

## Asociación Ecologista Santo Tomás - SEM-07-005 (Drilling Waste in Cunduacán)

Questions:

|  | Yes                    | No       | I don't know |
|--|------------------------|----------|--------------|
| Did the Citizen Submission procedure seem to be useful?  | <b>x</b>               |          |              |
| Were you satisfied with the CEC's handling of your petition?   |                        | <b>x</b> |              |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      | <b>x</b>               |          |              |
| Did the CEC's resolution seem just?  | <b>x</b>               |          |              |
| Did the CEC's response time seem appropriate?  |                        | <b>x</b> |              |
| How much time did the procedure take (in months)?  | <b>21 months</b>       |          |              |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? | <b>\$2, 000.00 M/N</b> |          |              |
| Did the Citizen Submission procedure seem to be useful?  |                        |          |              |

1. When and how did you learn about the citizen submission process?

**Early in the year 2000, through the national networks working on free trade and environmental law.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**It was easy, as we kept a record of the actions carried out regarding the case in question.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**Yes, we knew about the Guidelines and they proved quite useful to us in presenting the submission.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**It was not necessary to contact the Secretariat.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**In our view, no remaining authority in our country would be capable of resolving the case.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**Our goal was to have the CEC make a recommendation to the Mexican government on how the case in question had been dealt with.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**Yes, there were repercussions for the case. We were informed of the existence of pending cases before the courts in our country of which we were not aware. We had not been previously informed by the national authorities in charge of resolving the case.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**Yes, quite a lot. Nevertheless, it left us a bad taste in the mouth since despite having demonstrated the non-enforcement of Mexican environmental legislation, the SEM process was interrupted, without any follow-up on the case, when the Mexican government reported the existence of ongoing proceedings, which were not necessarily concerned with environmental issues.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**All of the competent Mexican authorities were contacted. When no results were forthcoming from these efforts the decision was made to present the submission.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**As we mentioned, the Mexican government's response did not respond to our submission as such, instead it sought to have the CEC dismiss it citing the existence of ongoing proceedings. The proof is that the status of the case presented remains unchanged with one difference: no state or federal Mexican authority has taken charge of the case.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**There was no communication on the part of the Mexican government in relation to the submission and a look at the government's reaction shows that rather than seek to resolve the problem, an attempt was made to discredit our submission by seeking to have the CEC dismiss it out of hand. However, this didn't happen.**

**Consequently, I consider that it would have served little purpose if the Mexican party had contacted us, given that from the very outset of the case every Mexican authority had been contacted without this resulting in any effective response to the case. In effect, the Mexican government was aware of what was happening, but was not acting in favor of effective enforcement of the law, despite the existence of rulings ordering urgent measures.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**The Secretariat took 21 months to issue a resolution on the submission, although it must be said that during this period of time a major event occurred which may have delayed the response.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**We would have liked a follow-up to the case, as our submission, which had demonstrated the non-enforcement of the legislation, was not, strictly speaking, dismissed. Instead, given the existence of ongoing proceedings, the Secretariat decided to not continue with the submission. Instead, it totally closed the case and made no subsequent inquiries with the Mexican government regarding what ultimately happened with the case.**

14. ¿Qué How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**In our view, it was not a costly process, as the team that presented the submission had the technical and legal expertise to do so.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**We consider the guidelines to be a very effective tool for presenting submissions.**

16. Approximately how much time went into the preparation of your submission?

**About two months.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**We believe so, since in some fashion it did have an impact by eliciting a response from the Mexican government regarding the case, which, it seems to us, is a step forward for our environmental work.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**Perhaps a section should be included on follow-up to cases submitted.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**Follow-up is needed concerning cases which for some reason are not accepted.**

## CEMDA SEM-96-001 (Cozumel)

Questions:

|  | Yes | No | I don't know     |
|--|-----|----|------------------|
| Did the Citizen Submission procedure seem to be useful?  | X   |    |                  |
| Were you satisfied with the CEC's handling of your petition?   | X   |    |                  |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      | X   |    |                  |
| Did the CEC's resolution seem just?  | X   |    |                  |
| Did the CEC's response time seem appropriate?  | X   |    |                  |
| How much time did the procedure take (in months)?  |     |    | <b>19 months</b> |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |     |    |                  |
| Did the Citizen Submission procedure seem to be useful?  |     |    |                  |

1. When and how did you learn about the citizen submission process?

**Since the mechanism was proposed in the negotiation of the North American Agreement on Environmental Cooperation. I learned of it from the Mexican negotiators.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**As it was one of the first cases submitted to the CEC (1995), it was not necessary to collect information on how to use the mechanism. We based it on the NAAEC and the respective guidelines for submitting citizen submissions.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**I knew of them and consulted them. They were useful to show us how to file the submission. I think that the Guidelines should offer simpler language to the North American public to present their cases. It can be quite technical-legalistic which complicates access to the mechanism.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**No. We had contact with the Secretariat once the submission was filed.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**Because the choice was either to file an appeal against a PROFEPA ruling or go to the CEC. We chose to go to the CEC for various reasons, especially: 1) to be one of the first Mexican cases at the CEC, which we were. 2) Given how long it takes and the lack of access to environmental justice in Mexico, we chose to go the CEC. 3) We wanted the case to have an international stage, which we achieved by brining the Cozumel Pier case to the CEC.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**To evidence the lack of effective enforcement of the environmental laws in the Cozumel Pier case, which was achieved with the publication of the CEC's first factual record. This is seen in the reading and linkage of the facts presented in the factual record. No penalties, recommendations or conclusions were expected since they are not contemplated in the NAAEC.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**This question is not very clear to me, but I would say yes because since we submitted the case to the CEC we have achieved several things, as described in detail in the attached file.**

8. ¿Considera Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**No, the relevant environmental law was already well understood. Once the factual record was released, we verified that the government's decisions were outside the environmental law, as we had claimed. We realized that the government wanted to interpret the NAAEC according to its interests and require, for example, that submitters had to prove the damage or exhaust the legal remedies available under domestic law, which the NAAEC at no time requires of submitters.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**Yes, a citizen complaint was filed with PROFEPA. We approached the CEC because PROFEPA decided not to find in our favor on the issue raised and the option was to file an appeal with the same authority or go to the CEC. We decided that the CEC was the option**

**due to the lack of access to environmental justice in Mexico, where economic interests prevail over environmental interests.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**There was a response from the government. The response was useless since the government's arguments were out of context and fully without regard to the applicable environmental law framework. The response did provide the information we were looking for, and once placed in the factual record, it confirmed that there was in fact a failure to effectively enforce the environmental laws in the case in question.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**Yes, there was communication with the government before, during and after the process. The communication was useful because, for example, the case could have been submitted to the CEC a few months earlier, but the government told us that the Mexican tuna embargo was about to be lifted and, if the case were submitted to the CEC, it should have affecting the lifting of the embargo. Therefore, we decided to wait to avoid conflict between the two matters. The communication was also of use to sign an agreement with the federal government in which we agreed to work together in drafting the management plan for Cozumel's protected reef area and in the ecological zoning of the Island.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**19 months from beginning to end (publication of factual record). This was a long, but reasonable, time considering that it was the first factual record.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**In 2001 CEMDA opened an office in Cancun, where ongoing work is done with respect to Cozumel. We monitor Cozumel's protected reef area, which was decreed based on our CEC submission, and have done much work with marine park staff. We monitor the ecological zoning of the Island and have been involved in the updating of the zoning rules. It would be good to have the CEC follow up after the factual record is released, to ensure that the effective enforcement issues are promptly addressed, since the record**

**itself is not binding upon the parties and they may throw the factual record into the trash and nothing will happen.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**It was not costly, just the hours of work spent to prepare, submit and follow up on the submission.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**We did it in-house and with the pro bono assistance of a lawyer from a law firm.**

16. Approximately how much time went into the preparation of your submission?

**Around three months.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**Yes, since with the factual record we were able to demonstrate that there was a lack of effective enforcement of the environmental laws, something that we surely would have been unable to do under domestic law due to the limitations on access to environmental justice. Also, the record was done in a "reasonable time", which in Mexico could have been longer.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**Yes, it is very necessary.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**The attached file contains our reply to this and the preceding question.**



## Daniel Tselei - SEM-10-002 (Alberta Tailings Ponds)

Questions:

|  | Yes | No       | I don't know  |
|--|-----|----------|---|
| Did the Citizen Submission procedure seem to be useful?  |     |          | <b>x</b>  |
| Were you satisfied with the CEC's handling of your petition?   |     |          | <b>x</b>  |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |     |          | <b>x</b>  |
| Did the CEC's resolution seem just?  |     |          | <b>x</b>  |
| Did the CEC's response time seem appropriate?  |     | <b>x</b> |   |
| How much time did the procedure take (in months)?  |     |          | <b>Ongoing for 1 year now</b>   |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |     |          | <b>Not sure, had in-kind help from NGOs, but substantial time was used on their part.</b> |
| Did the Citizen Submission procedure seem to be useful?  |     |          | <b>Not sure yet</b>   |

1. When and how did you learn about the citizen submission process?

**I learned about it in the spring of 2010 through people I know if various environmental NGOs.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**The majority of the work to gather information on the process and prepare a submission was done by Environmental Defence. Without their assistance, I would likely have been too busy to gather this information on my own time (as I have other commitments outside of work).**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**I was unaware of these guidelines.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**I did not contact them, although others involved in preparing the submission may have.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**Because the Canadian government is doing nothing about the issue at hand. There is little recourse for those of us affected by the lack of enforcement of existing environmental laws; we are up against an entire federal government. Even a submission to the CEC will do little to force action, but at least it could bring some attention to the issue.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**I expected, at the very least, that the CEC would publically acknowledge, by providing a factual record, that the Canadian government is failing to enforce specific sections of the Fisheries Act. I hoped this would force other actions, but all I expected from the CEC is to state, on record, what is actually happening.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**No.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**There has been no outcome yet, after our submission has spent more than a year in limbo.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**I have not, although I believe other bodies are be pursuing legal action against the government for reasons similar to those outlined in my submission.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

No.

