewater treatment.³⁸

Specifically with respect to Article 93, Mexico's response asserts that due compliance has been given to this article through the creation of a regulatory framework to control the pollution processes of national waters, and through the oversight of compliance with the corresponding Mexican official standards.³⁹ The issuance of Mexican official standards and the oversight of compliance therewith constitute measures that may contribute to the prevention of pollution processes in national waters. However, those measures do not in and of themselves constitute effective enforcement of Article 93, the purpose of which is not the issuance of standards but the prevention and control of water pollution. The submission states precisely that in spite of the issuance of various laws to prevent water pollution and the fact that these laws and the institutional oversight frameworks have undergone numerous modifications, according to the Submitters, measures for the effective enforcement of these provisions have not been taken.⁴⁰ Mexico's response asserts that the CNA oversees compliance with the applicable Mexican official standards, but does not provide information to support the statement that such oversight is effectively carried out, and thus the central questions raised in the submission on this matter remain open.

³⁴ Response of Mexico, p. 13.

³⁵ Response of Mexico, Exhibit 23, p. 40 of the Magdalena, Sonora project.

³⁶ Response of Mexico, p. 13.

³⁷ Response of Mexico, p. 34 and 35.

³⁸ *Ibid.*

³⁹ Response of Mexico, p. 47.

⁴⁰ Submission, p. 10 and 11.

With respect to the effective enforcement of LGEEPA Article 117, the Party's response refers only to Paragraph IV, establishing the need to give treatment to urban wastewater discharges and stating that this has been done because treatment infrastructure exists in two of the municipalities and there is a project to build one in the third.⁴¹ With respect to the latter, the municipality of Santa Ana, the Party asserts that it does not have a water wastewater treatment system, and such waters are discharged near the Magdalena River, although a project exists to build an oxidation lagoon.⁴² In the other two municipalities, there are projects to extend or build the treatment infrastructure to correct the deficiencies. The Party accompanied its response with copies of documents describing those projects.⁴³ The prior treatment of discharges is one of the criteria provided in Article 117, but it is not independent of the purpose of that provision, namely the prevention and control of water pollution. The response asserts that the infrastructure exists for wastewater treatment, as do projects to improve such infrastructure, but the information provided does not indicate that such infrastructure is meeting the objective of preventing and controlling water pollution of the Magdalena River, in the case of the municipalities of Imuris, Magdalena de Kino and Santa Ana, and thus the issue raised in the submission as to the lack of effective enforcement of the Article 117 criteria remains unresolved.

With regard to LGEEPA Article 122, which sets forth the concrete obligation that wastewater from urban public uses must meet the necessary conditions to prevent the pollution of receiving bodies, again the Party responds by indicating that the infrastructure exists for the treatment of wastewater discharges.⁴⁴ As in the case of Articles 93 and 117, the purpose of this provision is to prevent the pollution of the receiving bodies, and thus the existence of treatment plants (which the Party itself deems deficient) does not seem to be sufficient to resolve the issue raised in the submission of a failure to effectively enforce this provision.

The measures mentioned by the Party do not seem to have ensured that the wastewater from urban public uses (specifically, the discharges from the municipalities of Imuris, Magdalena de Kino and Santa Ana) meet the necessary conditions to prevent the pollution of the Magdalena River, in effective enforcement of the corresponding criteria and of the general obligation to prevent or control water pollution, pursuant to Articles 93, 117 and 122 of the LGEEPA. Therefore, the Secretariat considers that the alleged failure to effectively enforce these provisions, as set forth in this submission, warrants the development of a factual record with respect to the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora.

⁴¹ Response of Mexico, p. 49.

⁴² Response of Mexico, p. 17.

⁴³ Response of Mexico, p. 13 through 16, 28, 29 and Exhibit 23 "Project for Adaptation and/or Extension of the Sanitary Sewer Systems and Wastewater Treatment Plants for the Cities of Imuris, Magdalena, and Santa Ana."

⁴⁴ Response of Mexico, p. 51.

IV.5.2 Alleged failure to effectively enforce the responsibility of users of water for its preservation and sustainable use (LGEEPA Articles 88 paragraph IV and 89 paragraph VI)

Articles 88 paragraph IV and 89 paragraph VI of the LGEEPA establish the responsibility of users of water for its preservation and sustainable use. Under these articles, the municipalities of Imuris, Magdalena de Kino and Santa Ana, as users of the Magdalena River as a receiving body of their wastewater discharges, are responsible for the preservation and sustainable use of the water and must consider the sustainable water use criteria with respect to the wastewater discharges from their sewer systems. Mexico's response does not refer to the enforcement of Article 88. As for Article 89, it asserts that it does not fall under the subject matter of the submission and that since the concepts of sustainable use and aquatic ecosystems are so broad, the Party cannot refute any violation that may be denounced.⁴⁵

It is clear that these provisions, by establishing the responsibility of the municipalities as users of water, do fall under the subject matter of the submission. Although the provisions are broad, the responsibility they provide for is part of the context that frames the other enforceable obligations of prevention and control of water pollution that are the subject of the submission. These provisions are relevant in this contextual sense and should be considered in the factual record the development of which is warranted with respect to this submission.

