

[Unofficial Translation]

In accordance with Articles 13, 14, and 15 of the North American Agreement on Environmental Cooperation (NAAEC), the Submitters solemnly assert that the information presented herein is true and correct:

Name and domicile of submitters: ACADEMIA SONORENSE DE DERECHOS HUMANOS, A.C. and LIC. DOMINGO GUTIÉRREZ MENDÍVIL, domiciled for purposes of receiving notice at: Dr. Hoeffer No. 42-A, Colonia Centenario, 83260 Hermosillo, Sonora, Mexico, telephone: (662) 2171124; fax: (662) 2171034.

Purpose of the submission: **TO REQUEST THAT THE CEC CONDUCT A FORMAL INVESTIGATION TO VERIFY FAILURES BY MEXICO TO EFFECTIVELY ENFORCE ARTICLE 4 OF THE CONSTITUTION OF THE UNITED MEXICAN STATES; ARTICLES 5 PARAGRAPHS II, V, XVIII AND XIX, 7 PARAGRAPHS III, XII AND XIII, 8 PARAGRAPHS III, XI, XII AND XV, 10, 112 PARAGRAPHS II AND IV, AND 159 BIS 3 OF THE GENERAL ECOLOGICAL BALANCE AND ENVIRONMENTAL PROTECTION ACT (*LEY GENERAL DEL EQUILIBRIO ECOLÓGICO Y LA PROTECCIÓN AL AMBIENTE—LGEEPA*); ARTICLES 3 PARAGRAPH VII, 4 PARAGRAPH III, 13, 16, AND 41 OF THE REGULATION TO THE LGEEPA RESPECTING AIR POLLUTION PREVENTION AND CONTROL; ARTICLES 13(A) PARAGRAPH I AND (B) PARAGRAPH VI, AND ARTICLE 20 PARAGRAPH VII OF THE GENERAL HEALTH ACT (*LEY GENERAL DE SALUD*); ARTICLES 73, 75, 85 (B) PARAGRAPH I, 138, AND 139 OF THE STATE OF SONORA ECOLOGICAL BALANCE AND ENVIRONMENTAL PROTECTION ACT; ARTICLES 15 PARAGRAPH VI AND 18 PARAGRAPH VI OF THE STATE OF SONORA HEALTH ACT; ARTICLE 9 PARAGRAPH II OF THE**

STATE OF SONORA CIVIL PROTECTION ACT; MEXICAN OFFICIAL STANDARDS NOM-020-SSA1-1993, NOM-021-SSA1-1993, NOM-022-SSA1-1993, NOM-023-SSA1-1993, NOM-024-SSA1-1993, NOM-025-SSA1-1993, NOM-026-SSA1-1993, NOM-048-SSA1-1993, NOM-040-SEMARNAT-2002

(formerly NOM-040-ECOL-2002; NOM-CCAT-002-ECOL/1993), **NOM-043-SEMARNAT-1993** (formerly NOM-043-ECOL-1993; NOM-CCAT-006-ECOL/1993), **NOM 085-SEMARNAT-1994**, **NOM-121-SEMARNAT-1997** (formerly NOM-121-ECOL-1997), **NOM-041-SEMARNAT-1999** (formerly NOM-041-ECOL-1999; NOM-CCAT-003-ECOL/1993), **NOM-042-SEMARNAT-1999** (formerly NOM-042-ECOL-1999; NOM-CCAT-004-ECOL/1993), **NOM-044-SEMARNAT-1993** (formerly NOM-044-ECOL-1993, NOM-CCAT-007-ECOL/1993), **NOM-045-SEMARNAT-1996** (formerly NOM-045-ECOL-1996; NOM-CCAT-008-ECOL/1993), **NOM-048-SEMARNAT-1993** (formerly NOM-048-ECOL-1993; NOM-CCAT-012-ECOL/1993), and **NOM-050-SEMARNAT-1993** (formerly NOM-050-ECOL-1993; NOM-CCAT-014-ECOL/1993).

Case giving rise to the submission: Environmental pollution in HERMOSILLO, SONORA.