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**I have met with the previous federal environment Minister prior to my submission to discuss issues outlined in my submission among other things. This contact was most certainly not helpful. Not only were my concerns completely ignored, the Minister's office used pictures from the meeting to build a small webpage touting their efforts to consult with different affected groups and to explain government policy to them, which was a complete misrepresentation of what actually happened.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**The submission has not been fully processed. It has been over a year since it was first submitted, and about ten months since additional information was sent to the CEC. I don't think this is a reasonable amount of time. I'm not sure how to improve the timeline of the process, but I don't know that when it comes to environmental issues every day matters. Every day the government is not enforcing the Fisheries Act is another day that millions of litres of contaminants leak into fish bearing waters upstream from my home. This is an urgent matter, and I don't feel like the timeliness of the submission process reflects this urgency.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**My submission has not been concluded. I have continued to work on the issues raised in my submission through media campaigns to raise awareness, grassroots organizing in the NWT and Ottawa, and by working with my Nation (Dene Nation) and other First Nations in Canada.**

**I am not sure how the CEC operates following the conclusion of the process, but it would be nice if there were continued involvement of the CEC. Something that could help is to publish regular (e.g. annual) updates on past factual records detailing how the government in question has acted on the specific issue since the record was release (if they've acted at all) and if they are sufficiently enforcing the environmental legislation. This would help to keep pressure on governments to do what they are supposed to be doing.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**There were no monetary costs to me. It did take some of my time. I cannot yet speak to the benefits of the process as my submission is still being processed.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**I received assistance from the NGO Environmental Defence in researching and preparing the submission.**

16. Approximately how much time went into the preparation of your submission?

**Not sure, as several people and organizations were involved.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**Not sure yet, as there is no outcome yet.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**Not sure yet.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**Ecojustice - SEM-04-005 (Coal-Fired Power Plants) - SEM-04-006 (Ontario Logging II) - SEM-02-001 (Ontario Logging)**

Questions:

Ontario Logging

|  | Yes        | No | I don't know          |
|--|------------|----|-----------------------|
| Did the Citizen Submission procedure seem to be useful?  | X          |    |                       |
| Were you satisfied with the CEC's handling of your petition?   |            | X  |                       |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      | X          |    |                       |
| Did the CEC's resolution seem just?  | X          |    |                       |
| Did the CEC's response time seem appropriate?  |            | X  |                       |
| How much time did the procedure take (in months)?  |            |    | <b>60 months</b>      |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |            |    | <b>Approx 20,000.</b> |
| Did the Citizen Submission procedure seem to be useful?  | <b>Yes</b> |    |                       |

US Coal Fired Power Plants

|  | Yes       | No | I don't know                  |
|--|-----------|----|-------------------------------|
| Did the Citizen Submission procedure seem to be useful?  |           | X  |                               |
| Were you satisfied with the CEC's handling of your petition?   |           | X  |                               |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |           |    | X                             |
| Did the CEC's resolution seem just?  |           | X  |                               |
| Did the CEC's response time seem appropriate?  |           | X  |                               |
| How much time did the procedure take (in months)?  |           |    | <b>80 months and counting</b> |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |           |    | <b>Approx 25,000.</b>         |
| Did the Citizen Submission procedure seem to be useful?  | <b>No</b> |    |                               |

1. When and how did you learn about the citizen submission process?

**Workplace Education**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**The website is very helpful**

3. Did you know about the “Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]” (the “Guidelines”) published in the CEC booklet “Bringing the Facts to Light”? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**Very helpful**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**Yes, to gain help about procedural matters etc. Yes, staff are very helpful – although less so now than previously.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**Because is seemed to be an appropriate forum for addressing citizen concerns on such a matter.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**We expected a concise description of the issue and clear factual information about the state of enforcement.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**Ontario Logging was a concise report that became a strong advocacy tool. US coal fired power plants – the delay has undermined the relevance of the factual record.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government’s decisions with respect to enforcing those laws? If so, in what way?

**Ontario Logging – yes, the report was very thorough in explaining the government’s rationale.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**Ontario Logging – yes we continue to use other advocacy tools.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**Ontario Logging and US coal fired power plants – yes although it seemed more geared to denying the allegations and trying to avoid a factual record.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**Ontario Logging – yes, and it helped us understand the govt position.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**The delays in each case were the result of the government's attitude in wishing to interfere with the process set out in the NAAEC. The delays were completely unacceptable.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**In the case of Ontario Logging it would have been helpful if the CEC continued to monitor government conduct to see whether it would begin to enforce the MBCA. We used the CEC fr as an advocacy tool to push for change.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**Very costly in terms of staff time although we benefitted from volunteer help. In the case of Ontario Logging this was money well spent. In terms of the US coal fired power case, the process has been extremely frustrating. Without changes to the process, we are unlikely to participate again.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**General advice that was helpful.**

16. Approximately how much time went into the preparation of your submission?

**Ontario Logging: 250 hours**

**US coal fired power plants: 350 hours**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**Ontario Logging – yes because it clearly set out the issues and the government’s conduct. US coal fired power plants – the delays have totally undermined the possibility of a useful result.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**THE SEM PROCESS IS BROKEN. IT IS A SOURCE OF FRUSTRATION TO CITIZEN GROUPS AND IT OUGHT TO BE AN EMBARRASSMENT TO THE COUNCIL. THE CEC STAFF IS GENERALLY QUITE USEFUL AND HELPFUL – ALTHOUGH IT APPEARS THAT THE STAFF ARE BECOMING MORE COMPLIANT WITH THE COUNCIL ATTITUDE, WHICH HAS UNDERMINED THE SEM PROCESS.**

**THE SEM PROCESS IS BROKEN BECAUSE OF THE CONSISTENT PATTERN OF INTERFERENCE BY THE COUNCIL. THIS UNDERMINES VALUES OF ACCOUNTABILITY AND COMPLIANCE WITH THE LAW. THE COUNCIL IS CLEARLY INTENT ON THWARTING CITIZEN REQUESTS TO BRING GOVERNMENTS TO ACCOUNT FOR THEIR FAILURES TO EFFECTIVELY ENFORCE LAWS. THE ATTITUDE OF MINISTERS SEEMS TO BE ONE OF SCRATCHING EACH OTHERS BACKS. I WOULD NOT RECOMMEND TO ANYONE TO USE THIS PROCESS IF THEY HOPE TO GET A TIMELY RESPONSE FROM THE CEC.**

**WHY DO CITIZENS FEEL THAT MULTILATERAL ORGANIZATIONS DO NOT LISTEN TO THEM? THE CEC AND ITS SEM PROCESS IS A SHINING EXAMPLE.**

Do you have any other comment or recommendations regarding the citizen submission process?

**FIX IT. PUT STRICT TIME LIMITS ON COUNCIL ACTION. TAKE POWERS OF PUBLICATION OUT OF COUNCIL’S HANDS. FORCE THE COUNCIL TO MAKE DECISIONS BASED ON STRICT ENVIRONMENTAL PROTECTION CRITERIA. LEAVE MORE OF THE DECISION MAKING POWER IN THE HANDS OF CEC STAFF. STRICTLY LIMIT COUNCIL CONDUCT THAT UNDERMINES THE EFFECTIVENESS OF THE PROCESS. FORCE COUNCIL TO MAKE ITS DECISIONS IN THE OPEN AND TO EXPLAIN THEM.**



## Ecojustice - SEM 00-004 (BC Logging) - SEM 97-001 (BC Hydro) - SEM 98-004 (BC Mining)

Questions:

|  | Yes | No | I don't know                  |
|--|-----|----|-------------------------------|
| <b>BC HYDRO</b>  |     |    |                               |
| Did the Citizen Submission procedure seem to be useful?  | X   |    |                               |
| Were you satisfied with the CEC's handling of your petition?   | X   |    |                               |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      | X   |    |                               |
| Did the CEC's resolution seem just?  | X   |    |                               |
| Did the CEC's response time seem appropriate?  |     |    | It took longer than necessary |
| How much time did the procedure take (in months)?  |     |    | 3 years, 2 months             |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |     |    | Nominal, excluding time       |
| Did the Citizen Submission procedure seem to be useful?  |     |    |                               |
| <b>BC MINING</b>   |     |    |                               |
| Did the Citizen Submission procedure seem to be useful?  | Yes | No | I don't know                  |
| Were you satisfied with the CEC's handling of your petition?   |     |    | Somewhat                      |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |     | X  |                               |
| Did the CEC's resolution seem just?  |     | X  |                               |
| Did the CEC's response time seem appropriate?  |     | X  |                               |
| How much time did the procedure take (in months)?  |     |    | 5 years, 2 months             |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |     |    | Nominal, excluding time       |
| Did the Citizen Submission procedure seem to be useful?  |     |    | It had useful aspects         |
| <b>BC LOGGING</b>  |     |    |                               |
| Did the Citizen Submission procedure seem to be useful?  |     |    | Yes No I don't know           |
| Were you satisfied with the CEC's handling of your petition?   |     | X  |                               |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |     | X  |                               |
| Did the CEC's resolution seem just?  |     | X  |                               |
| Did the CEC's response time seem appropriate?  |     | X  |                               |
| How much time did the procedure take (in months)?  |     |    | 3 years, 5 months             |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |     |    | Nominal, excluding time       |
| Did the Citizen Submission procedure seem to be useful?  |     |    | Not at all                    |

Note: Ecojustice's prior responses to this questionnaire pertained primarily to the Species at Risk submission SEM-06-005 and the Ontario Logging I and II submissions SEM-02001 and SEM-04-006. This response pertains to the following submissions, all but the last of which led to factual records. The approximate time from submission filing to the termination of the process is indicated in brackets):

1. BC Hydro SEM-97-001 (3 years and 2 months)
2. BC Mining SEM-98-004 (5 years and 2 months)
3. BC Logging SEM-00-004 (3 years and 5 months)
4. Pulp and Paper, SEM-02-003 (4 years and 9 months)
5. Coal-fired Power Plants, SEM-04-005 (6 years and 11 months, and still pending)
6. Devil's Lake, SEM-06-002 (5 months)

Our experience with the process has been mixed, but predominantly negative. The process was often useful for drawing attention to important environmental problems and bringing out valuable information. However, the processes did not lead to adequate resolutions of the problems. In most cases, the CEC Council substantially changed the nature or scope of the inquiries we requested. In addition, the mainstream media has greatly reduced its reporting on the submissions process in recent years. The lack of media attention limits public awareness of the problems Ecojustice has sought to highlight and resolve through the process.