IV.5.3 Alleged failure to effectively enforce the obligation to give prior treatment to wastewater discharges (LGEEPA Articles 92, 117 paragraph IV, 121 and 123)

The main allegation of the submission is that Mexico is failing to effectively enforce its environmental laws because it allows the municipalities of Imuris, Magdalena de Kino and Santa Ana to discharge their wastewater into the Magdalena River without giving it the treatment necessary to prevent pollution of the river. Article 92 provides that treatment and reuse of wastewater shall be promoted to ensure the availability and reduce its waste, while Articles 117 paragraph IV, 121 and 123 of the LGEEPA set forth the obligation to give prior treatment to wastewater discharges to prevent the pollution of the receiving bodies.

In its response, Mexico admits that there are deficiencies in the treatment of wastewater discharged into the Magdalena River.⁴⁶ However, the response indicates that "the economic conditions of the municipalities, state and federation limit the execution of action plans for

⁴⁵ Response of Mexico, p. 44 and 45.

⁴⁶ According to the response, the oxidation lagoons with which the municipality of Magdalena de Kino treats its wastewater are obsolete and insufficient. In the case of the municipality of Santa Ana there is not a wastewater treatment system. As for Imuris, the Party asserts that, according to information provided by the state and municipal governments, an anaerobic lagoon and a facultative lagoon began operation 11 June 1998 for the treatment of wastewater. Response of Mexico, p. 14.

the construction of sanitation systems.”⁴⁷ Additional information is warranted on this statement, especially in light of the submission’s claim that sufficient funds do exist to attend to these matters. The Submitter asserts that the municipalities “collect 35% on each monthly bill for drinking water consumption, drainage and sewer”⁴⁸ and that the money is spent on works that the Submitter deems unnecessary.⁴⁹

With regard to Article 92, the question of whether this provision is effectively enforced does not stand in light of Mexico’s response, because the purpose of this provision is only to promote wastewater treatment, and the actions described by the Party are precisely actions to promote the treatment of wastewater.⁵⁰

Unlike Article 92, in the case of Article 117, the obligation is not to promote treatment but rather that the result of such promotion efforts be the prevention and control of water pollution. As stated above, the Party’s response refers only to paragraph IV, which establishes the need to give treatment to urban wastewater discharges, and asserts that this has been fulfilled because the treatment infrastructure exists in two of the municipalities, with a construction project in the third.⁵¹ The obligation to give prior treatment to the discharges as a measure to prevent and control water pollution is not satisfied by the mere existence of treatment plants, but rather such treatment must effectively prevent or control water pollution. The Party’s argument also does not suffice to show effective enforcement of Article 117, by having programmed and budgeted the necessary investment to solve the deficiencies or lack of wastewater treatment in the municipalities of Magdalena de Kino and Santa Ana, since planning the future compliance with that provision is insufficient to consider that there has been effective enforcement.

In addition, while the response states that projects exist and have been budgeted, it does not state that such projects are being implemented nor does it show that the corresponding financing has actually been allocated in an approved budget. It also is not clear whether the budget would be covered by the CNA or the municipalities. This fact was noted and the respective documents were requested in the request for additional information sent by the Secretariat to the Party 13 September 2000. For example, the Secretariat sought information on the development of these projects by also requesting information from the Party on the filing, with the corresponding authority, of the preventive environmental impact statement for the three projects, referenced in numeral 11 of each project report, under the heading “Environmental Impact Study,” and on the procedure that would have applied to such preventive statements. As indicated, no response to that request has been received.

Article 121 of the LGEEPA may be summarized as a prohibition to discharge wastewater containing pollutants, without prior treatment and without authorization from the competent authority. In light of the Party’s response, the alleged failure to effectively enforce this

⁴⁷ Response of Mexico, p. 23.

⁴⁸ Additional filing to the submission, p. 11.

⁴⁹ Submission, p. 2.

⁵⁰ Response of Mexico, p. 46 and 47.

