

Secretariat of the Commission for Environmental Cooperation
Secretariat Determination in accordance with Article 24.27(2) and (3) of the United States-Mexico-Canada Agreement

Submitter: San Diego Coastkeeper
Party: United Mexican States
Date of submission: 26 January 2026
Date of determination: 25 February 2026
Submission No.: SEM-26-002 (*Tijuana Wastewater Management*)

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA/CUSMA) and the Environmental Cooperation Agreement (ECA) entered into force. After this date, the Submissions on Enforcement Matters (SEM) process originally established by Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) is governed by USMCA/CUSMA Articles 24.27 and 24.28. The Secretariat of Commission for Environmental Cooperation (“CEC Secretariat”)¹ remains responsible for implementing the SEM process, as stipulated in the ECA.²
2. Articles 24.27 and 24.28 of the USMCA/CUSMA provide a process for any national of a Party or entity organized under the laws of a Party to file a submission asserting that a Party to the USMCA/CUSMA is failing to effectively enforce its environmental laws. The CEC Secretariat initially reviews submissions based on the requirements set out in USMCA/CUSMA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements, it then determines, in accordance with the criteria of Article 24.27(3), whether the submission merits a response from the Party in question. In light of the Party’s response, the Secretariat then determines whether the matter warrants the preparation of a factual record and, if so, it informs the CEC Council and the Environment

¹ The Commission for Environmental Cooperation (CEC) was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), an instrument signed by Canada, Mexico, and the United States (the “Parties”). The constituent bodies of the CEC are its Council, Secretariat, and Joint Public Advisory Committee (JPAC).

² The Secretariat takes the view that although the provisions governing the SEM process are set forth in Chapter 24 of the USMCA, certain related procedures are also established under the Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada (ECA), namely: the Secretariat’s role in the implementation of the Submissions on Enforcement Matters process, the Council’s role in exchanging information with the Environment Committee, the preparation and publication of factual records, and the Council’s cooperation activities. The Secretariat is mindful of ECA Article 2(3) which states in part: “The Commission will continue to operate under the modalities in place as of entry into force of this Agreement, including its rules, policies, guidelines, procedures, and resolutions, to the extent these modalities are consistent with this Agreement.” Environmental Cooperation Agreement, Articles 2(3); 4(1)(l)–(m); 4(4); and 5(5).

- Committee,³ providing its reasons as prescribed by USMCA/CUSMA Article 24.28(1); otherwise, it terminates the review of the submission.⁴
3. On 26 January 2026, San Diego Coastkeeper (“the Submitter”) an organization established in the United States, filed a submission with the Secretariat, in accordance with Article 24.27(1) of the USMCA/CUSMA.⁵
 4. The Submitter asserts that Mexico is failing to effectively enforce its environmental laws relating to wastewater management, public health, transboundary notification procedures through binational channels, and overall management of the water resource, leading to what the Submitter refers to as a transboundary sewage crisis in the area, with potential civil and/or criminal liability implications.
 5. According to the Submitter, Mexico is failing to effectively enforce various legal provisions and regulatory instruments in force in Mexico:
 - i) the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*, “the **Constitution**”);
 - ii) the General Act on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*, **LGEEPA**);
 - iii) the National Waters Act (*Ley de Aguas Nacionales*, **LAN**);
 - iv) the Federal Law of Environmental Responsibility (*Ley Federal de Responsabilidad Ambiental*, **LFRA**);
 - v) the Federal Law of the Sea (*Ley Federal del Mar*, **LFM**);
 - vi) the Mexican Navigation and Maritime Commerce Act (*Ley de Navegación y Comercio Marítimos*);
 - vii) the National Code of Penal Procedures (*Código Nacional de Procedimientos Penales*, **CNPP**);
 - viii) the Federal Penal Code (*Código Penal Federal*, **CPF**);
 - ix) the Official Mexican Standard NOM-001-SEMARNAT-2021, Establishing permissible limits for pollutants in wastewater discharges into receiving bodies owned by the nation (*Que establece los límites permisibles de contaminantes en las descargas de aguas residuales en cuerpos receptores propiedad de la nación*, **NOM-001**);
 - x) the American Convention on Human Rights (**ACHR**);
 - xi) the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“the **Protocol of San Salvador**”);
 - xii) the Rio Declaration on Environment and Development (“the **Rio Declaration**”);

³ The Environment Committee is established by USMCA Article 24.26(2) and its role is to “oversee the implementation” of USMCA Chapter 24.

⁴ More details on the various stages of the submissions on enforcement matters process, the public registry of submissions, and previous Secretariat determinations and factual records can be found on the CEC website at <<http://www.cec.org/submissions/>>.

⁵ SEM-26-002 (*Tijuana Wastewater Management*), submission under USMCA Article 24.27(1) (26 January 2026), at: <<https://bit.ly/4adUUJt>> [Submission].

- xiii) the Agreement Between the United States and Mexico on Cooperation for the Protection and Improvement of the Environment in the Border Area (“the **La Paz Agreement**”).
6. After reviewing the submission, the Secretariat considers that the submission does not meet all the admissibility requirements, particularly the requirement under USMCA/CUSMA Article 24.27(3)(c) (private remedies), and hereby notifies the Submitter. This includes information to confirm whether private remedies have been pursued to address the matter raised in the submission. The Submitter may choose to file a revised submission providing additional information on matters relating to some of the environmental law in question cited in the submission and identified by the Secretariat in this determination.
7. As of the date of this determination, the Submitter has 60 days to submit a revised submission for further consideration of admissibility. In the event that the revised document is not received by **27 April 2026**,⁶ the Secretariat will terminate the submission SEM-26-002 (*Tijuana Wastewater Management*). The Secretariat’s reasoning is set out below.

II. SUMMARY OF THE SUBMISSION

8. In submission SEM-26-002 (*Tijuana Wastewater Management*), the Submitter describes a “crisis” of considerable magnitude caused by “constant leaks, spills and intentional discharge of billions of gallons of raw sewage annually” causing an “ongoing human health, economic, and ecological disaster in both sides of the US-Mexico border.”⁷ The Submitter contends that multiple studies confirm that sewage pollutants containing pathogens, viruses and hydrogen sulfide are constantly aerosolized.⁸ According to the Submitter, this situation is contributing to the rapid deterioration of the Tijuana River Valley and Estuary (TRVE) ecosystems and adjacent coastal areas in California, US.⁹
9. The Submitter explains that a 57% sewer line failure rate in Tijuana, combined with informal settlements lacking adequate sewage systems, has resulted in an open sewer running through Tijuana and into the US.¹⁰
10. The Submitter recognizes that in July 2025, the US and Mexico entered into a Memorandum of Understanding (MOU) outlining specific actions, priorities and deadlines for both

⁶ For clarity purposes, please note that the following principles have been applied to calculate the USMCA/CUSMA deadlines applicable to the SEM process:

1. Deadlines are counted in calendar days, which means that holidays and weekends are included in the count.
 2. The day on which the deadline begins to run is not counted, and the day on which the deadline ends is counted.
 3. If a deadline falls on a weekend or holiday, it is extended to the next Monday or business day.
 4. If a document is received on a non-business day, the first day of the count is moved to the next business day; therefore, if a document is received on a Saturday, Sunday, or holiday, it will be considered to have been received on the following Monday or next business day.
 5. Holidays correspond to those observed at the location of the CEC Secretariat. However, if a Party's deadline falls on a holiday observed by that Party, it shall notify the Secretariat in advance, and the count shall be adjusted to end on the next business day for that Party.
- ⁷ Submission, statement of facts, at 1.
- ⁸ Id.
- ⁹ Id.
- ¹⁰ Id. at 2.

countries to address the Tijuana wastewater management issues.¹¹ The Submitter contends that the 2025 MOU focuses on rehabilitating collectors, interceptors, and pump stations whose ongoing inoperability is resulting in the discharge of millions of gallons of sewage through leaks and spills.¹² The Submitter expresses skepticism regarding Mexico's ability and willingness to abide by the commitments given past failures to fund, maintain and rehabilitate wastewater infrastructure despite historical commitments made under the International Boundary Water Commission (IBWC) minutes.¹³

11. The Submitter informs that according to the US International Boundary and Water Commission (USIBWC), the San Antonio de los Buenos Wastewater Treatment Plant (SABTP) treats 18.26 million gallons per day (MGD), but that it received 45 MGD. This is compounded by the dynamic nature of wastewater spills and discharges and a reported failure in 2024 of the Punto de Bombeo de Control Integral Lomas de Agua (PBCILA) which, even after repair, diverted 30-35 MGD of wastewater from the main stem of the Tijuana River to the San Antonio de los Buenos (SAB) Creek. Meanwhile, PBCILA was once more offline and repairs were ongoing at the date of filing the submission.¹⁴ In addition, wastewater volumes flow into the TRVE through the Matadero and the Los Laureles canyons instead of being pumped, given that the corresponding pump stations have been offline for years.¹⁵
12. The Submitter asserts that the Tijuana River contains high concentrations of bacteria, viruses such as SARS-CoV-2 and hepatitis B/C, antibiotic resistant bacteria, pesticides, solvents, and flame retardants.¹⁶ In addition, the Submitter states that according to research, pathogens and toxic chemicals from sewage become aerosolized which cause contaminants to extend beyond source,¹⁷ causing air pollution spikes in hydrogen sulfide 4,500 times of typical levels for an urban area.¹⁸ According to the submission, water quality impacts are being experienced in the beaches of Imperial Beach, Coronado, and other San Diego County beaches, in the US, as well as beaches in Tijuana and Playas de Rosarito, in Mexico.¹⁹
13. The Submitter contends that the Tijuana River National Estuarine Research Reserve has been severely degraded by continuous discharges resulting in oxygen depletion, eutrophication, persistent bacterial contamination and "dramatic declines in both fish populations and diversity."²⁰ This contamination also extends into coastal waters at Imperial Beach and Punta Bandera, where pathogens and toxins bioaccumulate in marine life, causing wildlife deaths and creating food security concerns, rendering traditional shellfish harvesting unsafe.²¹

¹¹ Id. at 4.