Governmental bodies responsible for enforcement of the law: Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat); Federal Ministry of Health (*Secretaría de Salud*); Office of the Federal Attorney for Environmental Protection (*Procuraduría*

Federal de Protección al Ambiente— Ministry of Urban Infrastructure and Profepa); Environment, and Ministry of Health; State of Sonora Executive Branch, Municipality of Hermosillo, Sonora.

I. PURPOSE

Academia Sonorense de Derechos Humanos, A.C. and Domingo Gutiérrez Mendivil (hereinafter, "the Submitters") hereby request that the Secretariat of the Commission for Environmental Cooperation (hereinafter, "the Secretariat"), taking as a basis this citizen submission, obtain a response from the government of Mexico and obtain authorization from the CEC Council to prepare a factual record in accordance with Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC). Simultaneously, the Submitters request that the Secretariat produce a report in accordance with NAAEC Article 13. The submission is made on two fundamental grounds: 1) Mexico is failing to effectively enforce its environmental law in relation to air pollution control in the city of Hermosillo, Sonora, as per NAAEC Articles 14 and 15, and 2) the matter in issue is related to the cooperative functions of the Commission for Environmental Cooperation (hereinafter, the "CEC") under NAAEC Article 13.

II. FACTUAL BACKGROUND

1. Semarnat is failing to: **a)** enforce and promote compliance with Mexican official standards governing air pollution control in the state of Sonora and, in particular, in the municipality of Hermosillo; **b)** recommend to the government of the state of Sonora that it: **1.** take measures to prevent and control air pollution on property and areas under state jurisdiction; **2.** determine, in the state urban development plan, the zones in which polluting industrial facilities may be sited; **3.** monitor and enforce, within the limits of its jurisdiction, the Mexican official standards governing air pollution control; **4.** enact the relevant environmental technical standards; **5.** establish and operate or, as applicable, authorize the establishment and operation of inspection centers for motor vehicles used in mass transit under concession from the state, in accordance with the environmental technical standards; **6.** enact any regulations, circulars, and other generally applicable provisions that may be necessary to provide, within its administrative purview, for strict observance of the federal and state environmental law, and in particular those provisions governing air pollution prevention and control, and that it update the state environmental plan; **c)** recommend to the municipality of Hermosillo that it: **1.** take air pollution prevention and control measures on property and in areas under municipal jurisdiction; **2.** determine, in the municipal urban development plan, the zones in which polluting industrial facilities may be sited; **3.** monitor and enforce, within the limits of its jurisdiction, the Mexican official standards governing air pollution control; **4.** establish mandatory vehicle inspection programs, and establish and operate or, as applicable, authorize the establishment and operation of mandatory vehicle inspection centers, in accordance with the environmental technical

