

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submission I.D.: SEM-97-002

Submitter(s): Comité Pro Limpieza del Río Magdalena

Party: United Mexican States

Date of this plan: 22 March 2002

Background

On 7 April 1997 Comité Pro Limpieza del Río Magdalena filed a submission with the Secretariat of the Commission for Environmental Cooperation (CEC) in accordance with Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The submission 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 are allegedly released into the Magdalena River without being duly treated to prevent the pollution thereof.

On 7 March 2002, the Council decided unanimously to instruct the Secretariat to develop a factual record, in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC (Guidelines)*, with respect to the assertions set forth in Submission SEM-97-002, 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 General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*) with respect to the pollution of the Magdalena River due to the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora. The Council directed the Secretariat, in developing the factual record, to consider whether the Party concerned “is failing to effectively enforce its environmental law” since the entry into force of the NAAEC on 1 January 1994. In considering such alleged failure, relevant facts existing prior to 1 January 1994 may be included in the factual record.

Under Article 15(4) of the NAAEC, in developing a factual record, “the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information: (a) that is publicly available; (b) submitted by interested non-governmental organizations or persons; (c) submitted by the Joint Public Advisory Committee; or (d) developed by the Secretariat or by independent experts.”

Overall Scope of the Fact Finding:

The submission asserts that Mexico is failing to effectively enforce its environmental law by not preventing the pollution of the Magdalena River due to the discharge of untreated wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora. The assertions in the submission that are the subject of this factual record are:

1. the alleged failure to effectively enforce Articles 93, 117 y 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 Articles 88 paragraph IV and 89 paragraph of the LGEEPA with respect to the responsibility of the municipalities of Imuris, Magdalena de Kino and Santa Ana, as users of the Magdalena River's national waters, to use them sustainably;
3. the alleged failure, in the case of the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana into the Magdalena River, to effectively enforce Articles 92, 117 paragraph IV, 121 and 123 of the LGEEPA, with respect to the obligation of any person discharging wastewater to give prior treatment to the discharge 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 discharge permits for the municipalities of Imuris, Magdalena de Kino and Santa Ana;
5. the alleged failure, in the case of the wastewater discharge into the Magdalena River, to effectively enforce Article 123 of the LGEEPA, with respect to compliance with the applicable Mexican Official Standards; and
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.

To prepare the factual record, the Secretariat will gather and develop information relevant to the facts concerning:

- i) the alleged violations by the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora, of Articles 88 paragraph IV, 89 paragraph VI, 92, 93, 117, 121, 122, 123, 124 and 133 of the LGEEPA;
- ii) Mexico's enforcement of these provisions, with respect to those municipalities; and
- iii) the effectiveness of Mexico's enforcement of these provisions, with respect to those municipalities.

Overall Plan:

Consistent with Council Resolution 02-02, execution of the overall work plan will begin no sooner than 15 April 2002. All other dates are best estimates of execution time. The overall plan is as follows:

- Through public notices or direct requests for information, the Secretariat will invite the Submitters, JPAC, members of the communities of Imuris, Magdalena de Kino and Santa Ana, and the local, state and federal authorities to submit relevant information within the scope of the fact-finding described above. The Secretariat will explain the scope of the fact-finding, providing sufficient information to enable interested persons or non-governmental organizations or JPAC to provide relevant information to the Secretariat (section 15.2 of the *Guidelines*) **[mid-April 2002]**.
- The Secretariat will request information relevant to the factual record from the appropriate federal, state and local Mexican authorities, and will consider any information provided by a Party (Articles 15(4) and 21(1)(a) of the NAAEC) **[mid-April and early May 2002]**. Information will be requested relevant to the facts regarding:
 - i) the alleged violations by the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora, of Articles 88 paragraph IV, 89 paragraph VI, 92, 93, 117, 121, 122, 123, 124 and 133 of the LGEEPA;
 - ii) Mexico's enforcement of these provisions, with respect to those municipalities; and
 - iii) the effectiveness of Mexico's enforcement of these provisions, with respect to those municipalities.
- The Secretariat will gather the relevant technical, scientific or other information that is publicly available, including from existing databases, information centers, libraries, research centers and academic institutions **[May through August 2002]**.
- As appropriate, the Secretariat will develop, through independent experts, technical, scientific or other information relevant to the factual record **[May through August 2002]**.
- As appropriate, the Secretariat will gather relevant technical, scientific or other information for the development of the factual record, from interested persons or non-governmental organizations, JPAC or independent experts **[May through August 2002]**.

- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed [**September through November 2002**].
- The Secretariat will submit a draft factual record to Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5) [**December 2002**].
- As provided by Article 15(6), the Secretariat will incorporate, as appropriate, any such comments in the final factual record and submit it to Council [**February 2003**].
- The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, in accordance with Article 15(7).

Additional Information

The submission, Mexico's response, the Secretariat determinations, the Council Resolution, and a summary thereof are available in the Registry on Citizen Submissions in the CEC home page at www.cec.org or upon request to the Secretariat at the following address:

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