¹² Id.

¹³ Id. at 3-4

¹⁴ Id. at 4.

¹⁵ Id.

¹⁶ Id. at 5.

¹⁷ Id. at 6.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 7.

14. The Submitter maintains that Mexico’s “decades-long failure to adequately capture, control, and treat Tijuana’s wastewater” allegedly constitutes a “sustained, recurrent, and systematic failure to implement and enforce its own federal environmental laws,” resulting in persistent pollution that has created a cross-border environmental and public health crisis.²² According to the Submitter, Mexico is failing to enforce provisions from the Constitution, federal laws, and international laws and maintains that wastewater management agencies operate without any sort of supervision or control, making the regulatory system ineffective.²³

III. ANALYSIS

15. Article 24.27(1) allows “[a]ny person of a Party” to file a submission with the CEC Secretariat “asserting that a Party is failing to effectively enforce its environmental laws.” The Secretariat reiterates, as it has stated previously in determinations issued in accordance with NAAEC Articles 14 and 15²⁴ and the USMCA/CUSMA²⁵ that the requirements of USMCA/CUSMA Articles 24.27(1), (2), and (3) are not intended to be an insurmountable procedural screening device, and they must therefore be given a broad interpretation in accordance with Chapter 24 of the Agreement.²⁶ The Secretariat reviews the submission with that perspective in mind.
16. The Secretariat notes that on 27 January 2026, following the notification that SEM-26-002 was filed, Mexico requested the Secretariat to temporarily place on hold the processing of the submission.²⁷ In support of this request, Mexico referenced a presidential memorandum from the United States “direct[ing] all executive departments and agencies...to take immediate steps to effectuate the withdrawal of the United States from the organizations listed in section 2 of this memorandum as soon as possible.”²⁸ This memorandum listed the Commission for Environmental Cooperation as per Section 2(a)(iii).²⁹ The requested place on hold of the SEM process proposed by Mexico should, according to Mexico, remain in effect until the Council decides how Council decisions will be addressed in the future, including deliberations that the Council may undertake with respect to the possible preparation of factual records.
17. While the Secretariat takes note of Mexico’s communication and its request to place the submission process on hold, the Secretariat observes that despite the issuance by the United

²² Id. at 8.

²³ Id.

²⁴ SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998) and SEM-98-003 (*Great Lakes*), Article 14(1) and (2) Determination (8 September 1999).

²⁵ SEM-20-001 (*Loggerhead turtle*), Determination in accordance with Articles 24.27(2) and (3) (8 February 2021), §8, online at <<https://bit.ly/3MbPQ0q>>; SEM-21-001 (*Fairview Terminal*), Determination in accordance with Articles 24.27(2) and (3) (9 March 2021), §6, online at <<https://bit.ly/4keTW4B>>; SEM-21-002 (*Vaquita Porpoise*) Determination in accordance with Articles 24.27(2) and (3) (8 September 2021), §8, online at <<https://bit.ly/46iwuxo>>.

²⁶ Cf. USMCA Article 24.2.

²⁷ Unidad Coordinadora de Asuntos Internacionales, e-mail (27 January 2026).

²⁸ The White House (2026), “Withdrawing the United States from International Organizations, Conventions, and Treaties that Are Contrary to the Interests of the United States,” Presidential memoranda, 7 January 2026, at: <<https://bit.ly/3NUenrl>>.

²⁹ Id.

States of a presidential memorandum announcing a withdrawal from the CEC, the Secretariat is bound by its responsibilities under the USMCA.

18. Further, the Secretariat notes that regarding the withdrawal announced by the United States in the cited presidential memorandum, none of the formalities provided in Article 17(2) of the ECA regarding withdrawal from the agreement have been satisfied by any of the Parties. The United States has not, at the time of writing, “provid[ed] six month’s written notice to the other Parties” and even if such a withdrawal notice were to exist at present, the Secretariat notes that Article 17(2) also stipulates that “unless decided otherwise by the Parties, such withdrawal, shall not affect the continuation of ongoing activities not completed at the time of withdrawal”.
19. Considering the SEM process’ instrumentation exists under the wider framework of the USMCA/CUSMA which is still in force and upheld by its three State members, the Secretariat considers that its current responsibility is to continue with the processing of this submission in accordance with USMCA/CUSMA Article 24.27.

A. Article 24.27(1)

20. Article 24.27(1) of the USMCA/CUSMA provides that any person of a Party may file a submission asserting that a Party is failing to effectively enforce of its environmental laws.
21. Article 1.5 of the USMCA/CUSMA³⁰ defines the term *person of a Party* as “a national of a Party or an enterprise of a Party.” In turn, *national* means “a natural person who has the nationality of the Party...or a permanent resident of a Party.” *Enterprise* means “an entity constituted or organized under applicable law [the law of a Party], whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization.”
22. Taken together, these definitions clarify that an entity organized under the law of a Party qualifies as a “person of a Party” eligible to make a submission.
23. The submission indicates that San Diego Coastkeeper is a nonprofit public benefit organization incorporated under the laws of the State of California on January 20, 1995.
24. Based on this information, the Secretariat determines that the Submitter is a “person of a Party” within the meaning of the USMCA/CUSMA.

B. Environmental laws in question

25. The next criterion in Article 24.27(1) is whether the submission identifies an “environmental law” within the meaning of the USMCA/CUSMA.
26. USMCA/CUSMA Article 24.1 provides the following definition:

environmental law means a **statute or regulation** of a Party, or provision thereof, including any that implements the Party’s obligations under a multilateral environmental agreement, the primary

³⁰ The Secretariat is mindful of the adoption of the Amending Protocol to the Agreement between the United Mexican States, the United States of America and Canada (“the Protocol”), by which provisions were added to chapters 1 and 24, so that the numbering of some articles of the Protocol was revised. This is the case with Article 1.5, “General definitions,” initially Article 1.4, but then renumbered in accordance with the Protocol. Thus, in the case of the Spanish version, it is necessary to consult the USMCA and its Protocol.

purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

- (a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;
- (b) the control of environmentally hazardous or toxic chemicals, substances, materials, or wastes, and the dissemination of information related thereto; or
- (c) the protection or conservation of wild flora or fauna,¹ including endangered species, their habitat, and specially protected natural areas,²

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources.³¹

¹ The Parties recognize that “protection or conservation” may include the protection or conservation of biological diversity.

² For the purposes of this Chapter, the term “specially protected natural areas” means those areas as defined by the Party in its law.

[S]tatute or regulation means: “(b) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government.”³²

- 27. Although a law may be intended to protect the environment or human health, some of its provisions may not be directly enforceable by federal authorities or it may lack the necessary specificity to be enforced directly. It is also possible that the cited provisions do not relate to the matter raised in the submission. The Secretariat assessed whether the legal provisions cited in the submission correspond to environmental laws within the meaning of the USMCA/CUSMA and whether they are applicable to the issues raised by the Submitter. The Secretariat determined that some individual provisions of laws and regulations to which the Submitter refers—but not all—meet the eligibility criteria. The Secretariat provides its reasoning below.
- 28. The laws cited by the Submitter are listed in Table 1 below.

Table 1. Legal instruments and their provisions cited in the submission

Title	Acronym or abbreviation	Provisions cited
Political Constitution of the United Mexican States	Constitution	Articles 1 (paragraphs 1, 2, and 3), 4 (paragraphs 6 and 8), 17 (paragraph 1), and 25 (paragraph 1)
General Act on Ecological Balance and Environmental Protection	LGEEPA	Articles 15 (Sections IV and XVII), 88 (Sections I, II, and IV), 89 (Sections II, V, and VI), 92, 93, 117 (Sections I, II, III, and IV), 118 (Section V), 121, 122 (Section I), 123, 124, 129, 130, 132, 133, 161, 170 (Sections I and II, and last paragraph), 171, 172, and 182

³¹ USMCA Article 24.1.

³² Id.