The process has also become less effective with each time we have filed a submission. We attribute the increasing ineffectiveness to governments becoming more obstructionist and adept at frustrating the process.

As discussed below, Ecojustice, including when we were called Sierra Legal Defence Fund, has provided information to the JPAC and other CEC bodies in previous studies regarding the SEM process.

We also agree generally with the analysis former SEM Director Geoffrey Garver' provides in "Tooth Decay" and we specifically draw your attention to the observations at pages 35 to 38. Tooth Decay is attached for reference.

1. When and how did you learn about the citizen submission process?

**We became aware of the process during the negotiations and finalization of the NAACE. We filed our first submission BC Hydro SEM-97-001 at the request of a client.**

**See also the previous Ecojustice response regarding the Species at Risk Act citizen submission, SEM-06-005.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**See the previous Ecojustice response regarding the Species at Risk Act citizen submission, SEM-06-005.**

3. Did you know about the “Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]” (the “Guidelines”) published in the CEC booklet “Bringing the Facts to Light”? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**See the previous Ecojustice response regarding the Species at Risk Act citizen submission, SEM-06-005.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**Ecojustice did not contact the CEC Secretariat prior to preparing any our submissions.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

The specific instances of non-enforcement were not amenable to redress under domestic law (For example, there is a lack of citizen suit provisions in Canadian law).

**See also the previous Ecojustice response regarding the Species at Risk Act citizen submission, SEM-06-005.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**Our hope was and is that information provided through the process and will lead to improved enforcement and compliance efforts that would address the broad areas of weakness we identified: inadequate protection of fish habitat affected by dams; inadequate protection of fish habitat and stream quality impacted by logging on Crown and private land in British Columbia; inadequate protection of fish-bearing waters impacted by acid mine drainage at numerous mines sites in British Columbia; complete inattention to severe impacts on migratory birds from clearcut logging in Ontario; and weak enforcement of pulp and paper effluent regulations in Eastern Canada.**

**See also the previous Ecojustice response regarding the Species at Risk Act citizen submission, SEM-06-005.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**The processing of submissions had limited to no impact beyond confirming Canada's weak enforcement of environmental laws as alleged in the submissions. None of the submissions led to the meaningful reforms in enforcement and compliance of the relevant legislation. The CEC's 2004 TRAC report identifies some modest results from the BC Hydro, BC Logging and BC Mining submissions (p. 46). Of these, BC Hydro had the biggest impact. We attribute the impact from the BC Hydro case mostly to the attention that the filing of the submission brought to the issues. The factual record has also been useful in ongoing provincial proceedings such as the "Water Use Planning Process". The scope of the BC Logging and BC Mining factual records was so limited by the CEC Council that they no longer respond to the overarching concerns we raised in our submissions; And the problems raised still persist.**

**CEC Council action on the Ontario Logging submissions led to a new standard for submissions that essentially requires submitters to prepare mini factual records in support of their allegations. The Council required us to include evidence of destroyed birds or nests from clear cuts in remote forests with difficult access. Given that the collection of this kind of evidence should be a basic element of the enforcement of migratory bird rules by the government, the process should place this burden on the government, not on submitters. Publication of the Ontario Logging factual record has had no discernible impact in resolving persistent negative impacts of clearcut logging on migratory birds in Ontario.**

**With the Pulp and Paper submission, the Council in effect created an incentive for governments to delay the process as much as possible. The Council did this by limiting the scope of the factual record to violations of the federal pulp and paper effluent regulations as of 2000, the latest year that we had data for. However, it took two years to obtain information through freedom of information requests and so we did not file the submission until May 2002, and the factual record was authorized in December 2003. When the factual record was published in February 2007, the Canadian government effectively said that any problems revealed were from too long ago to be of concern. The extensive evidence supporting our submission should have been sufficient to authorize the Secretariat to present up-to-date factual information on ongoing violations and the government's response to them. The CEC Council's resolution authorizing the factual record made it very difficult to present current factual information on violations and responses.**

**We were disappointed that the CEC Secretariat decided not to proceed with the Devil's Lake submission. Processing of the Coal-fired Power Plant submission has taken an inexcusably long time, with no factual record nearly 7 years after the submission was filed.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**Not significantly, although the CEC Secretariat has done a commendable job explaining the laws and enforcement policies to the extent they are relevant to the restricted factual records the Council has authorized. Overall, the Canadian government appears determined to delay and limit the process, and to prevent rigorous, independent and objective scrutiny of its enforcement performance. The following media release links provide additional information relevant to this question:**

**Ontario Logging - <http://www.ecojustice.ca/media-centre/press-releases/naftacommission-confirms-canadian-failure-to-enforce-wildlife-law-against-loggingcompanies/?searchterm=CEC>**

**Pulp and Paper - <http://www.ecojustice.ca/media-centre/pressreleases/independent-inquiry-exposes-canadas-lax-enforcement-on-waterpollution/?searchterm=CEC>**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**A factor in our filing of several submissions, especially the BC Hydro, BC Logging and BC Mining submissions, is the practice of the Canadian government to take control of private prosecutions and then close them. In light of this routine practice, we were not confident that private prosecutions were a viable avenue for many of our concerns.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**The Canadian government's responses have provided some useful information, but in general the responses were too, obstructive and intended to obfuscate. For example, Canada provided some helpful information in connection with the Pulp and Paper submission, but it was limited in time to the period ending in 2000. With Ontario Logging, Canada should have been able to provide more extensive information regarding its enforcement activities and regarding Ontario timber management practices that impact migratory birds. The U.S. response to the Coal-fired Power Plant submission was extensive but did not adequately address the concerns raised in the submission.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**Contact with a Party only occurred during the BC Hydro process where a joint meeting was scheduled by the Secretariat as part of Factual Record preparation.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**This information is provided above. The length of time that it takes to process submissions is a significant shortcoming. Unfortunately, process times have increased in recent years. Although a strict set of time limits at each stage of the process might not be appropriate in light of the wide variability in the subject matter of submissions, we believe the following general timelines are reasonable: initial analysis under Articles 14(1) and (2) should normally occur within one month; the analysis under Article 15(1) should be normally occur within three months; votes on factual record recommendations should take no longer than 90 days; and draft factual records should normally be prepared within one year.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**In the case of BC Hydro, Ecojustice and its clients participated in a process known as Water Use Planning that addressed many of the concerns raised in the submission.**

**It would have been helpful with all submissions to have the CEC review the situation at some point after the factual record had been prepared (perhaps 3 – 5 years) to determine if any material changes have occurred.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**In general, preparation of the submissions was time consuming. For example, the supplementary information required for the Ontario Logging and Coal-fired Power Plant submissions took enormous effort. For Pulp and Paper, the government sought to assess large fees related to freedom of information requests needed to gather the underlying data. Much of this information, including pulp and paper mill self-reported discharge monitoring data, should be freely available online.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**Ecojustice often prepares and files citizen submissions on behalf of other groups. In many cases, those groups provided scientific expertise.**

**On some occasions, the JPAC provided support through trying to convince the Council to respect the Citizen Submission process. For example:  
<http://www.cec.org/Page.asp?PageID=122&ContentID=1897&SiteNodeID=362> and**

[http://www.cec.org/Page.asp?PageID=122&ContentID=1002&SiteNodeID=296&BL\\_ExpandID=91](http://www.cec.org/Page.asp?PageID=122&ContentID=1002&SiteNodeID=296&BL_ExpandID=91)

16. Approximately how much time went into the preparation of your submission?

**Preparing the initial submissions in the cases of BC Hydro, BC Logging and BC Mining took approximately 100 hours each. In each case, an equivalent or greater amount of time was spent trying to determine the status of submissions and engage in activities attempting to move the process along.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**Overall, our answer is no. Ecojustice has devoted an enormous amount of human and financial resources to gather information to support submissions and to file them, with little to show for it.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**We reiterate our previous response re: the SARA submission: Article 14 and 15 are honoured more in breach than observance. The process is hollow and creates a form over substance process that, as currently manipulated by Canada, is not credible.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**Our intention in filing submissions with the CEC was to make this innovative tool work to its full potential to provide rigorous, independent information on the enforcement performance of Canada, Mexico and the U.S. Given the very modest results of the process, the CEC Council's ongoing attempts to limit its effectiveness, the long delays in processing submissions, and the progressive decline in media attention given to the process and to the CEC in general, Ecojustice is finding it increasingly difficult to justify using the process. Given our conclusion that the withdrawal of the SARA submission was necessary to prevent the process from actually causing harm, extensive reform of the process is needed for us to see it as a useful forum again. Above all, these reforms should insulate the process from self-serving actions by the governments, give greater weight to the independent determinations of the Secretariat, and improve timeliness.**

**Over the years, Ecojustice has worked at trying and improve the process. This has included:**

- **making submissions about the "inherent conflict of interest" given the role of the Parties being the subject of an investigation while making critical**

decisions about the conduct and potential termination of the process. Our submission provided recommendations for resolution of that conflict;

- authoring an article for the *Journal of Environmental Law and Practice* describing experiences and noting needed improvements and reforms;
- filing a “Petition” with the Canadian Commissioner on Environment and Sustainable Development raising concerns about the Government of Canada’s actions in relation to the process; and
- organizing a coalition of groups that presented a letter to Council regarding interference in the CEC process.