standards; **5.** create the municipal environment commission contemplated in Article 138 of the relevant local act; **6.** enact any bylaws, circulars, and other generally applicable provisions that may be necessary to provide, within its administrative purview, for strict observance of federal and state environmental law, and in particular, the air pollution prevention and control bylaw, the municipal environment bylaw, the municipal environmental protection plan, the environmental contingency response plan, and an air quality management plan. **Profepa and the federal Ministry of Health are failing to:** enforce the Mexican official standards governing air pollution control in the state of Sonora and, in particular, in the municipality of Hermosillo; the Ministry of Health is failing to establish and keep up-to-date a national air quality information system containing data for the city of Hermosillo, and is failing to enforce Mexican Official Standard NOM-048-SSA1-1993, establishing the standardized method for assessment of health risks arising from environmental factors, since it has never conducted any assessment of the impact of the Cytrar hazardous waste facility on the population of Hermosillo. **The State of Sonora Executive Branch, Ministry of Urban Infrastructure and Environment, and Ministry of Health are failing to:** **a)** take measures to prevent and control air pollution on property and areas under state jurisdiction; **b)** determine, in the state urban development plan, the zones in which polluting industrial facilities may be sited; **c)** monitor and enforce, within the limits of their jurisdiction, the Mexican official standards governing air pollution control; **d)** enact the relevant environmental technical standards; **e)** establish and operate or, as applicable, authorize the establishment and operation of inspection centers for motor vehicles used in mass transit under concession from the state, in accordance with the environmental technical standards (which do not exist); **f)** enact any regulations, circulars, and other generally applicable provisions that may be necessary to provide, within their administrative purviews, for strict observance of state environmental law, and in particular those provisions governing air pollution prevention and control, and they have also ceased to update the state environmental plan; **g)** propose plans for the verification, monitoring, and control of the parameters set out in Mexican Official Standards NOM-020-SSA1-1993 to NOM-026-SSA1-1993. **The municipality of Hermosillo, Sonora is failing to:** **a)** take measures to prevent and control air pollution on property and areas under municipal jurisdiction; **b)** determine, in the municipal urban development plan, the zones in which polluting industrial facilities may be sited; **c)** monitor and enforce, within the limits of its jurisdiction, the Mexican official standards governing air pollution control; **d)** establish mandatory vehicle inspection programs, and establish and operate or, as applicable, authorize the establishment and operation of mandatory motor vehicle inspection centers, in accordance with the environmental technical standards (which do not exist); **e)** create the municipal environment commission contemplated in Article 138 of the relevant local act; **f)** enact any regulations, circulars, and other generally applicable provisions that may be necessary to provide within its administrative purview for strict observance of state environmental law, and in particular the air pollution prevention and control bylaw, the municipal environment bylaw, the municipal environmental protection plan, the

environmental contingency response plan, and an air quality management plan; **g)** reduce or control air pollutant emissions, whether from artificial or natural and from fixed or mobile sources, in order to guarantee satisfactory air quality for public well-being and environmental stability. **The State of Sonora Human Rights Commission, the National Human Rights Commission, the Second District Court of the State of Sonora, and the Third Collegiate Court of the Fifth Circuit are failing to:** properly apply the environment-related legal provisions in their decisions, as shall be explained below, although it is understood that such authorities may not be deemed to have responsibility for this matter, as the Secretariat may determine.

2. Among the legal actions aimed at remediation (cleanup) of the Cytrar toxic waste dump, on 3 December 1998 we requested of the municipality and of the municipal president of Hermosillo that they inform us of whether or not air quality monitoring is being done in the capital of the state of Sonora for the purpose of determining the negative environmental impact of emissions from the above-mentioned containment facility.¹

3. In response to the foregoing, the City Council (*Cabildo*) of Hermosillo, meeting in ordinary session on 25 February 1999, resolved to provide the following information: that the last studies to determine the concentration of total suspended particles (TSP) and particles less than 10 μ (PM-10) in the ambient air of the city of Hermosillo were done by the federal Ministry of the Environment, Natural Resources, and Fisheries (*Secretaría de Medio Ambiente, Recursos Naturales y Pesca*—Semarnap) in 1995; that the air quality records possessed by the municipality are those deriving from sampling performed 1 December 1997 to 30 November 1998 in the environs of what is today the sanitary landfill, to determine the impact in that area of particles issuing from the operation thereof, and that since the beginning of that municipal administration, the federal government, acting by the National Institute of Ecology (*Instituto Nacional de Ecología*—INE), **has claimed to be decentralizing air quality monitoring in urban areas, involving the municipal governments in such a way that they take charge of the administration of such programs.**²

4. In a statement to the media, the director of urban development of the commune, Fernando Landgrave, acknowledged that no air pollution records whatsoever were being kept because they did not have the necessary equipment. He also said that "an attempt will be made to include in the expense budget for the next year an allocation of 100,000 pesos for making this equipment operational." (*Cambio*, 5 December 1998). However, Municipal President Jorge Valencia stated that it was not so important to repair the monitoring equipment; rather, "what is important is to obtain money to pave and improve the city." He added that there is no need to measure air quality to realize that everybody is wheezing from bronchial disease and asthma caused by excessive dust pollution (*Cambio*, 8 December 1998). This latter statement reveals that Mr. Valencia could not even conceive that the

atmosphere of the city of Hermosillo contained and still contains, in what he calls "dust," compounds that are extremely hazardous to human health, including ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead. These enter the respiratory tract in the form of total suspended particles (primarily particles less than 10 μ) generated by fixed and mobile sources such as dye shops, auto repair shops, assembly plants (*maquiladoras*), cement plants, and motor vehicles. Now, a power plant must be added to this list.³