National Water Law	LAN	Articles 44 (paragraph 3), 86 (Sections IV and V), 88 (paragraph 1), 88 Bis (Sections I, II, IX, and X), 89 (paragraph 3), 91 Bis 1, 92 (Sections I, II, and its last two paragraphs), 93, 94, 95, 96 Bis, 96 Bis 1, 118 Bis 2, 118 Bis 3, 119 (Sections I, XV, and XVII), 120 (paragraph 1), 122 (Section I), and 123 Bis 1
Federal Law of Environmental Responsibility	LFRA	Article 76
Federal Law of the Sea	LFM	Article 2
Mexican Navigation and Maritime Commerce Act		Articles 10, 11, 13 (paragraphs 1, 2, and 3), 14 18, 24, 25, 27, 28 (Section III), 53, and 54 (paragraphs 2 and 4)
National Code of Penal Procedures	CNPP	Article 222
Federal Penal Code	CPF	Articles 416 and 421 (Sections I, II, and V)
Official Mexican Standard NOM-001-SEMARNAT-2021	NOM-001	Articles 1 (paragraphs 1 and 2) and 10
American Convention on Human Rights	ACHR	Articles 1 and 2
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights	Protocol of San Salvador	Articles 1 and 2
Rio Declaration on Environment and Development	Rio Declaration	Principles 1, 2, 16, 18 and 27.
Agreement Between the United States and Mexico on Cooperation for the Protection and Improvement of the Environment in the Border Area	La Paz Agreement	Articles 1, 2, 6, and 9.

a) Political Constitution of the United Mexican States

29. **Article 1 (paragraphs 1, 2, and 3)** acknowledges the human rights that everyone enjoys in the territory of the United Mexican States;³³ it establishes the *pro homine* principle for the enforcement of human rights³⁴ norms and sets forth the duty of the State to promote human rights³⁵ which serve as a guide for the Secretariat's analysis. These are, however, not considered environmental law.

³³ Political Constitution of the United Mexican States, published in the Official Gazette of the Federation (*Diario Oficial de la Federación*–DOF) on 5 February 1917, Article 1, paragraph 1, at: <<https://bit.ly/4rpsV10>>. [Constitution].

³⁴ Id. at Article 1, paragraph 2. (“Human rights norms shall be interpreted in conformity with this Constitution and with the relevant international treaties, favoring at all times the widest protection for individuals.”)

³⁵ Id. at Article 1, paragraph. 3.

30. **Article 4 (paragraphs 6 and 8)** of the Constitution establishes the human right to equality between women and men; to free recreation of children; to nutritious, adequate and quality food; to health; to a healthy environment for development and well-being; to access, provision and sanitation of water; to decent housing; to identity; and to be immediately registered at birth. The Secretariat determines that paragraphs six and eight — which recognize the human right to a healthy environment and to water and sanitation, respectively — qualify as environmental law in accordance with the definition of environmental law in USMCA/CUSMA Article 24.1.
31. **Article 17 (paragraph I)** establishes that no person may take the law into their own hands or use violence to claim their rights. This provision does not qualify as environmental law and bares no direct relation with the assertions set forth in the submission. The Secretariat will consequently not consider it in its analysis.
32. **Article 25 (paragraph I)** seeks to ensure that national development is integrated and sustainable, and that it reinforces the nation's sovereignty and democracy, as well as economic growth, employment and a more equal distribution of wealth so as to fully enable individual and collective freedoms and dignity as protected by the Constitution. Article 25(1) of the Constitution has, among other objectives, protecting the environment as contemplated by Article 24.1 of the USMCA/CUSMA. The Secretariat cannot rule out that there may be provisions established in accordance with Article 25(1) of the Constitution whose purpose coincides with the definition of USMCA/CUSMA Article 24.1. This provision may qualify as environmental law in that it is partly aimed at protecting the environment; however, due to its general aim, the Secretariat determines that this provision should therefore not be reviewed specifically but should guide its analysis in relation to submission SEM-26-002.

b) General Act on Ecological Balance and Environmental Protection

33. All the provisions of the LGEEPA cited by the Submitter qualify as environmental law under USMCA/CUSMA Article 24.1 because they have as their purpose the protection of the environment or human health. Provisions of the LGEEPA cited by the Submitter relate to sustainable water use, environmental criteria for the issuance of permits and other authorizations, wastewater treatment and conditions for wastewater discharges, pollution prevention and control as it pertains to national water resources, government and user responsibilities in relation to national waters, emergency and security measures in cases of risks to the environment and human health, interagency coordination for the prevention of marine pollution and federal-state government coordination for water management at a local level, water quality monitoring, inspection, surveillance and enforcement authority of the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*, Semarnat), sanctions for violations of the LGEEPA, and Semarnat's ability to initiate proceedings in cases of environmental offences. In addition, all LGEEPA provisions cited by the Submitter relate to the assertions raised in the submission. For this reason, the Secretariat will consider them in its analysis.
34. **Article 15 (sections IV and XIII)** sets out principles for formulating and administering environmental policy, including the obligation to prevent, minimize or repair damage and assume the corresponding costs by those who perform works or activities that affect or may affect the environment (**section IV**); and guarantees the right of communities to the

protection, preservation, use and sustainable exploitation of natural resources and biodiversity (**section XIII**).

35. **Article 88 (sections I, II and IV)** lists the criteria for sustainable use of water and aquatic ecosystems, namely: the obligation to protect aquatic ecosystems and maintain the balance of elements involved in the hydrological cycle (**section I**); the obligation to use natural resources comprising aquatic ecosystems in a sustainable manner that does not affect their ecological balance (**section II**), and the users' responsibility to preserve and sustainably use water (**section IV**).
36. **Article 89 (sections II, V and VI)** provides that the criteria for sustainable use of water and aquatic ecosystems shall be taken into account when: granting concessions, permits and authorizations for the use of natural resources or activities that affect or may affect the hydrological cycle (**section II**); suspending or revoking authorizations under the LAN in cases of works or activities that damage the hydric resources or affect the ecological balance (**section V**), and operating and managing drinking water and sewerage systems serving urban centers and industries (**section VI**).
37. **Article 92** provides that competent authorities shall promote water conservation and its efficient use, as well as wastewater treatment to ensure water availability and reduce waste.
38. **Article 93** provides that Semarnat shall take the necessary measures to prevent and, where appropriate, control eutrophication, salinization and any other forms of pollution in national waters.
39. **Article 117 (sections I, II, III, and IV)** establishes that water pollution prevention and control is fundamental in avoiding water scarcity and protecting ecosystems (**section I**); government and society are collectively responsible for preventing pollution of rivers, basins, watercourses, marine waters, and other surface and underground water bodies (**section II**); water use in productive activities that could generate pollution comes with the responsibility to treat wastewater discharges adequately prior to being released into the environment to maintain the equilibrium of ecosystems (**section III**); urban wastewater must be treated before it is discharged into rivers, watercourses, marine waters, and other water bodies (**section IV**).
40. **Article 118 (section V)** provides that prevention and control of water pollution shall be taken into account in the concessions, allocations, permits, and any type of authorization required and providing for the release of wastewater into the land or its discharge into receiving bodies other than municipal sewers.
41. **Article 121** provides that wastewater containing pollutants may not be discharged into any body of water, soil, subsoil or into the drainage and sewerage systems in urban centers without prior treatment and the authorization of the competent authority.
42. **Article 122 (section I)** provides that wastewater from urban, industrial or agricultural uses that is discharged into municipal drainage and sewerage systems or into river basins, and other bodies of water, as well as wastewater that infiltrates or is spilled into the ground by any means, must meet the necessary conditions to prevent pollution of the receiving bodies.
43. **Article 123** establishes that all discharges into sewage systems, rivers, aquifers, marine waters, and other water bodies or streams shall comply with the applicable Official Mexican Standards and the specific conditions governing such discharges, as determined by

Semarnat or the local authorities. Moreover, any party or entity that generates such discharges shall be responsible for ensuring the applicable treatment.