Documents related to all of these steps are attached.



## Ecojustice (formerly Sierra Legal Defence Fund) - SEM-06-005 (Species at Risk)

Questions:

|  | Yes | No                     | I don't know |
|--|-----|------------------------|--------------|
| Did the Citizen Submission procedure seem to be useful?  |     | <b>X</b>               |              |
| Were you satisfied with the CEC's handling of your petition?   |     | <b>X</b>               |              |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |     | <b>X</b>               |              |
| Did the CEC's resolution seem just?  |     | <b>X</b>               |              |
| Did the CEC's response time seem appropriate?  |     | <b>X</b>               |              |
| How much time did the procedure take (in months)?  |     | <b>Greater than 48</b> |              |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |     |                        |              |
| Did the Citizen Submission procedure seem to be useful?  |     | <b>No</b>              |              |

1. When and how did you learn about the citizen submission process?

**At inception of agreement.**

**Note, these comments are informed most recently by our experience with SEM-06-005 (Species at Risk). Please refer to our request for withdrawal of our complaint for detailed information which informs the summary responses below.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**CEC documents describe it in a straightforward manner.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**Yes. Helpful.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**No.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**Wanted to ensure we addressed all viable avenues for scrutinizing government non-compliance.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**Confirmation, conclusions and recommendations.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**No.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**No. See the attached letter. In summary, the process exhibited:**

**Extreme prejudicial delay (in terms of both the secretariat and council);**

**Error in interpreting constating documents in that Council interpreted the existence of active litigation against Canada as precluding their review when it is clear that the bar exists only if the litigation is brought by Canada; and,**

**Council arbitrarily narrowing the factual record to portray Canada in the best light, resulting in the submitters believing that the process would materially prejudice intended outcomes.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**Yes, we filed successful specific legal actions that found failure to enforce on the part of Canada. The reason we filed was that there was systemic failure to enforce that individual court actions cannot address.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**The government Party filed a submission that was at most obstructive and intended to obfuscate. For example, Canada objected to our asserting not only past non-compliance**

**but also anticipated future non-compliance with statutory deadlines. They did so notwithstanding their submissions, arguing that positions on anticipated actions were inappropriate, came after they had already breached statutory deadlines. This verged on nonsensical. It appeared that Canada did not take the process seriously.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**No.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**So long that I can't remember, to the extent that the merit of the submission process was prejudiced.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**Continued federal court actions (successful).**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**Preparation of the submission was time consuming. We received no benefit from the process.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

16. Approximately how much time went into the preparation of your submission?

**60 hours.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**No. Reasons stated above.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**Article 14 and 15 are honoured more in breach than observance. The process is hollow and effects a form over substance process that, as currently manipulated by Canada, is not credible.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

## Environmental Defence Canada - SEM-10-002 (Alberta Tailings Ponds)

Questions:

|  | Yes                  | No                | I don't know            |
|--|----------------------|-------------------|-------------------------|
| Did the Citizen Submission procedure seem to be useful?  |                      |                   | <b>still open</b>       |
| Were you satisfied with the CEC's handling of your petition?   | <b>before filing</b> | <b>after file</b> |                         |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |                      |                   | <b>ongoing</b>          |
| Did the CEC's resolution seem just?  |                      |                   | <b>ongoing</b>          |
| Did the CEC's response time seem appropriate?  |                      |                   |                         |
| How much time did the procedure take (in months)?  |                      |                   | <b>16 months so far</b> |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |                      |                   | <b>\$2,000</b>          |
| Did the Citizen Submission procedure seem to be useful?  |                      |                   |                         |

1. When and how did you learn about the citizen submission process?

**Mr. Price learned about the process through his work with the Sierra Legal Defence Fund.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**It was relatively easy to learn about the process through the guidelines on the web.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**Yes the guidelines were helpful. It would be beneficial for the CEC to be clearer up front about the information that was required rather than asking for it later and delaying the process. For example, the CEC asked for copies of full reports referenced in submissions which were subsequently provided. Had the submitter known this was a requirement at the outset, the full materials would have been submitted thereby expediting the process.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**Yes the submitter met with CEC staff prior to preparing their submission and found the staff to be helpful.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**The SEM process was chosen as there was no other recourse. Attempts were made to dialogue with government representatives to no avail. Legal recourse was not feasible due to limited resources and the way prosecutions are handled under the Fisheries Act.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**The outcome expected was a factual record which would shine a brighter light on the environmental problem and the inadequate response by government.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**The filing of the submission resulted in significant media coverage which achieved the goal of shining a brighter light on the problem.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**N/A - Process is still ongoing**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**No - due to limited resources and the heavy legal burden associated with pursuing legal action**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**No response yet from the Party**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**There was considerable correspondence with the government prior to the submission and it was subsequently included in the submission.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**It took 5 months for an initial response and it has been a further 11 months of waiting for the next step in the process (total of 16 months).**

**The submitter recommends the inclusion of timelines - eg - timeline of 30 days for CEC to ask for more information and a timeline of 6 months for CEC to make a recommendation to Council.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**Not Applicable**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**\$2,000.00 - Exposure in the media with the filing of the submission made the filing worth the expense.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**There was a positive meeting with CEC staff prior to preparing the submission.**

16. Approximately how much time went into the preparation of your submission?

**It took about 2 weeks to prepare the submission as the organization was already tracking the issue and was quite familiar with the topic.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**Yes, initially it was helpful with the media exposure. We will see how it unfolds as the process is still ongoing.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**The establishment of structured timelines would be useful.**

**With regard to the bigger picture, should Council have an opportunity to vote on whether to proceed with action when the factual record confirms there is an environmental problem and the government has not complied with its environmental legislation.**

**Having sanctions such as Chapter 11 would make the process more robust. "The private sector got Chapter 11 and we got the CEC."**

19. Do you have any other comment or recommendations regarding the citizen submission process.

**While there were no other recommendations regarding the process, there was a personal observation that a correlation seems to exist between the controversial nature of an issue and the length of time it takes to process a submission.**



## Greenpeace México, A.C. - SEM-09-001 (Maíz transgénico en Chihuahua)

Questions:

|  | Yes | No | I don't know         |
|--|-----|----|----------------------|
| Did the Citizen Submission procedure seem to be useful?  | X   |    |                      |
| Were you satisfied with the CEC's handling of your petition?   |     | X  |                      |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |     | X  |                      |
| Did the CEC's resolution seem just?  |     | X  |                      |
| Did the CEC's response time seem appropriate?  |     | X  |                      |
| How much time did the procedure take (in months)?  |     |    | <b>23 months</b>     |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |     |    | <b>Indeterminate</b> |

1. When and how did you learn about the citizen submission process?

**We learned of it when the first complaint was submitted against the Mexican government concerning the construction of a pier in Cozumel, Quintana Roo.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**It wasn't difficult in principle as the CEC has guidelines on how to make a submission. However, a year after the complaint was submitted the CEC Secretariat informed the Submitters that the submission (SEM-09-001 - Transgenic Maize in Chihuahua) did not comply with all the requirements for its acceptance and that modifications had to be made and more information provided.**

**The modifications were extensive and complex, and more intended for lawyers and scientists than the general public. The CEC requested information from the Submitters on several points, including the following:**

**More information on whether the Cartagena Protocol should be considered as environmental legislation, even though it is the principal international treaty on regulating cross-border transport of living modified organisms (LMOs) and Mexico is a signatory to it.**

**Data on the strains of maize and species of *teocintle* in Chihuahua. Possible consequences on human health and biodiversity from releasing genetically modified organisms (GMOs).**

**Legal basis for the Federal Attorney General's obligation to inform the complainant on the progress or status of an ongoing criminal investigation.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**Yes, I knew about them.**

**Yes, I consulted them.**

**Yes, they were useful but should be more descriptive, especially when more information is required of the Submitter because the CEC deems that the submission does not comply with all requirements for its acceptance and that modifications must be made and more information provided.**

**Yes, the Secretariat's criteria for determining what is and what is not enforceable environmental legislation. In effect, in our case, the Secretariat determined that some laws were not subject to review under the procedure established in Articles 14 and 15 of the NAAEC, as they did not satisfy the definition set forth in Article 45(2)(a).**

**It seems incredible that the CEC Secretariat questions whether the Cartagena Protocol on cross-border transport of LMOs should be considered environmental legislation under the NAAEC. This issue obliged us to state our arguments on why said international instrument does indeed constitute environmental legislation and should be accepted as such.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**There was no prior contact with the Secretariat.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**Because Greenpeace bore in mind the Report and recommendations elaborated by the CEC Secretariat, pursuant to Article 13 of the NAAEC, in November 2004 (*Maize and Biodiversity: the Effects of Transgenic Maize in Mexico*), which remained without effect as they were not applied by the Mexican government.**

**Recourse was made to this mechanism because of the lack of effective enforcement and proper environmental management on the part of the Mexican authorities under the General Law of Ecological Balance and Environmental Protection (*Ley General del***

*Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*), the Biosafety of Genetically Modified Organisms Act (*Ley de Bioseguridad de Organismos Genéticamente Modificados—LBOGM*), the Federal Penal Code (*Código Penal Federal—CPF*), and the Cartagena Protocol on Biosafety, with respect to a case of genetic flow from transgenic maize towards conventional varieties of maize (native and hybrid), detected in different regions of the state of Chihuahua, in the northern part of Mexico. Due to the absence of biosafety measures, this genetic flow imperils the environment, biodiversity, plant health and human health, and has potential socio-economic consequences, all of which highlights the lack of effective enforcement of environmental legislation and proper environmental management by national authorities.