⁵¹ Response of Mexico, p. 49.

provision cannot be dismissed. Mexico's response is limited to indicating that, as of the filing date of the response, the municipalities involved have not received the corresponding wastewater discharge permits. Particularly in the case of the municipality of Santa Ana, the matter of the effective enforcement of Article 121 persists, insofar as this municipality has been allowed to discharge its wastewater with no prior treatment whatsoever, in contravention of the express prohibition established in that article.

In sum, the alleged failure to effectively enforce Article 92 does not warrant further consideration, while the allegation relating to Articles 117, 121 and 123 cannot be dismissed in light of Mexico's response, and thus the development of a factual record is warranted with respect to those provisions. The factual record is appropriate to develop information relating to the undertaking of the necessary works in the municipality of Santa Ana to treat the wastewater prior to discharge, the correction of deficiencies in the treatment system of the municipality of Magdalena de Kino, and the operating efficiency of the Imuris treatment system, in order to attain the objectives of these provisions with respect to the Magdalena River, namely the prevention or control of water pollution.

IV.5.4 Alleged failure to effectively enforce the requirement to have a wastewater discharge permit, and the potential cancellation thereof in the case of pollution of waters intended for human consumption (LGEEPA Articles 121 and 124)

The discharge of wastewater containing pollutants requires a permit or authorization from the competent authority pursuant to Article 121, which shall not be granted or shall be revoked when the wastewater affects or may affect water supply sources, in accordance with Article 124. The Submitter asserts that the Magdalena River is the only water supply source in the region and that it has been subjected to pollution and environmental damage due to the discharges of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana, for 17 years prior to the filing of the submission.⁵² The information provided in Mexico's response confirms that the municipalities in question discharge their wastewater into the Magdalena River and that they do not have the corresponding discharge permits, although those permits were supposedly being processed at the time the response was filed.⁵³

As regards the use of the Magdalena River for human consumption, in its description of the municipal water infrastructure provided in the response, the Party asserts that the drinking water supply in the three municipalities in question comes from deep wells: two in Imuris, four in Magdalena de Kino and four in Santa Ana. Mexico's response specifies that two of the wells in Magdalena de Kino are adjacent to the left bank of the Magdalena River.⁵⁴ While this information is useful for understanding the context of the matter raised in the submission, this information does not counter the Submitters' assertion that the wastewater

⁵² Submission, p. 2 last paragraph, and additional filing to the submission, p. 1 and 12.

⁵³ Response of Mexico, p. 36.

⁵⁴ Response of Mexico, p. 14-16.

discharges from these municipalities pollute waters intended for human consumption in the towns of the region.⁵⁵

The Party's response recognizes that the waters of the Magdalena River are polluted, and that it has even sanctioned farmers who use it for irrigation. The Party nevertheless asserts that, according to a CNA study, the pollution is due to "open-air defecation practices, discharges of domestic drainage, and the disposal of trash and organic matter."⁵⁶ In the same sense, the response states that a well was closed in Imuris (without specifying the date) because it was seriously polluted, and indicates that the cause of the pollution was that most people in the town discharge their wastewater in outhouses, wastewater wells and septic tanks.⁵⁷

These affirmations by the Party do not demonstrate that the Magdalena River is not polluted, nor that the wastewater discharges into the Magdalena River do not pollute water supply sources or that they are being done with the authorization required under law. Furthermore, they are not supported by information allowing for confirmation of the data upon which they are based. Given that the information provided by the Party in its response confirms the Submitters' assertion that the municipalities of Imuris, Magdalena de Kino and Santa Ana do not have discharge permits and does not refute the assertion that these wastewater discharges pollute water supply sources, review of the effective enforcement of Articles 121 and 124 is warranted in the factual record the development of which is warranted with respect to this submission.

IV.5.5 Alleged failure to effectively enforce the applicable Mexican official standards (LGEEPA Article 123)

The Submitter alleges a failure to effectively enforce Article 123, which establishes among other things that all discharges into rivers must satisfy the Mexican official standards issued for such purpose.

On 6 January 1996, Mexican Official Standard NOM-001-ECOL-1996 (NOM-001), establishing the maximum allowable limits of pollutants in wastewater discharges into national waters and properties, was published in the Official Gazette of the Federation. NOM-001 is binding for the municipalities involved, establishing the following obligations for those responsible for wastewater discharges into receiving bodies or properties under federal jurisdiction:

- The discharges of wastewater must comply with the parameters established in the standard, before being released.

⁵⁵ Submission, p. 1 and additional filing to the submission, p. 11.

⁵⁶ Response of Mexico, p. 18-23.

⁵⁷ Response of Mexico, p. 14.