44. **Article 124** provides that when wastewater affects water supply sources, the Semarnat shall notify the Ministry of Health (*Secretaría de Salud*) and deny or revoke the necessary authorizations as well as suspend water supply as appropriate.
45. **Article 129** conditions the granting of any kind of authorization, allocation or concession for the exploitation or use of water in economic activities to prior treatment of the wastewater that is likely to pollute the resource.
46. **Article 130** provides that Semarnat shall authorize the discharge of wastewater into marine waters, in accordance with the LAN, its Regulations and the Official Mexican Standards issued in this regard. It also establishes that when discharges originate from platforms in the territorial sea and the exclusive economic zone, as well as from land-based facilities whose discharge is into the sea, Semarnat shall coordinate with the Navy (*Secretaría de Marina*) for the issuance of the corresponding authorizations.
47. **Article 132** provides that Semarnat shall coordinate with the Navy and the Ministries of Energy, Health, Tourism, and Communications and Transport, so that, within their respective powers, they may take measures to prevent and control marine pollution, preserve and restore the balance of ecosystems, in accordance with the provisions of the LGEEPA, the LAN, the Federal Seas Act (*Ley Federal del Mar*), the General Tourism Act, the international treaties to which Mexico is a party, and any other applicable provisions.
48. **Article 133** mandates Semarnat to carry out, in collaboration with the Ministry of Health, systematic and ongoing water quality monitoring to detect the presence of pollutants or excess organic waste and remedy those situations through appropriate measures. The provision also provides that federal authorities will carry out coordination efforts for water under local jurisdiction.
49. **Article 161** establishes that Semarnat will complete inspection and surveillance acts for compliance with the provisions of the LGEEPA and the regulations derived from it.
50. **Article 170 (sections I and II, and last paragraph)** stipulates that when there is an imminent risk of ecological imbalance or serious damage or deterioration to natural resources, the competent authority shall impose security measures, including: ordering the temporary, partial or total closure of facilities where forest resources are handled or stored (**section I**) and completing the precautionary seizure of forest resources and instruments related to the conduct that gave rise to the imposition of the security measure (**section II**). In addition, it authorizes Semarnat to coordinate with the competent authority to apply any safety measure prescribed by other provisions (**last paragraph**).
51. **Article 171** provides that violations of the LGEEPA, regulations, and the provisions arising therefrom shall be punishable by a fine, temporary or permanent closure, in whole or in part; administrative arrest for up to 36 hours; confiscation of tools, copies, products or byproducts; suspension or revocation of concessions, licenses, permits or authorizations. In addition, it provides that the authority shall provide a deadline for remedying the offense(s), and in the event of the continuation of the offense, fines may be imposed for each day of the offense without obeying the mandate, in the event of a repeat offense the amount of the fine may be increased up to three times the original amount.

52. **Article 172** provides that in cases of serious offences, the Semarnat shall request the suspension, revocation or cancellation of concessions or any form of authorization granted for the performance of activities, or for the exploitation of natural resources.
53. **Article 182** provides that where Semarnat takes cognizance of “acts or omissions that may constitute offenses under the applicable law, it shall file the relevant complaint with the Office of the Federal Public Prosecutor [*Ministerio Público Federal*].” In addition, it recognizes the right of any person to file a criminal complaint; gives Semarnat the power to issue expert opinions, and establishes that Semarnat shall assist the public prosecutor.

c) National Waters Act

54. The Submitter cites provisions of the LAN that qualify as environmental law under USMCA/CUSMA Article 24.1, since they have as their main purpose the protection of the environment through provisions for the protection of water, and are related to assertions regarding wastewater management in Tijuana. Specifically, the LAN provisions cited by the Submitter relate to the powers of National Water Commission (*Comisión Nacional del Agua*, Conagua), prevention and control of water pollution, discharge permit requirements, responsibilities of natural and legal persons with respect to wastewater discharges, applicable sanctions in cases of LAN violations, Conagua’s ability to suspend activities and revoke permits, Conagua’s inspection and audit powers, as well as its duty to intervene to ensure environmental damage is repaired, assignment of liability for environmental damage resulting from wastewater discharges, and Conagua’s ability to initiate disciplinary proceedings against offenders. A summary of these provisions is presented below:
 - i. **Article 44 (paragraph 3)** provides that municipalities, states as well as the agencies or companies that provide drinking water and sewerage services, are responsible for treating urban public wastewater prior to its discharge into national water bodies, in accordance with the relevant Official Mexican Standards or the specific discharge conditions determined by Conagua.
 - ii. **Article 86 (sections IV and V)** establishes the list of powers of Conagua and, as applicable, of the corresponding basin organization, with respect to the prevention and control of water pollution. This article namely addresses Conagua’s power to establish and monitor compliance with discharge conditions applicable to wastewater (**section IV**) in property and areas under federal jurisdiction (subsection a), national waters and property (subsection b), land that may contaminate the subsoil or aquifers (subsection c), and other cases provided for in the LGEEPA and in the LAN regulations (subsection d); and the power to inspect and verify compliance with the provisions of the Official Mexican Standards regarding the preservation and conservation of the quality of national waters and assets indicated in the LAN (**section V**).
 - iii. **Article 88 (paragraph 1)** establishes that natural or legal persons require a discharge permit issued by Conagua to discharge wastewater into national waters or other national assets, including marine waters, as well as when wastewater infiltrates land that is national property or other land and may contaminate the subsoil or aquifers.
 - iv. **Article 88 Bis (sections I, II, IX, and X)** establishes that natural or legal persons that discharge wastewater must: have a wastewater discharge permit in accordance

- with Article 88 (**section I**); treat wastewater prior to its discharge into receiving bodies in compliance with applicable discharge permits and the Official Mexican Standards (**section II**); comply with the conditions of the corresponding discharge permit and, where applicable, maintain the works and facilities of the treatment system in satisfactory operating conditions (**section IX**); and comply with the Official Mexican Standards and, where applicable, with any specific discharge conditions that may have been established for the prevention and control of widespread or dispersed pollution resulting from the handling and application of substances that may contaminate the quality of national waters and receiving bodies (**section X**).
- v. **Article 89 (paragraph 3)** establishes that when the discharge of wastewater affects or may affect drinking water sources or public health, Conagua shall notify the competent authority, refuse or revoke the corresponding permit and, where appropriate, suspend the water supply until the revealed anomalies are eliminated.
 - vi. **Article 91 Bis 1** provides that in cases of accidental, negligent or intentional wastewater discharges into receiving bodies that are considered national assets, the persons responsible must comply with Article 86, notify the Attorney General's Office and Conagua within 24 hours, and provide information regarding the discharges, to allow for appropriate measures to be taken. This Article also provides that failure to provide such notice shall be punished in accordance with the LAN, regardless of any other applicable administrative and criminal penalties.
 - vii. **Article 92 (sections I, II, and its last two paragraphs)** establishes that Conagua shall order the suspension of activities that give rise to wastewater discharges in the absence of a wastewater discharge permit (**section I**), or when the quality of the discharges does not comply with the relevant Official Mexican Standards, permit conditions or the provisions of the LAN and its regulations (**section II**). This Article also provides that a suspension of activities is without prejudice to any civil, criminal or administrative liability. Additionally, this provision allows Conagua to take measures to prevent damage or danger to people or ecosystems at the expense of the persons responsible (**last two paragraphs**).
 - viii. **Article 93** lists the grounds on which wastewater discharge permits may be revoked: discharging wastewater elsewhere than where authorized by Conagua (**section I**); committing the acts or omissions indicated in sections II, III and IV of Article 92 of the LAN when the activities of the permit holder have been suspended by Conagua for the same reason (**section II**); or revoking the concession or allocation of national waters, when these are the only waters whose exploitation or use give rise to the wastewater discharge (**section III**). This provision also establishes that upon revocation and after hearing the interested party, Conagua shall issue and notify its decision, and provide its reasoning. The discharge permit shall expire when the concession or allocation title that gives rise to the discharge expires.
 - ix. **Article 94** provides that when a wastewater treatment plant's suspension or closure could cause serious harm to the health and safety of people or damage to vital ecosystems, Conagua shall only order the suspension of activities causing the discharge. If this is not possible or convenient, Conagua shall appoint an inspector to provisionally administer and operate the wastewater treatment facilities. This

Article also provides that costs incurred by such intervention shall be borne by the holders of the discharge permit. If costs are not covered within thirty days of the request by Conagua, they shall be treated as a tax credit.

- x. **Article 95** specifies that Conagua, within the purview of federal jurisdiction, shall conduct inspections or audits of wastewater discharges to verify compliance with regulatory standards. The results of the inspections or audits must be prepared for legal purposes and able to serve as a basis for the application of sanctions provided in the LAN.
- xi. **Article 96 Bis** provides that Conagua will intervene to ensure that environmental damage is repaired, including damage that compromises vital ecosystems, and must act in accordance with the law, the LAN and its Regulations.
- xii. Under **Article 96 Bis 1** any party or entity that discharges wastewater in violation of applicable statutes and regulations and causes pollution into a receiving waterbody, shall assume responsibility for the environmental damages under the terms of the LAN and the LAN Regulations. Furthermore, Conagua, with the support of the competent water basin authority, shall intervene to ensure the implementation of measures to repair the environmental damage to the affected waterbody.
- xiii. Under **Article 118 Bis 2** Conagua is responsible for carrying out inspections to ensure compliance with the LAN and LAN-related provisions and may access all types of information, including classified or confidential documents related to offences.
- xiv. **Article 118 Bis 3** provides that when, following an inspection by Conagua, there is evidence of an offence, Conagua shall initiate administrative disciplinary proceedings in accordance with the provisions of the LAN Regulations.
- xv. Under **Article 119 (Sections I, XV, and XVII)**, Conagua shall punish the following offences: unlawfully discharging wastewater into receiving bodies that are considered national assets, including marine waters, as well as when wastewater infiltrates land that is national property or other land and may contaminate the subsoil or aquifer (**section I**); failure to comply with the conditions set forth in the concession, allocation or discharge permit (**section XV**); causing considerable environmental damage or generating imbalances in water resources (**section XVII**).
- xvi. **Article 120 (paragraph 1)** provides that for offences referenced in Article 119, Conagua shall issue administrative sanctions regardless of other sanctions imposed under the LGEEPA, the LFRS, the General Law on National Assets and the Quality Infrastructure Act and its regulations, Official Mexican Standards, the Federal Penal Code and other applicable provisions.
- xvii. **Article 122 (section I)** provides that under certain sections of Article 119, as well as in cases of recidivism, Conagua shall additionally impose the temporary or permanent, partial or total closure of wells and works for the extraction or use of national waters. Conagua shall also impose such sanctions upon failure to comply with an order to suspend activities or suspend the wastewater discharge permit referred to in Article 92 of the LAN, in which case the permanent or temporary closure of the establishment shall follow.