Because of a desire to reveal the acts and omissions of the Mexican government in the face of its tendency to hide information from citizens and to over apply the criteria governing the confidentiality of public government information.

To put pressure on the Mexican authorities to take adequate measures in pursuit of access to environmental justice which does not exist in Mexico.

To demonstrate the absence of coordination between environmental, agricultural and health authorities as regards biosafety matters and to show that citizen complainants – or even the environmental authorities themselves – have no access to the investigations arising from criminal complaints lodged with the PGR on biosafety issues.

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**First, that the Mexican government be ordered to elaborate a factual record; second that recommendations to the government would result from the analysis of said factual record.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**No.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**No, on the contrary, it helped me to understand NAAEC's limits with respect to the few international environmental agreements on which it bears (it isn't appropriate to use the term "relevant environmental legislation" since it delegitimizes other agreements and issues). All agreements must be relevant in the eyes of international environmental law.**

**That the NAAEC has fallen behind the times.**

**The decisions of the Mexican government are increasingly opaque and rigged, and their aim is to confuse and to hide information.**

**That the SEM should be improved and its mandate should go beyond offering recommendations.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**Yes. Criminal charges and administrative proceedings.**

**Because they are not timely procedures. In effect, the Mexican government hides information, alleging the confidential or reserved character thereof, or cites the protection of personal data, or states that proceedings are ongoing, or that a legal ruling is pending, etc.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**Yes, but only because the CEC Secretariat erroneously sent two versions of the response: one with information classified by the Government of Mexico as reserved and the other without said information. In Greenpeace's view, said information should not have been classified as it does not contain personal data, does not allude to proprietary industrial information or to ongoing legal proceedings. It was simply the minimal information that we NGOs tried to obtain from the Mexican government.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**No. Its "modus operandi" has become opaque and evasive regarding compliance with the law, leaves no place for public information requests and discredits the work done by NGOs.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**It was not a reasonable period: 23 months elapsed between January 2009, when the Submitters presented their complaint, and December 2010, when the CEC Secretariat determined that the preparation of a factual record was not warranted.**

**It's worth mentioning that the Submitters filed their submission with the CEC in January 2009. One year later, (in January 2010) the CEC Secretariat informed the Submitters that their submission (SEM-09-001 - Transgenic Maize in Chihuahua) did not comply with all the requirements for its acceptance and that modifications had to be made and more information provided. It is unbelievable that an institution like the CEC should be so extremely slow in responding to a case of transgenic contamination of maize crops in our country. In February 2010, the CEC requested that the Mexican government report on the effective enforcement of environmental legislation to protect Mexican maize from transgenic contamination in response to determination A14/SEM/09-001/22/COM. In December 2010, the CEC Secretariat determined that the elaboration of a factual record was not warranted.**

**I would recommend that the NAAEC be revised, that deadlines for the Secretariat be established and, more generally, that its procedures be better defined to make it into a more effective mechanism. It seems like a large international bureaucracy to me.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**None.**

**Yes, may the CEC Secretariat continue "inviting" the Mexican government to consider providing a public summary of the information cited in the confidential sections of this determination.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**I am unable to determine the monetary cost. As for the time invested, this was an exhausting endeavor which required dedicating long hours to research and write the submission.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**None. However, it would be very difficult for a Submitter without legal expertise to make use of this mechanism.**

16. Approximately how much time went into the preparation of your submission?

**Several weeks.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**No, for the reasons alluded to above.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**Yes, definitely.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**The ones already mentioned.**

El artículo 45(2)(a) del ACAAN establece:

“2. Para los efectos del Artículo 14(1) y la Quinta Parte:

(a) “legislación ambiental” significa cualquier ley o reglamento de una Parte, o sus disposiciones, cuyo propósito principal sea la protección del medio ambiente, o la prevención de un peligro contra la vida o la salud humana, a través de:

(i) la prevención, el abatimiento o el control de una fuga, descarga, o emisión de contaminantes ambientales,

(ii) el control de químicos, sustancias, materiales o desechos peligrosos o tóxicos, y la diseminación de información relacionada con ello; o

(iii) la protección de la flora y fauna silvestre, incluso especies en peligro de extinción, su hábitat, y las áreas naturales protegidas en territorio de la Parte, pero no incluye cualquier ley o reglamento, ni sus disposiciones, directamente relacionados con la seguridad e higiene del trabajador.”

**Instituto de Derecho Ambiental, A.C. - SEM-97-007 (LAKE CHAPALA) - SEM-03-003 (LAGO DE CHAPALA II)**

Questions:

|  | Yes   | No | I don't know |
|--|---|----|--------------|
| Did the Citizen Submission procedure seem to be useful?  | x   |    |              |
| Were you satisfied with the CEC's handling of your petition?   | x   |    |              |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |   | x  |              |
| Did the CEC's resolution seem just?  |   | x  |              |
| Did the CEC's response time seem appropriate?  |   | x  |              |
| How much time did the procedure take (in months)?  | 96  |    |              |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? | <b>\$480,000.00</b><br><b>(two years of research and to build the case)</b> |    |              |

1. When and how did you learn about the citizen submission process?

**Since the signature and entry into force of NAFTA, the chairwoman of IDEA has been an environmental law researcher at *Universidad de Guadalajara*, and as such is up to date in environmental laws and treaties. Environmental Law Alliance Worldwide (ELAW) also offered a space to discuss access to justice topics and mechanisms that led us to approach the citizen submission mechanisms under NAFTA.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**At first, IDEA A.C. was practically composed of the time dedicated by Dr. Raquel Gutiérrez Nájera, researcher at *Universidad de Guadalajara*. As the organization grew and became more specialized, it entered into an agreement so that her research would contribute to strengthening cases in the public interest. Thus, our alliance with *Universidad de Guadalajara* researchers has been a key element to building and documenting cases with the CEC, especially our first case (Chapala I, the basis for Chapala II). Raquel Gutiérrez was directly responsible for the case, which I discussed with friends at ELAW and members of the organization's Technical Secretariat, such as Jennifer Gleason, Mark Chernaik, Mercedes Lu, Bern Johnson, John Bonine, Glen Miller and Cris Wold. All of them provided legal, scientific and technical contributions and expertise regarding Lake Chapala and its basin.**

3. Did you know about the “Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]” (the “Guidelines”) published in the CEC booklet “Bringing the Facts to Light”? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**When the Chapala I case (1977) was built, it provided the basis for the following cases, when the CEC publication did not exist. However, for the other cases, it has been a tool used especially by the younger attorneys at IDEA to build cases. It is also a document used in environmental law. I think that it has useful information, but is specialized for attorneys. In my opinion, Bringing the Facts to Light would have facilitated the building of the case and contains useful and necessary information for such purpose.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**No.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**IDEA A.C. is an organization dedicated primarily to environmental litigation in the public interest. The NAAEC represented an opportunity to improve laws and work on environmental policy in Mexico, with respect to collective and/or common rights. In effect, the absence of legal mechanisms to protect collective and/or common environmental assets in Mexico gave way to the citizen complaint and the NAAEC. In fact, those were the only remedies available, and since the citizen complaint is ineffective, we only used the Agreement as a means of access. The NAAEC citizen submission system let us shed light of systematic and serious violations against ecosystems of collective interest that had no defenders and influence the Mexican government to pay more attention to these highly issues complex of national relevance, such as the case of Chapala and the Lerma-Santiago basin.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**The expected result was the factual record, which I characterized, when explaining the organizations presenting these submissions in Mexico, as a “diagnostic recommendation” to improve environmental law and policy in Mexico. It is hard to explain that this is not a recommendation, with no penalties or conclusions, but rather a sort of diagnostic of the issue and problem of systematic violations and compliance failures. In particular, I believe that the factual record should constitute an environmental recommendation and set the foundation for compliance and enforcement (a sort of international trilateral ombudsman). Perhaps the CEC should**



**evolve into this role and be revitalized as a trilateral authority on environmental issues of common concern.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**The process did contribute to and have an effect on water policy and basin issues in Mexico. Due to the analysis of the Chapala I and II case, we discussed a Lerma-Chapala-Santiago-Pacific Basin Act that was approved by Congress but vetoed by President Fox on his last day in office. The National Water Act was amended, and in fact IDEA consulted on the 2004 amendments. We worked to have the CNA open its council to NGOs, environmental representatives and the municipalities located in the basin. IDEA also coordinated efforts to have Chapala named a Ramsar site, etc. Without a doubt, the Chapala case has contributed to improving environmental law in Mexico, although its implementation still remains. In effect, the reform that sought a water revolution in Mexico was very poorly undertaken, since the CNA only changed from Regions to Basins and continues to operate the same without a vision of sustainability.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**In particular, I think that the process strengthened existing knowledge of the application of environmental laws in Mexico. In the case of Chapala I, it contributed to understanding the guidelines applied by the CEC itself in the process.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**The remedy we used was the citizen complaint. With the 1996 amendments to LGEEPA, this remedy is no longer binding in Mexico, and we exhausted all legal remedies available. So we approached the CEC, since the citizen complaint in Mexico has ceased to be at least an instrument of mediation to protect collective environmental assets.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**The government's response offered a glimpse of what it thought about the issue raised. Moreover, it was useful to create awareness of the effect on public policy, the law and enforcement in Mexico.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**I had no communication, although I think it would have been of use. However, we were invited to forums and discussions on Chapala and my contributions were well received. We worked on a Lerma-Chapala Sustainability Program with Secretary Víctor Lichtinger that unfortunately was left behind and not followed up on with Secretary Elvira, even though it was a well-developed document prepared by consensus.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**I think that this is a core area of improvement for the CEC with respect to factual records. We submitted the Chapala case in 2003, and it was decided to open a factual record two years ago and it is not yet concluded! We are talking about a case that has been going on for 8 years.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**It appears to me that this case may be emblematic for the CEC to implement models to follow up on factual records. I think that in this case that CEC's involvement with the submitters and authorities may contribute to opening up areas of improvement and to help resolve the issues raised that still pose problems today. IDEA would hope that after releasing the factual record there could be discussion groups to implement policies, programs, responsibilities and budgets.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**For IDEA, the cost of participating in the submission was the salary of the person responsible for building the submission, paid by Universidad de Guadalajara over two years. A McArthur Grant was also available during two years, along with CEC support to attend the Ministers' meetings.**