5. It is powerfully eloquent that, according to the official version, air quality monitoring "just happened to" cease during the same period in which larger quantities of contaminated slag were coming in to Cytrar. Even stranger is the information published on the matter if one considers that in early 1998, then deputy official of Semarnap César Catalán Martínez stated that "the local municipality has now earmarked a special budget for air quality monitoring and improvement" (*El Imparcial*, 14 and 18 January 1998).

6. Investigations into the Cytrar toxic waste dump case have pointed up numerous failures to enforce as well as the existence of outdated legal instruments. Thus, as mentioned previously, there is no up-to-date state environmental plan, nor has the municipality of Hermosillo enacted an environment bylaw, in contrast with other municipalities of Sonora which do have such an instrument; much less does it have an air quality management plan, and it has not enacted an environmental contingency response plan to deal with episodes like the thermal inversion that took place on 9 December 1998, a phenomenon that has recurred several times since.

7. As a consequence of the lack of air quality monitoring in Hermosillo, the Sonora Ministry of Health has refrained from conducting epidemiological studies to determine the severity of the negative impact of air pollution on the health of Hermosillo residents.

8. Ultimately, there is no money for air quality monitoring in Hermosillo, with the conclusion that the people "are wheezing... from excessive dust pollution," yet the municipality is required to conduct such monitoring under LGEEPA Article 8 paragraphs III and XII. Furthermore, it should be borne in mind that Mexican Official Standards NOM-020-SSA1-1993 to NOM-026-SSA1-1993, setting criteria for the assessment of ambient air quality with respect to ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, TSP, PM-10, and lead, published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) on 23 December 1994, provide that: "Within 180 calendar days of publication... the governments of the federated entities shall put forward plans for verification, monitoring, and control of the parameters established." This means that the government of the state of Sonora had to comply with this provision no later than mid-1995, but has not done so to date.

9. Similarly, the Mexican official standards originally known as NOM-CCAM-001-

ECOL/1993 to NOM-CCAM-005-ECOL/1993, establishing measurement methods for determination of the concentration of these pollutants, as well as the Mexican official standards originally known as NOM-CCAT-001-ECOL/1993 to NOM-CCAT-014-ECOL/1993, setting limits on air emissions for various pollutants, published in the DOF on 18–22 October 1993, hold Profepa, the state government, and the municipality responsible for their enforcement, but these entities have done nothing to comply with these provisions.

10. In response to the written request we made to him on 14 January 1999 to inform us as to whether air quality monitoring equipment was operational in Hermosillo and as to the municipality's compliance with the air pollution prevention and control measures it is obligated to implement, the Semarnap official in Sonora at that time, Juan Carlos Ruiz Rubio, in file no. DS-UAJ-095/99 of 26 February 1999, stated as follows, among other matters:

In regard to your request in point II, please note that **said air quality monitoring equipment is not operational since those funds are included within the decentralization process currently taking place from this ministry to the municipalities.**

In regard to the information you request in point III, consisting of a detailed report on compliance by the municipality with the air pollution prevention and control measures it is empowered to take, in this regard **it should be clarified that this authority is not competent to verify compliance with the legal provisions which, in accordance with its powers, it has transferred to the municipality,** and therefore that information must be requested from that order of government.

11. On 29 April 1999, a complaint was filed against the municipality of Hermosillo, Sonora with the State Human Rights Commission (*Comisión Estatal de Derechos Humanos*) for its failure to issue the municipal environmental protection plan and the municipal environment bylaw.