- xviii. **Article 123 Bis 1** provides that in cases of presumed criminal activity, Conagua shall file a complaint before the Public Prosecutor's Office. Conagua shall provide technical or expert opinions requested by the Public Prosecutor's Office or the judicial authorities in connection with the complaints filed. Conagua shall be considered a victim or injured party in criminal proceedings and trials related to offences against national waters provided for under the LAN, the General Law on National Assets and the Federal Criminal Code.

d) Federal Law of Environmental Responsibility

55. The Submitter cites an inexistent Article from the LFRA: Article 76. In a revised submission, the submitter may correct this irregularity by referencing the appropriate provision or clarifying its assertions regarding any omissions to effectively enforce the LFRA by the Party in question.

e) Federal Law of the Sea

56. **Article 2** of the LFM provides that the act applies to marine areas that form part of the national territory and in marine areas where Mexico exercises sovereign rights, jurisdiction and other rights. It also specifies that provisions of that act are of public order. While this Article determines the LFM's scope and its imperative character, in the absence of a tie to any other provision that may qualify as environmental law within the meaning of the USMCA/CUSMA, the Secretariat does not consider this standalone provision as environmental law and will not consider it in its analysis.

f) Mexican Navigation and Maritime Commerce Act

57. The Submitter cites various provisions of the LNCM that bear no relation to the assertions contained in the submission. In addition, The Secretariat finds that these provisions, with the exception of Article 14 (section I), do not qualify as environmental law in the sense of USMCA/CUSMA Article 24.1 and will not be given further consideration in this analysis. A description of those provisions is nonetheless provided below.
58. **Article 10** describes the vessels and other seacrafts considered as Mexican for the purposes of the LNCM and provides that those vessels and seacrafts shall be registered in the National Vessel Registry. The provision lists the types of vessels and seacrafts according to their use (**section I**) and to their size (**section II**), adding that vessels in Mexico's navigable waters must comply with the United Nations Convention on the Law of the Sea's registration requirements and fly the flag of Mexico in their highest point (**last paragraph**).
59. **Article 11** describes the circumstances under which natural and legal persons may apply for registration of their vessel or seacraft before Mexican authorities, namely when such vessel or seacraft is owned (**section I**) or lawfully rented (**section II**) by that person. This provision also establishes that all purchase or rental agreements will be communicated to fiscal authorities upon vessel registration and that registered vessels and seacrafts must comply with international treaties and applicable regulations (**last paragraph**).
60. **Article 13** lists the vessels that are considered Mexican vessels, namely those flying the Mexican flag and registered under the LNCM (**section I**), abandoned vessels in Mexican waters (**section II**) and those seized by Mexican authorities (**section III**).

61. **Article 14** of the LNCM provides that the registration certificate of a Mexican vessel is without expiration and shall be cancelled in the following cases: failure to meet the safety requirements for navigation and prevention of marine pollution (**section I**); shipwrecks or accidents impeding navigation over a one-year period (**section II**); destruction or total loss of the vessel (**section III**); the owner or possessor ceases to be Mexican, except in the case of recreational or sports vessels for private use (**section IV**); the vessel's sale, purchase or transfer to a foreign government or person, with the exception listed under the previous section (**section V**); the vessel's capture by the enemy (**section VI**); a court ruling (**section VII**); the owner or possessor's renunciation of the flag (**section VIII**); unlawful stay in the national territory, in the case of vessels or seacrafts under a temporary import regime (**section IX**). The **last paragraph** of this provision adds that the navy shall only cancel the registration at the request of a vessel owner upon payment of tax credits or other fees due, except when cancelation results from a court ruling. The Secretariat finds that only section I of this provision qualifies as environmental law in the sense of USMCA/CUSMA Article 24.1 as it is geared at preventing marine pollution. However, the Secretariat will not consider this provision in its analysis as it is insufficiently related to the assertions made in the submission.
62. **Article 18** is grounded in the principle of relativity of contracts, providing that acts and documents that are not registered in accordance with the LNCM shall only be effective between the issuing and receiving parties.
63. Article 24 states that the naval officer responsible for ships will act as representative before federal port authorities and may carry out the following functions: receive and assist the vessel assigned to him at the port (**section I**); perform the necessary acts to obtain clearance for the vessel (**section II**); take the necessary steps to comply with the provisions or instructions issued by any federal authority (**section III**); prepare the vessel for dispatch (**section IV**); act as representative of the captain or commercial operators for the bills of lading and other necessary documents, as well as delivering goods to recipients or depositaries (**section V**); assist the captain of the vessel, as well as contract and supervise the services necessary for the care and operation of the vessel in port (**section VI**); and perform all acts concerning navigation, transport and maritime trade related to the vessel (**section VII**). This provision also foresees that all foreign shipowners must appoint a naval officer in order to operate in Mexican ports.
64. **Article 25** relates to vessel crew members, minimum crew membership for different types of fishing vessels, technical, training and supervision personnel and provides that captains, naval pilots, skippers, engineers, mechanics and, in general, all personnel who crew a Mexican vessel must be Mexican by birth and must not acquire another nationality.
65. **Article 27** provides that the crews of vessels must have a captain or skipper, as well as the corresponding officers, in accordance with the LNCM, its regulations and international treaties. It specifies that the captain of the vessel is the highest authority on board and shall be considered the representative of the Mexican authorities in foreign waters and on the high seas.
66. **Article 28** provides that the captain acts as assistant to the federal public ministry on board a vessel (**section III**).
67. **Article 53** states the responsibilities of the harbor master, namely, to ensure that vessels do not remain in the port without just cause and apply the LNCM provisions relating to mooring and abandonment. This provision also establishes that vessels must have the necessary personnel

to carry out any movement ordered by the harbor master's office, or that is necessary for the safety of the port and other vessels.

68. The Submitter cites inexistent paragraphs of **Article 54**: paragraphs two and four. In a revised submission, the Submitter may correct this irregularity by refencing the appropriate provision or clarifying its assertions regarding any omissions to effectively enforce the LNCM by the Party in question.

g) National Code of Penal Procedures

69. **Article 222** of the CNPP establishes the duty to immediately report probable criminal activity to the Public Prosecutor's Office when such acts are discovered in the exercise of public functions. This provision further establishes that persons with such a duty must provide all information available to them, including bringing the accused forward, noting that failure to comply with this duty will result in sanctions (paragraph 2). This Article also foresees than in situations described in paragraph two, public officials whose role is also to cooperate with public safety authorities will seek to ensure that evidence of the incident is preserved at the scene, take measures to provide emergency medical care to the injured and transfer those arrested to the authorities in collaboration with the police (paragraph 3). The Secretariat determines that, while this provision is sufficiently broad to include environmental crimes under its scope and may at times seek the protection of the environment or the prevention of a danger to human life or health, there is no indication this is the provision's primary purpose in the sense of USMCA/CUSMA Article 24.1. Consequently, while it may guide its analysis, the Secretariat does not consider this provision to qualify as environmental law.

h) Federal Penal Code

70. **Article 416** of the CPF provides for the penalty for anyone who unlawfully discharges, deposits, or filters wastewater, chemical or biochemical liquids, waste or pollutants into the soil, subsoil, marine waters, rivers, basins, reservoirs or other water deposits under federal jurisdiction, causing a risk of damage or damage to natural resources, flora, fauna, water quality, ecosystems or the environment. This Article also applies to anyone who authorizes or orders the acts referenced above and specifies that the penalty shall be one to nine years of imprisonment and between three hundred to three thousand days in fine (*días multa*). Paragraph two of this provision specifies that in cases where wastewater is deposited in or flows into or towards a protected natural area, the prison sentence shall be increased by up to three years and the financial penalty by up to one thousand days' fine. The Secretariat finds that this provision qualifies as environmental law under USMCA/CUSMA Article 24.1, since its main purpose is the protection of the environment through sanctions for unlawful wastewater discharges and release of other pollutants into the natural environment.
71. **Article 421** provides for additional penalties and measures, including: reparation and compensation for damage to the environment, in accordance with the LFRA (**section I**); suspension, alteration or demolition of works or activities that give rise to an environmental offence (**section II**); and ineligibility when an offender is a public servant (**section V**). The Secretariat finds that this provision qualifies as environmental law under USMCA/CUSMA Article 24.1, since its main purpose is the protection of the environment through sanctions for unlawful wastewater discharges and release of other pollutants into the natural environment

i) Official Mexican Standard NOM-001-SEMARNAT-2021

72. **Section 1** establishes the object and scope of this Official Mexican Standard, which is to establish permissible limits for pollutants in wastewater discharges in order to protect, conserve, and improve the quality of national waters and assets (**paragraph 1**). The provision is mandatory and applies to wastewater discharges into any type of receiving body under national jurisdiction (**paragraph 2**). The Secretariat finds that this provision qualifies as environmental law under USMCA/CUSMA Article 24.1, since its main purpose is the protection of the environment by establishing a threshold for pollutants in wastewater discharges.
73. **Section 10** provides that Semarnat, through Conagua and the Attorney General's Office, is responsible for monitoring compliance with this Official Mexican Standard (**10.1**), adding that violations will be punished in accordance with the LGEEPA, the LAN, the Federal Law on Metrology and Standardization and their respective Regulations on the matter, as well as other applicable legal provisions (**10.2**). The Secretariat finds that this provision qualifies as environmental law under USMCA/CUSMA Article 24.1, since its main purpose is the protection of the environment through sanctions for unlawful wastewater discharges and release of other pollutants into the natural environment.