**However, the results achieved to date seem to be relevant and important, and the cost exceeded the benefits, e.g. it was not easy to amend the National Waters Act and open up the Basin Councils.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**In the preparation of the technical and legal aspects of Chapala I, I received a lot of feedback from the ELAW alliance, which was with me throughout the process. I was also invited to the University of Nevada to present the case, by Professor John Miller, and at**

**the Public Interest Conference at the University of Oregon. Living Lakes, through Marion Hammler and the entire networks of experts, also provided feedback on Chapala II.**

**In conclusion, for the case of Lake Chapala and its basin, international support was very important and relevant.**

16. Approximately how much time went into the preparation of your submission?

**I was working intensively on the case in research projects for two years, to build and document the case. I continue to study the case today.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**Yes. It apprised the Ministers of the serious contamination of the Lerma-Chapala-Santiago-Pacific basin.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**I think so, especially given the times and how factual records have been ruled on, perhaps the CEC should make recommendations and/or take on the role of trilateral environmental ombudsman. Likewise, as regards the follow-up of factual records, I think the policy impact, legislative improvement, and particularly the resolution of serious problems of systematic violations should be analyzed.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**It seems that, despite the times and the nature and impact of the submission process, this is an important instrument for wide-ranging environmental issues of collective or common concern, going beyond reparation of damages.**

## International Environmental Law Project - SEM-99-002 (Migratory Birds)

Questions:

|  | Yes | No                                  | I don't know                    |
|--|-----|-------------------------------------|---------------------------------|
| Did the Citizen Submission procedure seem to be useful?  |     | <input checked="" type="checkbox"/> |                                 |
| Were you satisfied with the CEC's handling of your petition?   |     | <input checked="" type="checkbox"/> |                                 |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |     | <input checked="" type="checkbox"/> |                                 |
| Did the CEC's resolution seem just?  |     | <input checked="" type="checkbox"/> |                                 |
| Did the CEC's response time seem appropriate?  |     |                                     |                                 |
| How much time did the procedure take (in months)?  |     |                                     | <b>About 30 months</b>          |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |     |                                     | <b>About \$2,000 to \$3,000</b> |
| Did the Citizen Submission procedure seem to be useful?  |     |                                     | <b>No</b>                       |

1. When and how did you learn about the citizen submission process?

**My organization at the time, the Center for International Environmental Law, provided legal support and analysis to a number of groups lobbying for environmental provisions to be included in the NAFTA. Thus, we were well aware of the SEM process.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**Since the Center for International Environmental Law was so involved in the negotiations concerning the NAAEC, it was very easy to find information about the SEM process. In particular, it was easy to find previous decisions of the Secretariat and Council relating to the SEM process. I have always found the CEC's website easy to use.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**Yes, I consulted the "Guidelines" but the copy I used was not from the CEC booklet "Bringing the Facts to Light." I either received a copy from someone working at the CEC or via the internet.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**I do not recall with certainty, but I do not think I contacted the Secretariat prior to preparing the submission.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**The SEM process was tailor made for our submission. Under U.S. law, citizens do not have the right to challenge decisions of agencies not to enforce law. Thus, the SEM process, which allows for investigations into failures to enforce environmental law effectively, provided a means to explore a nation-wide failure to enforce the Migratory Bird Treaty Act.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**We were well aware that the factual record would not lead to sanctions or recommendations. We had hoped that the United States government would engage us in a constructive conversation about how it could better implement and enforce the Migratory Bird Treaty Act against loggers. That never happened.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**No. the United States government did not take any steps to improve implementation and enforcement of the Migratory Bird Treaty Act against loggers. We know this because, a few years after publication of factual record, we filed a request under the U.S. Freedom of Information Act seeking any information about any changes to U.S. policy resulting from the SEM process. Each agency to which we submitted the response responded by saying "no."**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**No.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**No. It is possible that the continued US failure to enforce the Migratory Bird Treaty Act against loggers constitutes a total abdication of its enforcement responsibilities, and thus actionable, but the case would be very difficult to win.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**No. The response described a large number of things that the United States government does for birds, but it never addressed the core issue of the submission: enforcement of the Migratory Bird Treaty Act against loggers.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**No. See responses to questions 6 and 7.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**From submission to publication of the factual record, our submission took about 2.5 years. Many parts of the submission process occurred in a reasonable amount of time. For example, the Secretariat made a determination that our submission met the requirements of Article 14(1) and 14(2) within 5 weeks. In addition, the factual record was made public about 60 days after the Secretariat submitted the factual record to Council, as suggested by Article 15(7). The United States responded within about 68 days to the Secretariat's request to provide a response, a relatively quick response but still inconsistent with Article 14(3) which requires Parties to respond within 60 days.**

**The delay came between the Secretariat's request to prepare a factual record and the Council's vote instructing the Secretariat to prepare it. This took 331 days. Considering how frequently the Parties meet, this delay is unwarranted. If this was an isolated delay, further action would not be warranted. However, Council has frequently delayed votes instructing the Secretariat to prepare factual records. In Lake Chapala II, for example, Council took 876 days to vote. In Coal Fired Power Plants, it took 679 days. These delays are inexcusable. They significantly erode public confidence in the process. Moreover, they delay possible solutions to the problem alleged by submitters.**

**To improve the process, specific deadlines should be established in the Guidelines by which certain actions should take place. I recognize that the NAAEC itself does not impose such deadlines. However, to maintain public confidence in the process, Council must be willing to act by specific deadlines. There are no reasons why Council cannot**

**vote on a recommendation to prepare a factual record within 60 days, something it has done in several submissions such as Species at Risk, Cozumel, and BC Hydro.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**Yes, it would have been very helpful if the CEC could have stayed involved. Some kind of monitoring would be great, even if it was an annual request to the United States asking it to provide information on how it has followed up on the submission.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**I believe it cost \$2,000 to \$3,000.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**I don't recall receiving any assistance outside the professional staff at the Center for International Environmental Law and from other co-submitters.**

16. Approximately how much time went into the preparation of your submission?

**I don't recall. Because we involved law students in the process, it took more time than it otherwise would have.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**In some ways, yes, the SEM process was useful. For example, the factual record noted that California implements and enforces a state law similar to the Migratory Bird Treaty Act against loggers. The factual record provided examples of exactly how California does so. This was very useful. We had hoped that the United States government would use this information to improve implementation and enforcement of the Migratory Bird Treaty Act.**

**Overall, however, the factual record was not useful. This is primarily because Council reduced the scope of the factual record significantly. We had alleged that the United States had a nation-wide policy of not enforcing the Migratory Bird Treaty Act against loggers on both private and public land. We supported our allegations with a number of examples as well as other information showing that this failure to enforce resulted in an enormous number of birds being killed annually. However, Council allowed the Secretariat to investigate a failure to enforce the Act only with respect to two relatively insignificant instances involving the deaths of a small number of birds on private**

land. Thus, the much more significant allegations were never explored: that the United States had a policy not to even investigate possible violations of the Migratory Bird Treaty Act against loggers.

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**Yes. As noted above, specific deadlines should be required by which Council must vote to instruct the Secretariat to prepare a factual record and vote to make a factual record public. In addition, it would be helpful to have specific deadlines for the Secretariat to determine whether submitters have met the requirements of Article 14(1) and 14(2). While this was not an issue in our submission, imposing specific deadlines would give submitters the assurance that their submission will be reviewed in a timely manner.**

On the substance, many things could be done, including the following:

The Guidelines should make clear that the Secretariat alone has the authority to define the scope of the factual record.

The Guidelines should clear that the Secretariat alone has the authority to determine whether the submitters have provided “sufficient information” to allow the Secretariat to review the submission. While this was not at issue in the *Migratory Birds* submission, it has in others. Article 14(1) clearly grants this authority to the Secretariat but Council has usurped this authority in some submissions.

As has been recommended by many scholars, the factual record could include recommendations for improving enforcement if there is in fact a failure to enforce environmental law effectively. I note that this is required by Article 17.8.8 of the United States-Dominican Republic-Central America Free Trade Agreement.

In addition, it would be useful to determine, after some period of time, whether enforcement has improved.

Of course, it is possible that the adoption of these recommendations will only make the Parties and Council more adversarial in their approach to submissions. It may be that the entire process needs to be re-thought. For example, the US National Advisory Committee (NAC) has proposed to the U.S. Environmental Protection Agency a non-adversarial, cooperative mechanism for the resolution of environmental problems identified by citizens (Advice 2007-1, (May 24, 2007)). This “problem-solving” process would allow citizens to approach the Secretariat with issues unrelated to enforcement failures and would not seek to assign blame for the specified environmental concern. Instead, the process would help resolve environmental problems. As the US NAC wrote:

[T]he Secretariat would work with the requestors and the Party or Parties concerned to resolve the issue. The Secretariat’s functions would vary depending on the nature of the



issue. It would seek to identify technology, information, financing, or other resources and catalyze resolution of the problem. (Those resources could be available through governments, businesses, academic institutions, non-profit institutions, international organizations, etc.) In some cases, it might simply pass on such information to the requestors; in others, it might facilitate direct contacts between the requestors and other interested parties; in still others, it might prepare a short report outlining an approach that all interested parties might consider taking. Finally, in some cases it might determine after further consideration that it cannot assist with resolution of the problem.

