

3 September 2012

COUNCIL RESOLUTION: 12:04

Instruction to the Secretariat of the Commission for Environmental Cooperation regarding the submission on enforcement matters SEM-05-003 asserting that Mexico is failing to effectively enforce Articles 7, sections III and XIII; and 8, sections III and XV, of the *Ley General del Equilibrio Ecológico y Protección al Ambiente* (LGEEPA); Article 4, section III, 13, 16 and 41, section I, of the *Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Prevención y Control de la Contaminación de la Atmósfera* (RPCCA); and Articles 73, sections V, VI, VII and IX, and 85, section I, paragraph b), of the *Ley del Equilibrio Ecológico y la Protección al Ambiente para el Estado de Sonora* (LEES); and the *Normas Oficiales Mexicanas* (NOMs) NOM-020-SSA1-1993 through NOM-026-SSA1-1993

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

CONSIDERING the submission filed by the *Academia Sonorense de Derechos Humanos, A.C.*, and Mr. Domingo Gutiérrez Mendivil on 26 August 2005; and the response provided by the Government of Mexico on 16 February 2006;

HAVING REVIEWED the 4 April 2007 notification submitted to Council by the Secretariat recommending the development of a factual record with respect to certain of the assertions made by the submitters;

MINDFUL that the purpose of the final factual record is to present facts pertinent to assertions that a Party is failing to effectively enforce its environmental law; and

FURTHER MINDFUL that Mexico has indicated that the *Normas Oficiales Mexicanas* issued by the Ministry of Health (NOM-020-SSA1-1993 through NOM-026-SSA1-1993), included in the submission and which establish maximum atmospheric pollution levels, do not meet the NAAEC Article 45(2)(a) definition of environmental law, as their primary purpose is not to protect the environment or prevent a danger to human life or health through the prevention, abatement or control of the release, discharge or emission of pollutants or environmental contaminants; and

HAVING BEEN INFORMED that equivalent *Normas Oficiales Mexicanas* issued by the Ministry of the Environment and Natural Resources that meet the definition of environmental law are relevant to the assertions made by the submitters;

HEREBY UNANIMOUSLY DECIDES:

TO INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15(4) of the NAAEC and with the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, regarding the assertions that Mexico is failing to effectively enforce its environmental legislation in connection with the following:

- a) the establishment of mandatory vehicle inspection programs and the establishment and operation of vehicle inspection centers, pursuant to Articles 7, section III, 8, section III, of the LGEEPA; 4, section III of the RPCCA; 73, sections V and VII, and 85, section I, paragraph B of the LEES¹; in the terms recommended by the Secretariat²;
- b) plans for verification, monitoring and control of the polluting emissions referred to in the applicable *Normas Oficiales Mexicanas* issued by the Ministry of the Environment and Natural Resources, pursuant to Articles 7, section XIII, of the LGEEPA; 16 and 41, section I, of the RPCCA; 73, sections VI and IX of the LEES³;
- c) specific actions to reduce and control emissions of pollutants to the atmosphere in the city of Hermosillo pursuant to Article 13 of the RPCCA in the terms recommended by the Secretariat⁴;
- d) the issuance of the Municipal Environmental Protection Program, pursuant to Article 8, section XV, of the LGEEPA, in the terms recommended by the Secretariat.⁵

TO DIRECT the Secretariat to provide the Council with its overall work plan for gathering the relevant facts, as well as to keep this Council informed of any future changes or adjustments to such plan; to provide the Council with the draft factual record and to provide the Parties with the opportunity to provide comments on the accuracy of the factual record in accordance with Article 15 (5) of the NAAEC.

¹ It is here clarified that the LEES was abrogated by the new *Ley del Equilibrio Ecológico y Protección al Ambiente del Estado de Sonora (LEEPAS)*, published in the *State Official Gazette* on September 25, 2008. Notwithstanding, the substance of the Articles under which it is proposed that the Factual Record is prepared, remained untouched except for their numbering: Article 73, sections V and VII, of the LEES is now Article 111, sections V and VII, of the LEEPAS; and Article 85, section I, paragraph b), of the LEES is now Article 119, section II, paragraph b) of the LEEPAS.

² Page 11-12 of the Recommendation to the Council.

³ Pursuant to Footnote 1, Article 73, sections VI and IX of the LEES is now Article 111, sections VI and IX, of the LEEPAS.

⁴ Page 15 of the Recommendation to the Council.

⁵ Page 15-16 of the Recommendation to the Council.

APPROVED BY THE COUNCIL:

Dan Mc Dougall
Government of Canada

Enrique Lendo Fuentes
Government of the United Mexican States

Michelle DePass
Government of the United States