12. In its file no. 0309/99 of 6 May 1999 further to file no. CEDH/I/22/1/197/99, the First Inspector General (*Visitador General*) of the State Human Rights Commission notified us that the complaint had been dismissed.

13. On 13 May 1999, an administrative appeal (*recurso de impugnación*) was filed against the dismissal.⁴

14. In file no. 16614⁵ of 4 June 1999 further to file CNDH/121/99/SON/I00159.000, the Coordinator General of the Office of the President of the National Human Rights Commission, Adolfo Hernández Figueroa, gave notice that the appeal was dismissed, presenting the grounds for dismissal as transcribed below:

In effect, as may be discerned from Title Six, Chapter One of the State of Sonora Ecological Balance and Environmental Protection Act, the enactment of the instruments to which you refer is contemplated as a regulatory power of the municipalities, a power which, given its nature, **translates into a discretionary act in so enacting and does not give rise to an obligation to do so within a given period of time, something which is not specifically set out in said Act, for as is well known, provisions granting powers do not impose obligations.**

From the foregoing, it may be inferred that the authority's inaction as regards the enactment of a law cannot produce legal effects vis-à-vis anyone and, consequently, affect their human rights in any legal sense.

15. On 12 July 1999, indirect amparo no. 620/1999 was filed against this determination. The amparo was heard by the Second District Court of the State of Sonora. The Court dismissed the proceeding in a decision handed down on 13 December 1999.⁶ The fourth section of the decision by Rosa Eugenia Gómez Tello Fosado reads in substance as follows:

Moreover, Transitory Article 2 of the General Ecological Balance and Environmental Protection Act provides:

“...Until such time as the local legislatures enact the laws, and the municipalities the ordinances, bylaws, and policing and good government provisions (*bandos de policía y buen gobierno*) governing the matters which, according to the provisions of this act, correspond to state and municipal jurisdiction, the Federation is responsible for enforcing this law in the local context, coordinating its actions for that purpose with the state authorities and, with their participation, with the relevant municipalities, as applicable.”

Transitory Article 4 of the State of Sonora Ecological Balance and Environmental Protection Act provides:

“Until such time as the incumbent of the Executive Branch and the municipalities of the entity enact the regulations, bylaws, and other generally applicable provisions contemplated in this Act, the regulations to the General Ecological Balance and Environmental Protection Act shall apply, as relevant.”

From the foregoing provisions it may be inferred that if the municipalities do not enact the ordinances, bylaws, and policing and good government provisions to regulate environmental protection, the Federation is responsible for enforcing the General Ecological Balance and Environmental Protection Act in the local context.

“Therefore, it must be concluded that the failure by the municipality of Hermosillo to issue the municipal environmental protection plan and to enact the municipal environment bylaw does not affect the complainant's legal interest, for the General Ecological Balance and Environmental Protection Act contains necessary and sufficient environmental protection measures to guarantee his right to development and well-being, since this provision applies in the event where the states or municipalities have not enacted laws governing this matter...”

16. An appeal (*recurso de revisión*) was filed against the decision in indirect *amparo* no. 620/1999 on 18 January 2000.⁷

17. On 31 January 2001, the Third Collegiate Court of the Fifth Circuit, composed of judges Epicteto García Báez, Gustavo Aquiles Gasca, and Elsa del Carmen Navarrete Hinojosa, in decision 223/2000, upheld the lower court's decision.⁸

18. In another connection, on 6 May 1999, a complaint under file no. CEDH/II/22/1/210/99 was filed with the State Human Rights Commission against the municipality of Hermosillo, Sonora for failure to conduct air quality monitoring and control in that city and to issue an environmental contingency response plan as well as an air quality management plan for Hermosillo.⁹

19. In a document of 16 July 1999, we responded to and took issue with aspects of the response issued by the Municipal President of Hermosillo in the above cited file **and expanded our initial complaint to include the government of the state of Sonora as a responsible authority.**¹⁰

20. The fact is that in a decision of 11 August 2000, the Second Inspector General of the State Human Rights Commission of Sonora, Gabriel García Correa, definitively dismissed the matter in file no. CEDH/II/22/1/210/99. It should be pointed out that the expansion of the complaint to include the government of the state of Sonora was never processed, on the grounds that the requirement set out in decisions of 10 August 1999 and 18 January 2000 was never met, yet notice of those decisions was given to a person who was never authorized by us to receive notice. In addition, the arguments wielded in dismissing the complaint never contradicted or raised questions as to the factual correctness of the irregularities denounced in the initial complaint. Subsequently, in a document filed on 7 June 2001, the persistence of the violations mentioned in the complaint was reported, but despite this the file was never reopened.