- The persons responsible for the wastewater discharges must monitor the quality of the discharges and report it periodically to the CNA.
- The persons responsible for wastewater discharges that exceed the maximum allowable limits established therein must file a works and actions plan with the CNA, for controlling the quality of its discharges.
- Once said plans are filed, the CNA must be informed semiannually on the progress in the control of discharges.

Compliance deadlines are established for some of the obligations contained in this standard. Accordingly, point 4.5 of NOM-001 establishes that the date as of which the municipalities' discharges must comply with the respective parameters is determined based on the number of inhabitants in the municipalities.⁵⁸ Considering the data provided by the Party in its response,⁵⁹ the municipalities of Imuris and Santa Ana must comply with the parameters of NOM-001 as of 1 January 2010, while the municipality of Magdalena de Kino must do so as of 1 January 2005.

The filing date of the works and actions plan also varies according to the population size of each municipality. The municipalities of Imuris and Santa Ana were to have filed by 31 December 1999, while the municipality of Magdalena de Kino was to have filed by 31 December 1998.

However, there is no basis for concluding that the deadline for the municipalities to comply with the parameters of NOM-001 implies that the municipalities are exempt from compliance with their other enforceable obligations under the LGEEPA and the NOM-001. For example, there is no deadline or exemption with respect to compliance with the municipalities' obligation to treat their wastewater. The obligation to monitor the discharges and report them periodically is not subject to deadlines either. In accordance with point 4.8 of NOM-001, and according to the data reported by the Party as to the number of inhabitants, the municipalities of Imuris and Santa Ana are required to take semiannual measurements and report them annually to the CNA, while Magdalena de Kino must take quarterly measurements and report them semiannually to the CNA. Mexico's response does not indicate that this monitoring has been performed and reported.

The Party asserts that in 1997 the CNA entered into an agreement for the development of a "Project for Adaptation and/or Extension of the Sanitary Sewer Systems and Wastewater Treatment Plants for the Cities of Imuris, Magdalena, and Santa Ana" as a measure to solve the environmental problems of the Magdalena River, copies of which were included in the response.⁶⁰ However, while the pollutant levels in wastewater discharges are not yet

⁵⁸ The number of inhabitants is determined by the data found in the XI National Population and Housing Census, corresponding to 1990, published by the National Institute of Statistics, Geography and Information (*Instituto Nacional de Estadística, Geografía e Informática*—Inegi).

⁵⁹ Response of Mexico, p. 24.

⁶⁰ Response of Mexico, p. 28 and Exhibit 23.

enforceable, it is not clear whether the Party has started the works and adaptations that it claims to have planned in order to comply with those obligations.

Mexico's response does not include information on the enforcement for the municipalities in question, with respect to the NOM-001 obligations that are not subject to deadlines, nor on the execution of the project that is intended to allow the municipalities in question to comply with the pollutant limits set forth in the standard, when applicable. Thus, the Secretariat considers that the development of a factual record, with respect to the alleged failure to effectively enforce LGEEPA Article 123 regarding NOM-001, is warranted.

***IV.5.6 Alleged failure to effectively enforce the monitoring of water quality
(LGEEPA Article 133)***

Article 133 establishes the obligation of the Secretariat of Environment and Natural Resources (*Secretaría del Medio Ambiente y Recursos Naturales*—Semarnat) to perform, with the corresponding participation of the Secretariat of Health, the systematic and ongoing monitoring of water quality in order to detect pollutants or excess organic waste, and apply appropriate measures. The Party indicates in its response that in applying this provision, the CNA has performed water quality monitoring on the Magdalena River and that inspection visits have been performed, companies closed and farmers fined (pursuant to NOM-033) based on such monitoring.⁶¹ These actions carried out by the CNA clearly fall under the provisions of Article 133. However, the information provided by the Party is limited to describing one instance in which monitoring resulted in measures and does not refer to “systematic and ongoing” monitoring, as provided in Article 133.

In this sense, consideration of the effective enforcement of Article 133 in the factual record, the development of which is warranted with respect to this submission, is justified.

***IV.5.7 Alleged failure to effectively enforce the citizen complaint procedure
(LGEEPA Articles 189 through 192 and 199)***

The Submitter asserts that on numerous occasions it approached various federal and local authorities to notify them of the environmental problems of the Magdalena River, requesting that solutions be adopted, without receiving any response to its demands.⁶²

The Party asserts that it has handled three complaints filed by the Submitter, detailing the procedure and results thereof. Two of the complaints refer to the submission filed in 1992 and, according to the Party, they were processed in accordance with the LGEEPA.⁶³ Given that those two complaints were filed before the NAAEC entered into force and were concluded in 1992 and 1993, the alleged failure to effectively enforce the LGEEPA

⁶¹ Response of Mexico, p. 18 through 23 and 55.

