

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submission no.: SEM-98-007
Submitter(s): Environmental Health Coalition
Comité Ciudadano Pro Restauración del Cañón del Padre y
Servicios Comunitarios, A.C.
Party: United Mexican States
Date of this plan: 30 May 2000

Background

On 23 October 1998, the Environmental Health Coalition and the Comité Ciudadano Pro Restauración del Cañón del Padre y Servicios Comunitarios, A.C., presented to the Secretariat of the Commission for Environmental Cooperation a submission in accordance with Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The submission asserts that there has been a failure by Mexico to effectively enforce its environmental law in the case of an abandoned lead smelter in Tijuana, Baja California, Mexico (Metales y Derivados).

On 16 May 2000, the Council decided unanimously to instruct the Secretariat to develop a factual record, in accordance with Article 15 of the NAAEC and the *Guidelines*, with regard to the allegations of a failure by Mexico to effectively enforce Articles 170 and 134 of the General Law on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA), at the Metales y Derivados site. 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.

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."

The following is the Secretariat's overall plan for gathering relevant facts to develop the factual record. All dates are best estimates.

Overall Scope of the Fact Finding:

Metales y Derivados operated until March 1994. The enforcement measures in regard to the site, that the Secretariat is aware of based on the submission and the Party's response, were taken mainly between 1993 and 1995. The submission asserts that approximately 6000 metric tons of hazardous wastes and soil contamination at the abandoned site continue to represent a public health risk, particularly in Colonia Chilpancingo, located approximately 150 yards downhill from the site. Articles 170 and 134 of LGEEPA empower environmental authorities to take safety measures to respond to cases of imminent risk to the environment or contamination with dangerous repercussions to the environment or public health, and provide that certain criteria must be considered for the prevention and control of soil contamination, including restoration.

To prepare the factual record, the Secretariat will gather information on the Party's efforts to enforce Articles 170 and 134 effectively with respect to the site, information on the situation of the site, and information on the effects and risks to public health and the environment from the contaminated site. Information in connection with resource constraints or other obstacles that the Party may have been facing for the effective enforcement of its environmental law, with respect to the Metales y Derivados site, would also be relevant.

Overall Plan:

- The Secretariat will gather relevant technical, scientific or other information that is publicly available, including from existing databases, public files, information centers, libraries, research centers and academic institutions. **[June through September]**
- The Secretariat will provide public notice and notice to the JPAC, that it has initiated its fact finding to prepare the factual record. The Secretariat will explain the scope of the fact finding, providing sufficient information to enable interested non-governmental organizations or persons or the JPAC to provide relevant information to the Secretariat (section 15.2 of the Guidelines). The Secretariat will invite the Submitters, the neighbors of the site (residents and businesses), and local health services providers to submit any such information. **[mid-June]**

- The Secretariat will request information from the Mexican Party, and shall consider any information furnished by any of the Parties (Articles 15(4) and 21(1)(a) of the NAAEC).
 1. The Secretariat will request from the relevant Mexican federal, regional, state and local environmental authorities, any information relevant to the effective enforcement of Articles 170 and 134 of LGEEPA regarding the Metales y Derivados site, to the contamination of that site, and to the dangerous repercussions to public health and the environment from that contamination.
 2. The Secretariat will request from the relevant Mexican federal, regional, state and local health authorities, any information relevant to the dangerous repercussions to public health from the contamination in the Metales y Derivados site.

[early July, with follow-up at the end of September]

- The Secretariat will develop, through independent experts, relevant information and data on the situation of contamination at the Metales y Derivados site and its surroundings, and on the dangerous repercussions on public health, particularly in Colonia Chilpancingo. **[June through September]**
- The Secretariat will collect any relevant technical, scientific or other information for the preparation of the factual record, from interested non-governmental organizations or persons, the JPAC or independent experts. **[June to September]**
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered. **[programmed to begin October 1st, 2000]**
- The Secretariat shall submit a draft factual record to Council, and any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5). **[January, 2001]**
- As provided by Article 15(6), the Secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to Council.
- The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, according to Article 15(7).

Additional information

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

Metales y Derivados–Workplan to develop a
Factual Record

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Secretariat of the CEC
Submissions on Enforcement Matters
Unit (SEM Unit)
393, rue St-Jacques west,
bureau 200
Montreal QC H2Y 1N9
Canada

CEC/ Liason office in Mexico:
Attn: Submissions on Enforcement
Matters Unit (SEM Unit)
Progreso núm. 3,
Viveros de Coyoacán
México, D.F. 04110
Mexico