21. From all of the foregoing it may be seen that, according to the Semarnap official in Sonora, in regard to air pollution prevention and control, Semarnap is **“not competent to verify compliance with the legal provisions which, in accordance with its powers, it has transferred to the municipality,”** when the

exact opposite is established, among other things, by LGEEPA Article 5 paragraphs V and XIX; that according to the Coordinator General of the Office of the President of the National Human Rights Commission, the enactment of the municipal environmental protection plan and the municipal environment bylaw by the municipality of Hermosillo **“is contemplated as a regulatory power of the municipalities, a power which, given its nature, translates into a discretionary act in so enacting and does not give rise to an obligation to do so within a given period of time, something which is not specifically set out in said Act, for as is well known, provisions granting powers do not impose obligations,”** yet simple common sense tells us that the legal provisions necessary to prevent and control air pollution cannot be a matter left to the utter whim of the authority, besides the fact that, for example, Article 73 paragraph I of the State of Sonora Ecological Balance and Environmental Protection Act is unequivocal and leaves no doubt that both the municipality of Hermosillo and the state government are obligated to take “actions to prevent and control air pollution on property and areas under state or municipal jurisdiction”; that in the opinion of then judge of the Second District Court of the State of Sonora, **“the failure by the municipality of Hermosillo to issue the municipal environmental protection plan and to enact the municipal environment bylaw does not affect the complainant's legal interest, for the General Ecological Balance and Environmental Protection Act contains necessary and sufficient environmental protection measures to guarantee his right to development and well-being, since this provision applies in the event where the states or municipalities have not enacted laws governing this matter...”**, whereas it is the case that, as noted, the Semarnap officer in Sonora acknowledged that **“said air quality monitoring equipment is not operational since those funds are included within the decentralization process currently taking place from this ministry to the municipalities,”** not to mention that the aforementioned municipal plan and bylaw must be suited to the particular characteristics of the city of Hermosillo, which are obviously not contemplated in the General Act in question.

23. The authorities identified as responsible are not taking the measures necessary to prevent and control environmental pollution in Hermosillo, Sonora, and are thereby failing to enforce the legal provisions indicated in the submission.

24. In accordance with Article 14(1)(c) and (e) of the North American Agreement on Environmental Cooperation, be it noted that **the matter raised in the submission has been communicated in writing to the competent authorities of the United Mexican States**, as discussed below.

a) On 8 July 2004, through the Federal Access to Information Institute, copies of documents giving evidence of measures taken to enforce Mexican Official Standard NOM-048-SSA1-1993 in Hermosillo, Sonora were requested from the federal Ministry of Health.

b) On 6 September 2004 a response was received from the Ministry of Health to the effect that the matter was not within its purview, according to the Coordination Agreement for Decentralization of State of Sonora Health Services, published in the DOF on 29 July 1997.

c) On 8 September 2004, the Governor of the State of Sonora, the state Minister of Urban Infrastructure and Environment, and the municipality of Hermosillo were notified that they were failing to effectively enforce the aspects of their environmental law set out in the submission. A similar letter was sent on 9 September 2004 to the state Secretary of Health and the Semarnat officer in the state of Sonora. The same notice was sent on 13 September 2004 to the Profepa officer in the State of Sonora.

