

Secretariat of the Commission for Environmental Cooperation

REQUEST FOR INFORMATION for Preparation of a Factual Record Submission SEM-98-006 (Aquanova) February 2002

I. The factual record process

The Commission for Environmental Cooperation of North America (CEC) 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 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 persons or nongovernmental organizations 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, in 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 Article 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 information. Additionally, the Secretariat may consider any relevant technical, scientific or other information that is publicly available; submitted by the JPAC or by interested nongovernmental organizations or persons; or developed by the Secretariat or independent experts.

On 16 November 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)*, with respect to the assertions that Mexico is failing to effectively enforce several provisions of the General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*), the Forestry Law (*Ley Forestal*), Mexican Official Standards NOM-062 and NOM-059, the National Waters Law (*Ley de Aguas Nacionales—LAN*) and its Regulations, the Fisheries Law (*Ley de Pesca—LP*) and its Regulations, and the Federal Criminal Code (*Código Penal Federal*), in connection with the activities of Granjas Aquanova. 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 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 Aquanova submission, SEM-98-006. The following sections provide background on the submission and describe the kind of information requested.

II. The Aquanova Submission

On 20 October 1998, Grupo Ecológico “Manglar” filed a submission with the CEC with respect to the shrimp aquaculture activities carried on by the company Granjas Aquanova, S.A. de C.V. in Isla del Conde, San Blas, Nayarit, since approximately 1995. The submission asserts that Granjas Aquanova has allegedly committed violations of the environmental law and of the environmental impact authorizations granted by the National Institute of Ecology (*Instituto Nacional de Ecología*—INE).

The LGEEPA, the LF, Mexican Official Standard NOM-062-ECOL-1994¹ (NOM-062) with regard to NOM-059-ECOL-1994² (NOM-059) and, in particular, the three environmental impact authorizations granted to Granjas Aquanova, establish various environmental impact requirements. The LAN and its Regulations set forth wastewater monitoring and treatment obligations and provisions as to sustainable water use for the prevention and control of water pollution and the protection of aquatic ecosystems. The LP and its Regulations govern the introduction of new species for the protection of fishing resources. Lastly, certain acts, such as the unauthorized drying up wetlands without prior authorization and the uncontrolled discharge of untreated wastewater, are considered environmental crimes under the CPF. Specifically, the following provisions are in question: Articles 117, 118, 119, 121, 123, 129, 130, 168 and 182 of the LGEEPA; Article 51 of the LF; NOM-059; NOM-062; Articles 4, 9, 86 paragraph III, 88, 92 and 119 paragraphs I, II and VIII of the LAN; Articles 134, 135, 137 and 153 of the LAN Regulations; Articles 3 paragraph VIII and 24 paragraph XXIV of the LP; Articles 44, 48 and 50 of the LP Regulations; and Articles 416 paragraphs I and II, 418 and 420 paragraph V of the CPF.

The alleged violations with respect to which the Submitters assert that Mexico is failing to effectively enforce its environmental law include: noncompliance with the conditions established in the environmental impact authorizations, noncompliance with instructions issued by INE, unauthorized drying and refilling of lagoons, unauthorized clearing and burning of vegetation in protected species’ habitats, unauthorized land-use changes and removal of forest cover, unmonitored discharge of wastewater without a permit, unauthorized diversion of natural waterways, and the obstruction of fishing activities.

¹ Establishing the specifications to mitigate the adverse effects on biodiversity of land use changes from forestry to agriculture.

² Determining the endangered, threatened and rare species and subspecies of terrestrial and aquatic wildlife and those subject to special protection, and establishing specifications for the protection thereof.

The principal environmental damages allegedly caused have been mangrove mortality, the accelerated destruction of protected species' habitats and the degradation of water quality.

The response to this submission, provided by the Mexican Government on 15 June 1999, also indicates that Granjas Aquanova has committed violations of the environmental law, although Mexico asserts that it has not failed to effectively enforce such law.

III. Request for information

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

- i) alleged violations by Granjas Aquanova against the aforesaid provisions of the LGEEPA, NOM-062, the LF, the LAN and its Regulations, the LP and its Regulations, and the CPF;
- ii) Mexico's enforcement of these provisions with respect to Granjas Aquanova; and
- iii) the effectiveness of Mexico's enforcement of these provisions with respect to Granjas Aquanova.

IV. Examples of relevant information

1. Information on the local, state or federal policies or practices regarding enforcement of the environmental law that apply to the alleged violations of the environmental laws cited in the submission (as described in Section II of this document) and on the manner in which they were implemented in this case.
2. Information on Granjas Aquanova's alleged violations of Articles 117, 118, 119, 121, 123, 129, 130, 168 and 182 of the LGEEPA; Article 51 of the LF; NOM-059; NOM-062; Articles 4, 9, 86 paragraph III, 88, 92 and 119 paragraphs I, II and VIII of the LAN; Articles 134, 135, 137 and 153 of the LAN Regulations; Articles 3 paragraph VIII and 24 paragraph XXIV of the LP; Articles 44, 48 and 50 of the LP Regulations; and Articles 416 paragraphs I and II, 418 and 420 paragraph V of the CPF.
3. Information on Mexico's enforcement of the provisions cited above with respect to Granjas Aquanova.
4. Information on the effectiveness of Mexico's enforcement of these provisions, with respect to Granjas Aquanova; that is, information on the extent and manner in which the efforts to enforce the environmental law have contributed to the prevention and control of the environmental impact of Granjas Aquanova's activities, water pollution in the area and the effect on mangroves and the habitats of other protected species.
5. Information on the area where Granjas Aquanova carries on its operations particularly with respect to water quality, wetlands conditions and the conditions of protected species' habitats.

6. Information on the effects of the environmental law violations allegedly committed by Granjas Aquanova, particularly regarding the effects on fishing resources and the fishing activities in the zone where the company is located, due to the introduction of new species allegedly without due authorization, and the effects on water quality and mangrove health caused by the allegedly unauthorized discharge of wastewater.
7. Information on the human, financial and technical resources used in the enforcement of environmental law, with respect to the alleged violations by Granjas Aquanova.
8. 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 general 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 website 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 June 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
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Tel. (52-55) 5659-5021

For any questions, please send an e-mail to the attention of Carla Sbert, at <info@cemtl.org>.