j) Multilateral Agreements and International Declarations

74. The submission cites provisions of the ACHR, the Protocol of San Salvador, and the Rio Declaration. As the Secretariat has found in the case of other USMCA chapter 24 submissions,³⁶ the Secretariat is only authorized to consider the obligations of a Party under a multilateral agreement or declaration where they are implemented through an Act of Congress or a regulation pursuant to such act and are enforceable by federal authorities. In the case at hand, the Submitter directly relies on the ACHR, the Protocol of San Salvador and the Rio Declaration for its assertions. These instruments do not qualify as environmental law in the sense of USMCA Article 24.1 and will not be further considered by the Secretariat.

k) La Paz Agreement

75. The Agreement between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area was signed between Mexico and the United States in La Paz, Baja California Sur, on 14 August 1983 (the 'La Paz Agreement').³⁷ The La Paz Agreement entered into force on 16 February 1984 and establishes "the basis for cooperation between the Parties for the protection, improvement and conservation of the environment and the problems which affect it, as well as to agree on necessary measures to prevent and control pollution in the *border area*," an area situated 100 kilometers on either side of the inland and maritime boundaries between the Parties, as per Article 4.
76. The La Paz Agreement is not an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government in Mexico,

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³⁷ USA & Mexico (1983), "La Paz Agreement," United States of America and Mexico, 14 August 1983, at: <<https://bit.ly/4rsLphg>>.

thus not meeting the formal requirements to qualify as a statute or regulation for the purpose of USMCA/CUSMA Article 24.1.

77. On the other hand, the La Paz Agreement may not be applied directly as it provides, by way of example, for the conclusion of *specific arrangements* for the solution of common problems in the border area,³⁸ expresses the Parties' agreement "to coordinate their efforts, in conformity with their own national legislation and existing bilateral agreements,"³⁹ and foresees that "practical, legal, institutional and technical measures" will be namely considered through environmental impact assessments and regular exchanges of information.⁴⁰
78. The Secretariat determines that the La Paz Agreement, although aimed at protecting the environment in the border area, does not qualify as environmental law under Article 24.1 of the USMCA/CUSMA because it does not derive from an Act of Congress.
79. In summary, the Secretariat considers that the following provisions qualify as environmental law in accordance with USMCA/CUSMA Article 24.27(1):
- i. Article 4, paragraphs six and eight of the Constitution;
 - ii. Articles 15: sections IV and XIII; 88: sections I, II, and IV; 89: sections II, V, and VI; 92; 93: sections I, II, and III; 117: sections I, II, III, and IV; 118: section V; 121; 122: section I; 123; 124; 129; 130; 132; 133; 161; 170: sections I and II, and last paragraph; 171; 172; and 182 of the LGEEPA;
 - iii. Articles 44: paragraph three; 86: sections IV and V; 88: paragraph one; 88 *bis*: sections I, II, IX, and X; 89: paragraph three; 91 *bis* 1; 92: sections I and II, and last two paragraphs; 93; 94; 95; 96 *Bis*; 96 *Bis* 1; 118 *Bis* 2; 118 *Bis* 3; 119: sections I, XV, and XVII; 120: paragraph one; 122: section I; and 123 *Bis* 1 of the LAN;
 - iv. Articles 416 and 421 of the CPF;
 - v. Sections 1 and 10 of the Official Mexican Standard NOM-001-SEMARNAT-2021.
80. In a revised submission, the Submitter could clarify its assertions regarding how the Government of Mexico is failing to effectively enforce the other environmental law provisions it cites in the submission.

B Article 24.27(2)

81. Article 24.27(2) of the USMCA/CUSMA establishes five requirements that a submission must satisfy to be admissible.

The Secretariat may examine submissions under this article if it concludes that the submission:

a. is in writing in English, French, or Spanish;

82. The submission is written in Spanish, thus satisfying the requirement set out in USMCA/CUSMA Article 24.27(2)(a).

³⁸ Id. at Art. 3

³⁹ Id. at Art. 5

⁴⁰ Id. at Art. 6

b. clearly identifies the person making the submission:

83. The submission includes the name, address, e-mail address and telephone number of the person submitting the submission: sufficient and adequate information to identify the Submitter, communicate with them and assess whether the Submitter meets the requirements of Article 24.27(1).
84. In this regard, the Secretariat determines that the submission satisfies USMCA/CUSMA Article 24.27(2)(b).

c. provides sufficient information to allow for the review of the submission, including any documentary evidence on which the submission may be based and identification of the environmental law of which the failure to enforce is asserted;

85. The submission includes quotes and references as well as numerous appendices that contain information from various publications and studies. The submission includes links to publicly accessible information. A few of the most relevant exhibits included in the submission are summarized below:
- i. The submission provides a variety of documentary evidence supporting the Submitter's assertions, including meeting minutes⁴¹ and a memorandum of understanding⁴² related to agreements signed between US and Mexico; reports and assessments addressing health, environmental and economic impacts; analyses of alternatives and proposals for resolving the issue, as well as the state level involvement;⁴³

⁴¹ IBWC, *Minutes*, 270 (30 April 1985), 283 (2 July 1990), 298 (2 December 1997), 320 (5 October 2015), 328 (19 July 2022) & 333 (15 December 2025), International Boundary and Water Commission United States and Mexico, at: <https://bit.ly/min_270>, <https://bit.ly/min_283>, <https://bit.ly/min_298>, <https://bit.ly/min_320>, <https://bit.ly/min_328> and <https://bit.ly/min_333>; IBWC (undated), "Minutes between the United States and Mexican Sections of the IBWC," International Boundary and Water Commission United States and Mexico, at: <<https://bit.ly/4aDZrGG>>; IBWC (undated), "Minute 320," International Boundary and Water Commission United States and Mexico, at: <<https://bit.ly/4rQVJZ>>; Gobierno de México (2022), "Mexico and US welcome the entry into force of IBWC Minute 328," Secretaría de Relaciones Exteriores, Press Release 311, 18 August 2022, at: <<https://bit.ly/4cuQKjg>>.

⁴² Semarnat (2025), "Memorando de Entendimiento entre México y Estados Unidos de América sobre la Atención en la Región Tijuana-San Diego," Secretaría de Medio Ambiente y Recursos Naturales, 24 July 2025, at: <<https://bit.ly/4aW3EEP>>.

⁴³ CILA (2021), *Formulación del Programa de Saneamiento de la Frontera Norte a Nivel Gran Visión*, Comisión Internacional de Límites y Aguas entre México y Estados Unidos, Informe final, at: <<https://bit.ly/46ETWF8>>; CILA (2021), *Formulación del Programa de Saneamiento de la Frontera Norte a Nivel Gran Visión*, Comisión Internacional de Límites y Aguas entre México y Estados Unidos, Informe especial, at: <<https://bit.ly/401euE8>>; IBWC (2017), *Report of Transboundary Bypass Flows into the Tijuana River*, International Boundary and Water Commission United States and Mexico, prepared by: Minute 320, Binational Technical Team, Water Quality Workgroup, at: <<https://bit.ly/3MfAtUQ>>; GAO (2008), *International Boundary and Water Commission: Two Alternatives for Improving Wastewater Treatment at the United States-Mexico Border*, United States Government Accountability Office, Washington, DC, at: <<https://bit.ly/4r9HDJr>>; County of San Diego (2020), *Tijuana River Valley, Needs and Opportunities Assessment*, at: <<https://bit.ly/4kohWCa>>; EPA, IBWC & ERG (2022), *Final Programmatic Environmental Impact Statement, USMCA Mitigation of Contaminated Transboundary Flows Project*, Environmental Protection Agency, International Boundary and Water Commission and Eastern Research Group, at: <<https://bit.ly/3O51hrj>>; K. Robinson & B. Johnson (2024), Staff Report 61,

- ii. The submission includes information retrieved from public websites regarding monitoring of water quality of the Tijuana River;⁴⁴ as well as information on the Tijuana River Valley recovery strategy, including recent updates, conditions and impacts, infrastructure and projects, and San Diego water board actions;⁴⁵
- iii. The submission provides several communications to authorities in the US;⁴⁶ scientific articles;⁴⁷ and a note on the failure of minute 320, as clandestine discharges of wastewater persist, and Mexico does not report them in a timely manner.⁴⁸
- iv. The submission includes information regarding the wastewater requirements of the South Bay International Wastewater Treatment Plant (SBIWTP);⁴⁹ as well as documents outlining specific actions to improve water quality, protect public health,⁵⁰ restore ecological and recreational uses;⁵¹ and information regarding the San Dieguito Wetlands and Tijuana Estuary in San Diego County, CA.⁵²

California State Lands Commission, meeting (10 October 2024), at: <<https://bit.ly/4qqpcie>>; K. Robinson & B. Johnson (2024), Staff Report 61, California State Lands Commission, meeting (12 December 2024), at: <<https://bit.ly/4am3lm5>>.