d) Of these authorities, the Governor of the State of Sonora responded with file no. 03.02-4067/04 of 14 September 2004, only to relay our letter to various state officials. As to the reply from the Minister of Urban Infrastructure and Environment in file 10-1978-04 of 11 November 2004, it partially contradicts the provisions indicated in this submission as being violated through lack of effective enforcement (in maintaining that he is not responsible for taking measures that the law requires him to take) and, as well, he refrains from providing documentary evidence that the environmental law asserted to be infringed is in fact being enforced, on the pretext that the letter did not specify which documentation was requested, yet it is clear from the text of the letter what evidence we wanted to obtain, all of which gives rise to a violation of the right to environmental information contemplated in LGEEPA Article 159 Bis 3. Similarly, the correspondence from the Director of the Health Regulatory Branch (*Dirección de Regulación y Fomento Sanitario*) of the State of Sonora Ministry of Health, contained in files SSS-DGRFS-2004-1920 and SSS-DGRFS-2004-1945 of 28 September and 8 October 2004, respectively, contradicts the provisions presented in the submission as being violated through lack of effective enforcement (in asserting that she is not responsible for taking the measures that the law expressly obligates her to take), as regards the acknowledged environment-related powers of the State of Sonora Ministry of Health. Finally, the municipality of Hermosillo gave no reply to our request.

25. The failures to enforce the provisions of Article 4 of the Mexican Constitution, the General Health Act, the State of Sonora Health Act, and the State of Sonora Civil Protection Act are eligible for NAAEC Article 14 review **since these provisions concern environmental matters**. However, if this argument should be found invalid, then the Submitters accept the exclusion of these legal provisions from further consideration in this matter.

26. The failures to enforce discussed in this submission were also the subject of indirect amparo no. 894/2004 heard in the First District Court of the State of Sonora.

27. On 1 February 2005, the First District Judge in the State of Sonora ruled on indirect amparo no. 894/2004, dismissing the appeal of the acts and omissions that form the basis of this citizen submission.

28. On 23 June 2005 the Fifth Collegiate Court of the Fifth Circuit, in amparo appeal no. 10/2005, upheld the decision named in the preceding paragraph.

29. And so the available domestic remedies were exhausted without the irregularities denounced in this submission being in any way addressed.

30. In the end there can be no doubt as to the harm caused to all the residents of Hermosillo, Sonora by the virtual absence of air pollution prevention and control measures.

III. ARGUMENT

The authorities identified as responsible are failing to effectively enforce practically every legal provision governing air pollution prevention and control in the municipality of Hermosillo, Sonora, as well as those relating to the right to environmental information, and this includes all of those provisions recited separately herein.¹¹

B. IN ACCORDANCE WITH NAAEC ARTICLE 13:

1. THE CEC SECRETARIAT SHOULD PRODUCE A REPORT ON THE CASE OF **ENVIRONMENTAL POLLUTION IN HERMOSILLO** SINCE IT RELATES TO A MATTER LINKED TO THE COOPERATIVE FUNCTIONS OF THE NAAEC.

NAAEC Article 13 empowers the Secretariat to prepare an evaluation report on the case of **ENVIRONMENTAL POLLUTION IN HERMOSILLO** as a matter related to the cooperative functions of the Agreement. Article 13 allows the Secretariat to produce a report “on any matter within the scope of the annual program,” based on relevant scientific, technical, or other information presented by non-governmental organizations and persons. Under this article, the report is not required to be based on a claim of failures by a Party to effectively enforce its environmental laws and regulations.

The case of **ENVIRONMENTAL POLLUTION IN HERMOSILLO** merits the production of such a report by the Secretariat in that it falls within three of its main strategic programs: one concerning the furthering of our understanding of the relationships between environment, the economy, and trade; another concerning the Parties’ obligation to effectively enforce their environmental laws and regulations; and a third emphasizing the importance of cooperative initiatives

aiming to prevent and correct the adverse human health and ecosystem impacts of pollution in North America.

In the first place, the Secretariat can prepare a report to determine levels of pollution caused by lack of air quality control, the associated environmental and health risks, the current impact on Hermosillo and, fundamentally, a report considering the alternatives that can correct the irregularities committed. In the second place, a Secretariat report could make proposals as to how to support Mexico in a way that ensures that its enforcement of its environmental laws and regulations is effective.

