

## Secretariat of the Commission for Environmental Cooperation

### REQUEST FOR INFORMATION for Preparation of a Factual Record Submission SEM-97-002 (Río Magdalena) 16 April 2002

#### I. The factual record process

The Commission for Environmental Cooperation (CEC) of North America is an international organization created under the North American Agreement on Environmental Cooperation (NAAEC) by Canada, Mexico and the United States. The CEC operates through three organs: a Council, made up of the highest-level environmental official in each member country; a Joint Public Advisory Committee (JPAC), composed of five citizens from each country; and a Secretariat located in Montreal.

Article 14 of the NAAEC allows residents in North America to inform the Secretariat, in a submission, that any member country (hereinafter, a Party) is failing to effectively enforce its environmental law. This initiates a process of review of the submission, after which the Council may instruct the Secretariat to prepare a factual record in connection with the submission. A factual record seeks to provide detailed information to allow interested persons to assess whether a Party has effectively enforced its environmental law with respect to the matter raised in the submission.

Under Articles 15(4) and 21(1)(a) of the NAAEC, in developing a factual record, the Secretariat shall consider any information furnished by a Party and may ask a Party to provide additional information. The Secretariat also may consider any information that is publicly available; provided by the JPAC, the Submitters or other interested persons or nongovernmental organizations; or developed by the Secretariat or independent experts.

On 7 March 2001, 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)*, regarding the assertions raised in submission SEM-97-002 that Mexico is failing to effectively enforce Articles 88 paragraph IV, 89 paragraph VI, 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 by the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora.<sup>1</sup> The Council directed the Secretariat, in developing the factual

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<sup>1</sup> Note that the reference to Article 92 of the LGEEPA has been eliminated. On page 20 of its recommendation to Council for the development of this factual record, of 5 February 2002, the Secretariat determined that a review of the effective enforcement of this provision was not warranted, as the Party's actions with respect to the wastewater discharge in question qualify as promotion actions pursuant thereto.

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 an alleged failure to effectively enforce, relevant facts that existed prior to 1 January 1994 may be included in the factual record.

By means of this document, the Secretariat seeks information relevant to matters to be addressed in the factual record for the Río Magdalena submission, SEM-97-002. The following sections provide background on the submission and describe the type of information sought.

## **II. The Río Magdalena submission**

On 7 April 1997, Comité Pro Limpieza del Río Magdalena filed a submission with the Secretariat of the CEC, concerning wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana in the Mexican state of Sonora, which is allegedly released into the Magdalena River without being duly treated to prevent the pollution thereof.

The alleged failures to effectively enforce Mexico’s environmental law that is the subject of this factual record refer to:

- 1) The general obligation to prevent and control water pollution, in the case of the Magdalena River (LGEEPA Articles 93, 117 and 122);
- 2) 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 (LGEEPA Articles 88 paragraph IV and 89 paragraph VI);
- 3) The obligation of any person who discharges wastewater to give prior treatment to the discharge in order to prevent the pollution of the receiving bodies, in this case the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana into the Magdalena River (LGEEPA Articles 117 paragraph IV, 121 and 123);
- 4) The granting and cancellation of wastewater discharge permits for the municipalities of Imuris, Magdalena de Kino and Santa Ana (LGEEPA Articles 121 and 124);
- 5) Compliance with the Mexican Official Standards applicable in the case of the discharge of wastewater from the municipalities in question into the Magdalena River (LGEEPA Article 123); and
- 6) The obligation to perform an ongoing and systematic monitoring of the water quality of the Magdalena River (LGEEPA Article 133).

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However, this provision was accidentally included in the list of relevant provisions on pages 2 and 27 of that recommendation.

The principal environmental damages allegedly caused have been the degradation of the water quality of the Magdalena River, the rotting of fruit trees and the impossibility of using the river's water for irrigating traditional crops in the region.

The response to this submission, provided by the Mexican Government on 29 July 1998, describes the problems of the Magdalena River and the situation of the three municipalities in question. Mexico asserts that it has not failed to effectively enforce its environmental law because it has scheduled actions to handle these problems. Mexico's 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 addressed.

### **III. Request for information**

The Secretariat of the CEC requests information relevant to the facts concerning:

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

### **IV. Examples of relevant information**

1. Information on Mexico's enforcement of Articles 88 paragraph IV, 89 paragraph VI, 93, 117, 121, 122, 123, 124 and 133 of the LGEEPA, with respect to the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana into the Magdalena River.
2. Information on any local, state or federal policies or practices regarding enforcement of the environmental law that apply to the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana into the Magdalena River, and the manner in which those policies or practices were applied.
3. Information on the effectiveness of Mexico's enforcement of these provisions, with respect to the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana into the Magdalena River; that is, information on the extent and manner in which the efforts to enforce the Party's environmental law have

contributed to the prevention and control of the water pollution of the Magdalena River.

4. Information on the level of pollutants in the discharges of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana into the Magdalena River.
5. Information on the treatment given to the wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana before it is discharged into the Magdalena River.
6. Information on the removal efficiency of the existing treatment systems, considering the applicable maximum pollutant limits.
7. Information on the water quality of the Magdalena River, upriver and downriver from such discharges.
8. Information on the effects of the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana, on the water quality of the Magdalena River.
9. Information on the effects of the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana, experienced by farmers and other uses of the river's waters.
10. Information on other environmental effects of the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana.
11. Information on the monitoring and reporting of discharges of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana.
12. Information on the human, financial and technical resources used in the enforcement of environmental law, with respect to the discharge of wastewater from the municipalities of Imuris, Magdalena de Kino and Santa Ana.
13. Information on the execution of the infrastructure extension and construction programs that, according to Mexico's response to the submission, were undertaken to address these matters in the municipalities of Imuris, Magdalena de Kino and Santa Ana.
14. Any other technical, scientific or other information that could be relevant.

## **V. Additional background information**

The submission, Mexico's response, the Secretariat's determinations, the Council Resolution, the overall plan to develop the factual record and other information are available in the Registry and Public Files in the Citizen Submissions on Enforcement Matters section of the CEC web site at <<http://www.cec.org>>. These documents may also be requested from the Secretariat.

## **VI. Where to send information**

Relevant information for the development of the factual record may be sent to the Secretariat until 30 August 2002, to the following address:

Secretariat of the CEC  
Submissions on Enforcement  
Matters Unit (SEM Unit)  
393, rue St-Jacques Ouest,  
bureau 200  
Montreal QC H2Y 1N9  
Canada  
Tel. (514) 350-4300

CCA / Mexico Liaison Office  
Atención: Unidad sobre Peticiones  
Ciudadanas (UPC)  
Progreso núm. 3  
Viveros de Coyoacán  
México, D.F. 04110  
México  
Tel. (52-55) 5659-5021

For any questions, please send an e-mail to the attention of Carla Sbert, at [info@ccemtl.org](mailto:info@ccemtl.org).