- 44 USIBWC (undated) “Water Data Portal,” U.S. International Boundary and Water Commission, at: <<https://bit.ly/40cpu1D>>; IBWC (undated), “Water Data,” International Boundary and Water Commission United States and Mexico, at: <<https://bit.ly/4txUKWp>>.
- 45 SWRCB (2026), “U.S-Mexico Border Water Quality,” Tijuana river valley strategy, San Diego Regional Water Board, at: <<https://bit.ly/4rNUukb>>.
- 46 California State Lands Commission, letter (20 December 2025) to President of the United States, at: <<https://bit.ly/408WYrc>>; A. Barrera & C. Pauda, Memorandum (29 September 2023), “Tijuana River Pollution Crisis in San Diego County,” California Coastal Commission, at: <<https://bit.ly/4qDU5Qv>>.
- 47 K. Danil *et al.* (2023), “Systemic Erysipelas Outbreak among Free-Ranging Bottlenose Dolphins, San Diego, California, USA, 2022,” *Emerging Infectious Diseases*, 29(12): 2561-2563, at: <[10.3201/eid2912.230811](https://doi.org/10.1016/j.scitotenv.2024.175137)>; N. Mladenov *et al.* (2024), “Evaluation of real-time fluorescence sensors and benchtop fluorescence for tracking and predicting sewage contamination in the Tijuana River Estuary at the US-Mexico border,” *Science of the Total Environment*, 950: 175137, at: <<https://doi.org/10.1016/j.scitotenv.2024.175137>>; P. E. Stigler Granados *et al.* (2024), “Tijuana River Contamination from Urban Runoff and Sewage: A Public Health Crisis at the Border,” *San Diego State University’s white paper*, at: <<https://bit.ly/4kvOxWO>>.
- 48 S. Halawi (2019), “Sniffing Out Clandestine Water Pollution in the Tijuana River Valley,” Notes, *The Georgetown Environmental Law Review*, 31: 785-811, at: <<https://bit.ly/46MyVIH>>.
- 49 San Diego Water Board (2021), “Order no. R9-2021-0001, NPDES no. Ca0108928, Waste discharge requirements for the United States section of the International Boundary and Water Commission South Bay International Wastewater Treatment Plant discharge to the Pacific Ocean through the South Bay Ocean outfall,” California Regional Water Quality Control Board San Diego Region, at: <<https://bit.ly/4rdcSmO>>.
- 50 HHS—Live Well San Diego—CDC (2025), *Tijuana River Valley Community Assessment for Public Health Emergency Response (CASPER)*, Health and Human Services Agency of County of San Diego—Live Well San Diego—Centers for Disease Control and Prevention, at: <<https://bit.ly/4qyz0qE>>;
- 51 CRWQCB (2024), *Lower Tijuana River Indicator Bacteria and Trash Advance Restoration Plan*, California Regional Water Quality Control Board, San Diego Region, at: <<https://bit.ly/4rM21zY>>; SCC—DFW—CNRA—SWRCB—SSDC (2023), *California Wetland Program Plan 2023-2028*, California State Coastal Conservancy, California Department of Fish and Wildlife, California Natural Resources Agency, California State Water Resources Control Board & Sacramento-San Joaquin Delta Conservancy, at: <<https://bit.ly/4kwty6a>>
- 52 S.C. Schroeter *et al.* (2024), “UCSB SONGS Mitigation Monitoring: Wetland Survey - Fish Abundance ver 6. Environmental Data Initiative,” EDI Data Portal, at: <<https://bit.ly/4aEH9Ed>>; RIS (2005), *Tijuana River*

- v. The submission includes news pieces about a criminal complaint;⁵³ the impact of untreated wastewater on dissolved oxygen levels and its negative impact on marine life;⁵⁴ and the cross-border sewage flows on the Tijuana River since 2000.⁵⁵
- vi. The submission includes information about Mexico, including its obligation to adopt preventive measures against risks of serious damage to other countries;⁵⁶ annual activity reports from the Fiscalía General de la República without complaints for environmental crimes in the Tijuana River;⁵⁷ an audit that addresses wastewater;⁵⁸ a state of emergency declaration⁵⁹ and a resolution;⁶⁰ press releases;⁶¹ bacteriological

National Estuarine Research Reserve (TRNERR), Information Sheet on Ramsar Wetlands, at: <https://bit.ly/4qH3NBL>; T.E. Dahl (1990), *Wetlands losses in the United States 1780's to 1980's*, U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C., at: <https://bit.ly/4an3Vl6>.

- ⁵³ MND Staff (2018), “Environmental group prepares criminal complaint over Tijuana sewage,” *Mexico News Daily*, at: <https://bit.ly/4bQyJvz>.
- ⁵⁴ T. Murga (2024), “What oxygen levels in the Tijuana River estuary tell us about the impacts of the sewage crisis,” *Phys.org*, at: <https://bit.ly/4bWO8dS>.
- ⁵⁵ T. Murga (2024), “Tijuana River sewage flows last year broke all records since 2000. It’s on track to do it again,” *The San Diego Union-Tribune*, at: <https://bit.ly/4rRsBYI>; A. Black (2025), “Mexican sewage plant fixed, but South Bay pollution continues,” *CBS8*, at: <https://bit.ly/4c2PR1n>.
- ⁵⁶ I/A Court H.R. (2017), “Advisory Opinion OC-23/17 of November 15, 2017, Requested by the Republic of Colombia,” Inter-American Court of Human Rights, at: <https://bit.ly/4rhyezj>.
- ⁵⁷ FGR, letter FGR/005/2025 (4 march 2025), *Informe Anual de Actividades del Fiscal General de la República 2024*, Fiscalía General de la República, Cámara de Diputados, Mexico City, at: <https://bit.ly/3ZH3GuV>; FGR (2025), *Informe Anual de Actividades del Fiscal General de la República 2024*, Fiscalía General de la República, Mexico City, at: <https://bit.ly/4rOqYuH>; FGR (2024), *Informe Anual de Actividades del Fiscal General de la República 2023*, Fiscalía General de la República, Mexico City, at: <https://bit.ly/4rTWRCm>; FGR (2023), *Informe Anual de Actividades del Fiscal General de la República 2022*, Fiscalía General de la República, Mexico City, at: <https://bit.ly/4kEecwp>.
- ⁵⁸ ASF (2024), *Control Interno y Gobernanza del Manejo de los Derechos de Agua para Consumo Humano*, Auditoría Combinada de Cumplimiento y Desempeño: 2023-5-16B00-21-0106-2024, Informe Individual del Resultado de la Fiscalización Superior de la Cuenta Pública 2023, Auditoría Superior de la Federación, at: <https://bit.ly/4qJ8TNU>.
- ⁵⁹ Gobierno del Estado de Baja California (2020), “Declaratoria Estatal de Emergencia por Fenómenos Sanitario Ecológico, en la zona que se conoce como Colector Costeño Tijuana–Rosarito, la cual incluye los fraccionamientos Rancho del Mar, Residencial San Marino 1era Sección, Sueños del Mar, Baja Malibu Carretera y Lomas, Brisas del Mar, Gardenhaus, Delfines y Real del Mar, ubicados en los municipios de Tijuana y Playas de Rosarito,” at: <https://bit.ly/4rQ7QfQ>.
- ⁶⁰ Poder Legislativo del Estado de Baja California (2022), “Acuerdo por el que se exhorta al titular de la Secretaría para el Manejo, Saneamiento y Protección del Agua y al titular de la Comisión Estatal de Servicios Públicos de Tijuana, para que en el ámbito de sus atribuciones y competencias, con relación a la derrama de aguas residuales en la zona conocida como playas de Tijuana, ejecuten medidas para prevenir la contaminación de playas de Tijuana,” Presidency of the Congress of the State of Baja California, 8 September 2022, at: <https://bit.ly/4cuhOPA>.
- ⁶¹ Semarnat (2025), “Autoridades ambientales de México y EUA firman Memorando de Entendimiento para atender situación sanitaria y ambiental en Tijuana-San Diego,” Prensa, Secretaría de Medio Ambiente y Recursos Naturales, 24 July 2025, at: <https://bit.ly/4am4OKw>; Conagua (2017), “Referente a las descargas residuales que se presentaron en el Río Tijuana a principios del mes pasado, Conagua informa lo siguiente:,” Prensa, Comisión Nacional del Agua, 10 March 2017, at: <https://bit.ly/4rnqMmy>; H. Ayuntamiento de Tijuana (2025), “Clausura Gobierno Municipal baños públicos en Playas de Tijuana por derrame de aguas negras,” Comunicado Número 2, 3 July 2025, at: <https://bit.ly/4rQKkPT>.