IV. CONCLUSION

MEXICO IS FAILING TO EFFECTIVELY ENFORCE ARTICLE 4 OF THE CONSTITUTION OF THE UNITED MEXICAN STATES; ARTICLES 5 PARAGRAPHS II, V, XVIII AND XIX, 7 PARAGRAPHS III, XII AND XIII, 8 PARAGRAPHS III, XI, XII AND XV, 10, 112 PARAGRAPHS II AND IV, AND 159 BIS 3 OF THE LGEEPA; ARTICLES 3 PARAGRAPH VII, 4 PARAGRAPH III, 13, 16, AND 41 OF THE REGULATION TO THE LGEEPA RESPECTING AIR POLLUTION PREVENTION AND CONTROL; ARTICLES 13(A) PARAGRAPH I AND (B) PARAGRAPH VI, AND ARTICLE 20 PARAGRAPH VII OF THE GENERAL HEALTH ACT; ARTICLES 73, 75, 85 (B) PARAGRAPH I, 138, AND 139 OF THE STATE OF SONORA ECOLOGICAL BALANCE AND ENVIRONMENTAL PROTECTION ACT; ARTICLES 15 PARAGRAPH VI AND 18 PARAGRAPH VI OF THE STATE OF SONORA HEALTH ACT; ARTICLE 9 PARAGRAPH II OF THE STATE OF SONORA CIVIL PROTECTION ACT; AND MEXICAN OFFICIAL STANDARDS NOM-020-SSA1-1993, NOM-021-SSA1-1993, NOM-022-SSA1-1993, NOM-023-SSA1-1993, NOM-024-SSA1-1993, NOM-025-SSA1-1993, NOM-026-SSA1-1993, NOM-048-SSA1-1993, NOM-040-SEMARNAT-2002 (formerly NOM-040-ECOL-2002; NOM-CCAT-002-ECOL/1993), NOM-043-SEMARNAT-1993 (formerly NOM-043-ECOL-1993; NOM-CCAT-006-ECOL/1993), NOM 085-SEMARNAT-1994, NOM-121-SEMARNAT-1997 (formerly NOM-121-ECOL-1997), NOM-041-SEMARNAT-1999 (formerly NOM-041-ECOL-1999; NOM-CCAT-003-ECOL/1993), NOM-042-SEMARNAT-1999 (formerly NOM-042-ECOL-1999; NOM-CCAT-004-ECOL/1993), NOM-044-SEMARNAT-1993 (formerly NOM-044-ECOL-1993, NOM-CCAT-007-ECOL/1993), NOM-045-SEMARNAT-1996 (formerly NOM-045-ECOL-1996; NOM-CCAT-008-ECOL/1993), NOM-048-SEMARNAT-1993 (formerly NOM-048-ECOL-1993; NOM-CCAT-012-ECOL/1993), and NOM-050-SEMARNAT-1993 (formerly NOM-050-ECOL-1993; NOM-CCAT-014-ECOL/1993), **AS EXPLAINED IN THE FACTUAL BACKGROUND SECTION.**

The Secretariat also has the power to produce a report on the case of **ENVIRONMENTAL POLLUTION IN HERMOSILLO** under NAAEC Article 13 since it is a matter relating to the cooperative functions of the Agreement.

Date: 26 August 2005

In memory of Hildegardo Taddei, Rodolfo Acuña, and Panchito Padilla

Sincerely,

Domingo Gutiérrez Mendivil
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V. EVIDENCE DOCUMENTS¹

[The original text of the annex is in the original submission]

Notas de Prensa

[The original text of the annex is in the original submission]

Photos

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- ¹ [The original text of the footnote is in the original submission]
² [The original text of the footnote is in the original submission]
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⁸ [The original text of the footnote is in the original submission]
⁹ [The original text of the footnote is in the original submission]
¹⁰ [The original text of the footnote is in the original submission]
¹¹ [The original text of the footnote is in the original submission]

¹ [Non-translated footnote removed from translation]