At its core, this proposal attempts to address the central issues that matter to citizens: that their voices are heard and that officials respond to their concerns in a meaningful way. The proposal upends the nature of the citizen submission process by altering the nature of the process. Instead of an allegation that the government has failed to enforce environmental law, the process seeks ways to resolve specific environmental concerns. As such, the proposal would help renew the spirit of cooperation that has been lost in the NAAEC. This could perhaps be implemented through Article 13 of the NAAEC.

Another possible approach would focus the submission process on the scale effects of free trade. Under this approach, citizens could seek review of the effects of trade liberalization on the environment. As with Article 13 reports under the NAAEC, the Secretariat could assemble experts to ascertain whether the environmental impacts were, in fact, caused by trade. If they were, then the Secretariat could propose measures, including recommendations for capacity building and technology, to mitigate those impacts. As with the previous NAC's proposal, this proposal seeks to eliminate the hostility that pervades the current submissions process by changing the focus of the process. This proposal does not cast blame on any particular agency, official or company for environmental wrongdoing. Rather, it asks whether a particular policy or measure is adversely affecting the environment.

19. Do you have any other comment or recommendations regarding the citizen submission process?

All my experiences with Secretariat staff involving the submissions process have been positive. Secretariat staff have been helpful and courteous. Also, my review of a substantial number of Secretariat responses and factual records indicates that the Secretariat has implemented the SEM process with great diligence and fairness. I see no bias towards governments or submitters. As my comments make clear, I hope, my misgivings with the process are directed at Council.

## Lake Ontario Waterkeeper - SEM-03-005 (MONTREAL TECHNOPARC)

Questions:

|  | Yes        | No         | I don't know                                 |
|--|------------|------------|--|
| Did the Citizen Submission procedure seem to be useful?  | <b>x</b>   |            |  |
| Were you satisfied with the CEC's handling of your petition?   | <b>x</b>   |            |  |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      | <b>x</b>   |            |  |
| Did the CEC's resolution seem just?  | <b>x</b>   |            |  |
| Did the CEC's response time seem appropriate?  | <b>CEC</b> | <b>Gov</b> |  |
| How much time did the procedure take (in months)?  |            |            |  |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |            |            | <b>\$50k - investigation and preparation</b> |
| Did the Citizen Submission procedure seem to be useful?  |            |            |  |

1. When and how did you learn about the citizen submission process?

### **Through the Free Trade Agreement and CEC website and outreach**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

### **Fairly clear from the CEC website**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

### **Process and rules outlining application are clear and professional May not be as easy for a smaller organization**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

### **Yes - always contacted CEC to ensure submission was in accordance with procedure CEC staff were always very helpful and professional.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**SEM Process was last resort as they ran out of other alternatives to deal with environmental concerns.**

**Also, the Citizen Submission Process allows charitable organizations to participate in a quasi-judicial process to raise awareness of environmental concerns without lobbying (which they are not allowed to do).**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**The Factual Record is the only outcome from the SEM process and is a good mechanism to bring to light environmental concerns.**

**Wish CEC had more freedom to point fingers, assess fault and impose sanctions but clearly this is not part of their mandate.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**The submission process brought new attention to an environmental concern putting it “back on the front burner”. An excellent factual record was produced with the Tecnopark submission which subsequently was used as an election issue.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government’s decisions with respect to enforcing those laws? If so, in what way?

**The Factual Record provides a comprehensive review of an environmental issue, related legislation and action taken (if any). Anyone new to this environmental issue gets a thorough summary of all relevant material. The Factual Record provides an important step that could lead to improved environmental protection with better adherence to environmental laws.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**Yes - legal options are always pursued prior to a SEM submission as CEC requires all other options to be pursued first. The SEM submission process is considered a last resort.**

**In Canada, the Attorney General has the authority to stop legal action and further appeal leaving nowhere else to go but SEM Process.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party’s positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**No, the Government response was not helpful. The responses were insulting ('we know best' and 'how dare you challenge our decision'). It appears the government engages in a standard response which consists of deny the problem, defer the response, diminish the environmental impact and applaud other environmental initiatives.**

**It appears the government views the SEM submission process as a bureaucratic process they wish they could get rid of. They fear the transparency that occurs with the factual record and the potential criticism.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**Yes - there was contact with government officials prior to SEM with dispute resolution attempts, court etc. The file is already dead when it goes to CEC. Government officials appear to be more focussed on issue management that compliance with environmental laws. Contact with these officials continues as issues have not been resolved.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**The length of time for the CEC process was fine while it took much too long for the Minister's to respond. The inclusion of a specific timeline for Ministers to respond would be helpful.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**The posting of the Factual Record by CEC is a useful education tool for the public. It would be good if CEC could do a periodic review of submissions to determine if any action has been taken to address environmental concerns raised in submissions - eg - every 2 years**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**On average, it cost \$50,000 per submission including investigation, travel, samples, document search and preparation of the submission. While there is no specific return for a charity, the submission was still worth it in order to have the Factual Record produced.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**No assistance was provided. It would be great if countries provided some restitution for hard costs such as travel, gathering of samples, preparation of submissions and disbursements for submissions that proved to be helpful to the government and the public. This funding would allow charitable organizations to recover some of their costs.**

16. Approximately how much time went into the preparation of your submission?

**A minimum of 500 hours for senior staff per submission went into preparation of submission.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**Yes the process was useful. As a charity, it provides the only forum to raise environmental concerns. As such, it provides an essential and useful tool for charities to promote government enforcement of their environmental legislation.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**The mechanism needs to be revised to require governments to comply with specific time limits and not be able to stall the process.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**No further comments**

## North Coast Steelhead Alliance - SEM-09-005 (Skeena River Fishery)

Questions:

|  | Yes                  | No        | I don't know          |
|--|----------------------|-----------|-----------------------|
| Did the Citizen Submission procedure seem to be useful?  |                      |           | <b>Not in the end</b> |
| Were you satisfied with the CEC's handling of your petition?   |                      | <b>No</b> |                       |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |                      | <b>No</b> |                       |
| Did the CEC's resolution seem just?  |                      | <b>No</b> |                       |
| Did the CEC's response time seem appropriate?  |                      | <b>No</b> |                       |
| How much time did the procedure take (in months)?  | <b>22</b>            |           |                       |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? | <b>C\$ 10,191.00</b> |           |                       |
| Did the Citizen Submission procedure seem to be useful?  |                      |           |                       |

1. When and how did you learn about the citizen submission process?

**The Submitter learned of the CEC process in March, 2009, through a member of the Submitter's legal team who was a former intern with the CEC Secretariat.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**Given the Submitter's advisor's familiarity with CEC processes, sufficient information was available on the CEC website to proceed with a submission.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**Given the Secretariat's use of its previous decisions as precedents, it would be useful to annotate the various sections of the Guidelines with references to relevant previous decisions.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**No.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**At the time, the Submitter thought that bringing an international spotlight on the matters raised would prompt the national government to reform its policy and procedures. This turned out not to be the case.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**The Submitter expected that its submission would result in a factual record, which, although lacking in legal clout, would help pressure the government to make reforms.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**The situation addressed by the Submitter was apparently not affected by its CEC submission. A few days after receiving notice that the Secretariat would not be recommending a factual record, a national newspaper reported that the matter of the submission (non-enforcement of commercial salmon fishers' legal requirement to release by-catch species) was continuing in the area. This media report was not informed or prompted by the Submitter or any of its advisors.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**The original submission documented a correlation between the non-enforcement of relevant environmental laws and political pressure on the enforcing agency by and on behalf of the non-complying fishers. As noted above, the Submitter's understanding of that correlation has not changed as a result of the CEC process.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**The laws that were the subject of the submission are regulatory offences. As complaints and information given to the relevant decision-makers and to the media did not produce change, the only domestic legal option remaining was to initiate a private prosecution. As private prosecutions of offences are invariably stayed by the Crown prosecutor's office, this did not seem to be a useful course to pursue.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**The government response contained too many misrepresentations to be helpful to either the Submitter or to the Secretariat. For example: among other things, the submission raised the issue of the government putting considerable more effort into enforcing fishery regulations in the Pacific North Coast aboriginal and recreational fisheries than in the commercial sector. The government response attempted to deny this bias by presenting data for a four-year period that purported to show that enforcement effort was equally divided among commercial and recreational fisheries. The data set, however, was from only one of four detachments on the North Coast; the one that governed most of the salmon gillnet fishery subject to the submission and relatively little of the recreational fishing activity, which takes place within the two upriver detachments. Similarly, the government response reported that by-catch revival “improved drastically” in 2009, but failed to mention that in that year there was virtually no commercial fishery due to low salmon returns.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**The Submitter’s contact with government prior to making the submission consisted of letters and e-mails requesting greater enforcement, as well as requests for enforcement information. Details of the enforcement situation were eventually obtained through Freedom of Information requests.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**The process from submission to the decision not to approve a factual record took 22 months. Given that the main force of the CEC process is to “shame” governments into taking appropriate enforcement action, this is clearly far too long as the issue would likely become stale by that time.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**As the Submitter only received notice a couple of weeks ago that the CEC process was concluded, it is too soon to respond to this question.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?