⁶² Submission, p. 1.

⁶³ Response of Mexico, p. 24 through 27.

regarding them is not reviewed further. Only the citizen complaint filed in January 1997 is examined.

The Party confirms that in 1997 the Office of the Federal Attorney General for Environmental Protection (*Procuraduría Federal de Protección al Ambiente—Profepa*) received a filing from the Submitter, denouncing the problems of the Magdalena River, which was remitted to the Profepa delegation in the state of Sonora to be handled as a citizen complaint. Simultaneously—the Party asserts—information was requested from the CNA on the problems described, and the complainants were informed of the processing of their filing. The Party describes other CNA actions relating to this citizen complaint and asserts that, at the time its response was filed, the processing of the citizen complaint had not yet been concluded.⁶⁴

The Secretariat considers that, since the submission does not express a specific argument as to the supposed failure to effectively enforce Articles 189, 190, 191, 192 and 199 of the LGEEPA relating to the citizen complaint procedure and, given the actions described in Mexico's response, it is not necessary to continue reviewing this assertion in the factual record warranted with respect to this submission, beyond the inclusion of the results of the processing thereof, which had not yet concluded.

IV.5.8 Summary

In sum, the Secretariat considers that the development of a factual record is warranted on the effective enforcement of some of the provisions invoked by the submission. In addition to providing relevant information on whether Mexico effectively enforces its environmental laws regarding the discharges of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana into the Magdalena River, the factual record could allow for a better understanding of the actions undertaken by the Party to effectively enforce its environmental laws on the prevention of water pollution, with respect to the discharge of those municipalities' wastewater. It will also allow for a clarification of the relationship between NOM-001 and the general obligations of the federation and municipalities, regarding the prevention of the pollution of national waters, and as to drainage, sewer and municipal wastewater treatment services. Likewise, it would gather information to clarify which functions, responsibilities and obligations fall upon the operating agencies, the municipal government and the federal government with respect to the "Project for Adaptation and/or Extension of the Sanitary Sewer Systems and Wastewater Treatment Plants for the Cities of Imuris, Magdalena, and Santa Ana" that accompanies Mexico's response,⁶⁵ and information on the progress made in this Project.

⁶⁴ Response of Mexico, p. 28.

⁶⁵ The functions arising under this project do not seem to coincide with those established in the LGEEPA, the LAN or NOM-001. (LGEEPA Articles 88 paragraph IV, 89 paragraph VI, 93, 117 paragraph IV, 118 paragraph V, 119 BIS, 121, 122, 123 and 133; LAN Articles 88, 89 and 90.)

Furthermore, based on the reasons set forth in this determination, the Secretariat considers that the development of a factual record is not warranted with respect to the failure to effectively enforce articles 1 paragraphs I, II, III, V, VI, VIII, IX and X, 4, 5 paragraphs I, II, III, V, VII, XVI, XVII, XVIII and XIX, 6, 7 paragraphs I, II, VIII, XIX, XI, XII, XIV, XV, XVIII, XIX and XXI, 8 paragraphs I, II, VII, IX, X, XI, XIII and XV, 10, 15, 16, 23 paragraph VII, 36, 88 paragraphs I through III, 89 paragraphs II and VII, 90, 91, 96, 98 paragraph IV, 104, 108 paragraph I, 109 BIS, 118 paragraphs I, II, III, V and VI, 119, 119 BIS, 120, 126, 127, 128, 129, 134, 157, 159 BIS 3, 159 BIS 4 and 159 BIS 5, 189, 190, 191, 192, 199 and 200 of the LGEEPA; as well as with respect to all provisions invoked of the following state laws: the Law of Ecological Balance and Environmental Protection for the State of Sonora, the Waters Law for the State of Sonora, and the Health Law for the State of Sonora.

**V. NOTIFICATION TO COUNCIL IN ACCORDANCE WITH ARTICLE 15(1)
OF THE NAAEC**

In accordance with NAAEC Article 15(1), the Secretariat hereby notifies Council that, based on the reasons set forth in this determination, it considers that submission SEM-97-002 filed by Comité Pro Limpieza del Río Magdalena warrants the development of a factual record with respect to the assertion that Mexico is failing to effectively enforce Articles 88 paragraph IV, 89 paragraph VI, 92, 93, 117, 121, 122, 123, 124 and 133 of the LGEEPA, as of 1 January 1994, with respect to the pollution of the Magdalena River by the discharge of the wastewater of the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora.

Respectfully submitted for your consideration on this 5 of February 2002.

(original signed)
Janine Ferretti
Executive Director