**The direct costs to the Submitter were C\$10,191.00. This does not include volunteer time and costs, which were not recorded. Given that the process in the end proved to be unsatisfactory, the costs exceeded the benefits.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**The submission was prepared by a lawyer and legal researcher, which was absolutely necessary given the complexity of the arguments needed to show that the matter being submitted was an environmental one and not a resource management one.**

16. Approximately how much time went into the preparation of your submission?

**63 hours legal research and preparation time.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**In the end, the process was not a useful forum for the reasons outlined above.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**In the Submitter's experience, the overriding deficiency in the process is the inability of the Submitter to reply to the government response to its submission. Such a right of reply to facts and argument presented contrary to a submitted interest is fundamental to many, if not most, legal processes in those jurisdictions under the rule of law. For this submission, excluding a right of reply resulted in misrepresentation in the government response that would not be apparent without detailed knowledge of local institutional arrangements and subsequent enforcement history. Such misrepresentations would not be readily discernable by reviewers from outside of the region.**

**This procedural deficiency can be cured by changing the CEC governing agreement or if that is beyond redemption, by adopting an informal review of the government responses among CEC staff and the original submitter. Alternatively, the CEC could adopt a very precautionary approach that allows for the government having the last word. Unfortunately, the fact that the Secretariat apparently has not recommended a single submission for preparation of a factual record since 2007 (the awkward example of the Species at Risk submission excepted), does not offer much hope in that direction.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

## Pro San Luis Ecológico, A.C. - SEM-07-001 (Minera San Xavier)

Questions:

|  | Yes      | No   | I don't know |
|--|----------|--|--------------|
| Did the Citizen Submission procedure seem to be useful?  |          | <b>x</b>                                   |              |
| Were you satisfied with the CEC's handling of your petition?   |          | <b>x</b>                                   |              |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      |          | <b>x</b>                                   |              |
| Did the CEC's resolution seem just?  |          | <b>x</b>                                   |              |
| Did the CEC's response time seem appropriate?  | <b>x</b> |  |              |
| How much time did the procedure take (in months)?  |          | <b>Around 6</b>                            |              |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |          | <b>Approximately 30,000 Mexican pesos.</b> |              |

1. When and how did you learn about the citizen submission process?

### Via Internet

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**I followed the instructions and then at the first presentation I was given corrections by the CEC.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**I looked them up before preparing my submission and they looked right.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**I didn't have any prior contact. There was no contact until after the submission was submitted.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**I thought it would be more useful.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**I knew beforehand that the CEC is not an intervenor, but I thought there would be greater formality and authority in its recommendations.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**The effect was not the one I expected. It had aggressively affected the company now called New Gold Minera San Xavier S.A de C.V.**

**The reaction was in the sense that a very selective press conference was held, where two people were introduced, said to be Latin America's top specialists on NAFTA Chapter 11 claims, who threatened to sue the Mexican government before an international panel for something like 6 billion dollars if the Minera San Xavier's authorization to operate its mining project were denied in any way.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**Yes, I confirmed the government's weakness, corruption and protectionist policies towards multinational corporations in sensitive issues such as the preservation and protection of biodiversity that we are a fundamental part of as human beings, which this kind of company puts in real danger of extinction.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**Yes. Before the submission was made organized society had already won its case before the Superior Chamber of the Federal Court for Tax and Administrative Justice, in which the authority issued a final ruling voiding the San Xavier mining project as a whole, as it violated various Mexican laws.**

**With the complicity and corruption of the three levels of government, the company has been operating without authorizations and ignoring court orders. That was practically the basis for the submission, but unfortunately it was not properly handled by the CEC.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**Yes. The response was as expected; it failed to address the fundamental issue and claimed that the case was in the courts, while the ruling has been issued. The CEC accepted the Mexican authorities' baseless claims without considering the documentary evidence we supplied.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**There was no friendly contact with the government. Repression and persecution was unleashed against the people opposing the mining project. We had 6 people convicted of alleged crimes for their opposition to the project, and a good number threats, beatings and attempted murders by paramilitary staff working for the Minera San Xavier company. One colleague sought exile, which was later granted in Canada.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**I can't specifically recall the time right now, but I think it was normal and reasonable.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**The environmentalists opposing these kinds of activities are organizing at the national level to face not only the company in question, but around 800 companies that have invaded our country and threatened to destroy it. The term destruction is not an exaggeration; just visit some of the projects of this kind in different places to understand what's in store for our country.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**There wasn't any kind of correspondence, but San Luis Potosi society covered the cost involved in making the submission, with modest contributions.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**There was great availability of the CEC to refine the submission document.**

16. Approximately how much time went into the preparation of your submission?

**Around 10 days.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**I sincerely believe that the mechanism, where the CEC is not an intervenor, lacks any legal authority. Moreover, even if it had such authority, my country faces a crisis in the application of the rule of law—it is in the hands of organized crime, including high-ranking government officials and military. In the last four years there have been more than 50,000 unsolved murders. Corruption is a way of life for different official areas. We cannot think of a solution based in law. The Canadian mining companies are known here as creators of organized industrial crime.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**I believe it is necessary to modify it in order that it may effectively give way to the defense of the environment within the scope of the articles, penalizing governments, such as our own when it fails to observe the treaties, within the CEC's jurisdiction.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**Since this is an environmental issue, I would recommend that the personnel responsible for these tasks receive training in the corresponding country's environmental laws, and especially something we are required to overlook—honesty.**

**Waterkeeper Alliance - SEM-03-001 (Ontario Power Generation) - SEM-03-005 (Montreal Technoparc) - SEM-04-005 (Coal-Fired Power Plants)**

Questions:

|  | Yes      | No       | I don't know                 |
|--|----------|----------|------------------------------|
| Did the Citizen Submission procedure seem to be useful?  | <b>x</b> |          |                              |
| Were you satisfied with the CEC's handling of your petition?   |          |          | <b>x</b>                     |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      | <b>x</b> |          |                              |
| Did the CEC's resolution seem just?  |          |          | <b>x</b>                     |
| Did the CEC's response time seem appropriate?  |          | <b>x</b> |                              |
| How much time did the procedure take (in months)?  |          |          | <b>Varied w/ submissions</b> |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? |          |          | <b>Staff time</b>            |
| Did the Citizen Submission procedure seem to be useful?  |          |          | <b>Generally</b>             |

1. When and how did you learn about the citizen submission process?

**I first learned of the citizen submission process about 10 years ago when I worked with the NYS AG's office on a filing related to Ontario coal-fired power plants.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**I found the submission process itself to be fairly well explained in the materials located on the CEC's website in the submission materials. Those, along with the full record of past submissions and CEC determinations were very helpful in crafting my submissions.**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**I did rely on the guidelines and found them helpful. It was a few years back, but I seem to recall that they did not cover some of the more nuanced issues surrounding a submission, like the issue of "exhaustion".**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**I do not recall contacting the Secretariat prior to preparing the submission, but did have contact after and during the submission process.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**I have done 3 submissions, and in each case thought the SEM process useful for different reasons. On the Technoparc case, it was a matter of resources and some frustration with the Canadian Fisheries Act process. With the Ontario and US Coal-Fired Power Plants submissions, I thought the issues raised were broad enough and international enough to warrant the CEC's attention.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**I knew going in that the end result was a factual record and had no expectations for sanctions. I think that is one of the things that needs to change about the SEM process.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**I had mixed results for my 3 submissions, but, ultimately, I think that in each situation, the conditions of which I complained remained largely unchanged.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**Not really - I really needed to learn the laws before being able to effectively use the SEM process.**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**I did pursue side options related to one of my filings, but thought the SEM process would add to the overall effort to force changes.**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**I was not impressed by the government filings in any of the submissions, sensing a reluctance to admit problems and a need to make excuses rather than responding in ways to correct problems.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**No.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**It varied from several months to several years. I think, particularly in the case of the US power plant submission, politics played a role in creating a significant lag between the time of the submission and any real activity in the matter. If the SEM process is to have any value, it must be de-politicized.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**I have engaged little following the close of the processes on my submissions given the time and resource constraints of the non-profit world. I had wished that the CEC would be more engaged in post-submission efforts.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**The costs were mostly time and, given the outcomes, I would likely hesitate before embarking on another submission.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**None, really, except the time form colleagues.**

16. Approximately how much time went into the preparation of your submission?

**Anywhere from many weeks to several months. I think the process can be streamlined and some of the burden taken off the submitters by making it a more interactive process, with affirmative involvement by the CEC in the submission process.**



17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**It was at the time, but again, I'm not sure I would quickly turn to it again for the reasons discussed above.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**Yes, there are several ways it should be amended.**

19. Do you have any other comment or recommendations regarding the citizen submission process?

**I am willing to have a discussion about thoughts and recommendations in the future.**

## Yvon Otis - SEM-08-002 (Air Pollution in suburban Montreal)

Questions:

|  | Yes             | No       | I don't know |
|--|-----------------|----------|--------------|
| Did the Citizen Submission procedure seem to be useful?  |                 | <b>x</b> |              |
| Were you satisfied with the CEC's handling of your petition?   | <b>x</b>        |          |              |
| Did the CEC's resolution of your petition seem technically and legally appropriate?                                      | <b>x</b>        |          |              |
| Did the CEC's resolution seem just?  | <b>x</b>        |          |              |
| Did the CEC's response time seem appropriate?  | <b>x</b>        |          |              |
| How much time did the procedure take (in months)?  | <b>1</b>        |          |              |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? | <b>20 \$can</b> |          |              |

1. When and how did you learn about the citizen submission process?

**I no longer remember when that was.**

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

**Non**

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

**Yes, I followed the instructions in the guidelines.**

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

**Yes, I contacted the Secretariat for general information.**

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

**To bring the problem to public attention.**

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

**No, I only sought to bring the problem to public attention.**

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

**Unfortunately, there was very little media coverage.**

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

**Non**

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

**Non**

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

**I received a response from the Ministry of the Environment of Quebec which said nothing substantive.**

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

**Non et non.**

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

**About one month and my complaint was dismissed.**

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

**None. I don't know.**

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

**In total, it cost me less than \$20 Cdn.**

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

**No. None.**

16. Approximately how much time went into the preparation of your submission?

**25 hours.**

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

**The media didn't do their job.**

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

**I don't know.**

19. Do you have any other comment or recommendations regarding the citizen submission process?