quality of seawater monitoring results,⁶² and news pieces on beach closures, their recreational suitability and government actions on the wastewater system.⁶³

- vii. The submission also includes information that could not be accessed because the hyperlink provided did not work;⁶⁴ no hyperlink or file was provided;⁶⁵ or access to the information required a subscription.⁶⁶

86. The Secretariat determines that the submission satisfies USMCA/CUSMA Article 24.27(2)(c).

d. appears to be aimed at promoting enforcement rather than at harassing industry; and

87. The Submitter asserts that the “constant leaks, spills, and intentional discharge of billions of gallons of raw sewage annually have caused an ongoing human health, economic, and economic disaster on both sides of the US-Mexico border;”⁶⁷ that “the transboundary sewage crisis is not limited to episodic wet-weather events. Rather, it persists chronically year-round;”⁶⁸ and that these continuous discharges violate multiple provisions of Mexican federal environmental laws and international obligations.⁶⁹ In sum, the Submitter alleges that:

[T]here is little or no information or evidence documenting meaningful enforcement actions by relevant authorities within the Mexican government to conduct investigations, issue sanctions or penalties, issue closure orders, require remediation, coercively compel infrastructure improvements, file complaints or court proceedings, or otherwise require compliance with Mexico’s applicable environmental laws.⁷⁰

⁶² SS–Cofepris (2022), “Resultados del monitoreo prevacacional de Verano 2022;” SS–Cofepris (2023), “Resultados del monitoreo prevacacional de playas en el estado de Baja California, Invierno 2023;” SS–Cofepris (2024), “Resultados del monitoreo prevacacional de playas en el estado de Baja California, Semana Santa 2024;” SS–Cofepris (2024), “Resultados del monitoreo prevacacional de playas en el estado de Baja California, Verano 2024;” SS–Cofepris (2025), “Resultados del monitoreo prevacacional de playas en el estado de Baja California, Semana Santa 2025;” Secretaria de Salud–Comisión Federal para la Protección contra Riesgos Sanitarios, at: <<https://bit.ly/sscof2022>>; <<https://bit.ly/sscof2023>>; <<https://bit.ly/sscof2024>>; <<https://bit.ly/sscofv2024>>; <<https://bit.ly/sscof2025>>.

⁶³ J. M. Hernández (2024), “Anuncia Ayuntamiento de Tijuana cierre precautorio de playas,” *El Sol de Tijuana*, at: <<https://bit.ly/4aSMqco>>; Gobierno del Estado de Baja California (2021), “Informa COFEPRIS sobre playas aptas para uso recreativo,” at: <<https://bit.ly/3ML2Fiv>>; Gobierno del Estado de Baja California (2023), “Trabaja CESPT en reparación del sistema de alejamiento de aguas residuales de Tijuana,” *Noticia, Cada gota cuenta*, 10 de febrero de 2023, at: <<https://bit.ly/4rKmV2s>>.

⁶⁴ Exhibit BH: Federal Commission for the Protection against Sanitary Risks (COFEPRIS). (2025, July). Pre-holiday Monitoring Results for Beaches in Baja California, Summer 2025 [Monitoreo prevacacional de playas en el estado de Baja California, Verano 2025]. Gobierno de Mexico; Exhibit AC: City of Coronado, Staff Report to the City Council: Council Subcommittee on Cross Border Water Quality Quarterly Update (May 7, 2024).

⁶⁵ Exhibit BR: Federal Attorney General’s Office [Fiscalía General de la República (FGR)]. (2022, January). Annual Report of Activities 2021.

⁶⁶ Exhibit AM: The Water Report. (2025, April 15). The Water Report (No. 254).

⁶⁷ Submission, at 1.

⁶⁸ Id.

⁶⁹ Id. at 2.

⁷⁰ Id. at 9.

88. The Secretariat finds that USMCA/CUSMA Article 24.27(2)(d) is met, as the submission and its annexes do not aim to harass an industry. Although the submitter makes reference to Tijuana’s urban and industrial growth driven by economic policies, the submission seeks the effective enforcement of environmental law in relation to wastewater pollution, wastewater treatment systems, and impacts to health, the environment and the economy caused by the alleged failure to effectively enforce environmental laws.
- e. indicates whether the matter has been communicated in writing to the relevant authorities of the Party and the Party’s response, if any*
89. The Submitter explains that the Mexican government is well aware of the Tijuana wastewater crisis and that the relevant authorities recognize that the problem is “sustained, institutional, and documented through multiple formal channels”,⁷¹ that Conagua has publicly acknowledged that the coastal waters are “highly contaminated”,⁷² that the Memorandum of Understanding between Semarnat and the US Environmental Protection Agency recognized the sanitary and environmental situation in Tijuana-San Diego border,⁷³ that the Secretariat of Foreign Affairs (*Secretaría de Relaciones Exteriores*) acknowledged further cooperation is needed to resolve the water sanitation problem in the US-Mexico border;⁷⁴ that the International Boundary and Water Commission (*Comisión Internacional de Límites y Aguas*, CILA) planning documents have “diagnosed structural system failures and transboundary impacts” including the need to invest USD \$728 million for adequate infrastructure.⁷⁵ The Submitter contends that there is sufficient information evidencing that Mexican federal authorities are well aware of the wastewater and sanitation issues in Tijuana.
90. The documents attached to the submission include several minutes by IBWC and CILA in which concept plans are adopted to address sanitation in the San Diego-Tijuana region and, at least since 1990, authorities have recognized that “it has not yet been possible to eliminate the uncontrolled flows of wastewater that continuously drain through Goats Canyon and the Tijuana River.”⁷⁶ The submission includes a minute setting up a binational technical framework to study water quality in the Tijuana River watershed and adjacent canyons/drains, stating that there exist several matters demanding binational cooperation including “flood control, capture and beneficial use of surface and groundwater, sediment and solid waste deposition in the transboundary channels, water quality and the control of wastewater discharges, environmental protection and restoration”⁷⁷ and a minute adopting and sequencing major rehabilitation/expansion projects to mitigate transboundary flows, including expanding the SBIWTP and related Mexican infrastructure, while noting concern on behalf of IBWC and CILA commissioners that:

⁷¹ Id. at 14.

⁷² Id.

⁷³ Id.

⁷⁴ Id, see: Gobierno de México (2022), *supra* at: <<https://bit.ly/4aekHRP>>, cited in Submission at footnote 60.

⁷⁵ Id.

⁷⁶ IBWC (1990), *Minute 283*, *supra*, at: <https://bit.ly/min_283> (“No ha sido posible aun eliminar los flujos incontrolados de aguas residuales que escurren de manera continua por el Cañón de Los Laureles (Goats Canyon) y por el Rio Tijuana”).

⁷⁷ IBWC (2015), *Minute 320*, *supra* at 2, at: <https://bit.ly/min_320>.

due to the age of the facilities described [in the minute] and the impacts of population growth and urbanization, the existing sanitation infrastructure at the San Diego international border is no longer sufficient to prevent the transboundary wastewater flows, which have increased in volume and frequency since 2017.⁷⁸

91. The Secretariat has reiterated that the communication to the relevant authority is intended to ensure that “the competent authorities are aware of the matter in question”⁷⁹ prior to filing a submission with the Secretariat⁸⁰ and to give an opportunity to the authorities to take action in their administrative sphere.⁸¹ The Submitter demonstrates that Mexican environmental authorities are well aware of the wastewater management situation in Tijuana and that this is known to the authorities in question in such a manner that it is possible to take action on matters raised in the submission prior to filing a submission. The submission documents that at least since 1990⁸² and continues to exist to this date, as observed by the Submitters in documents referred in the submission through variety of documents, including monitoring results, *inter alia*: IBWC meeting minutes,⁸³ official reports and assessments,⁸⁴ and a Congress internal audit report.⁸⁵
92. The Secretariat finds that the submission satisfies the requirement under USMCA/CUSMA Article 24.27(2)(e).

D. Article 24.27(3) Criteria

93. Article 24.27(3) of the USMCA/CUSMA establishes four additional criteria that guide the Secretariat's review process:
- a. the submission alleges harm to the person making the submission;*
94. The Secretariat has found that, when considering the question of harm, it must be determined whether the harm asserted is due to the alleged failure to effectively enforce the

⁷⁸ IBWC (2022), *Minute 328*, *supra* at 2, at: <https://bit.ly/min_328>.

⁷⁹ SEM-06-003 and SEM-06-004 (*Ex Hacienda El Hospital II y III*), Notification to the Council pursuant to Article 15(1) of the NAAEC

⁸⁰ SEM-09-004 (Quebec Mining), NAAEC Article 14(1) Determination (20 October 2009), at 8, online at . https://www.cec.org/wp-content/uploads/wpallimport/files/09-4-detn_14_1_en.pdf

⁸¹ SEM-24-002 (*Cadereyta Refinery*), Determination pursuant to Article 24.27(2) and (3), at §26 and SEM-24-001 (*Time Ceramics*), Determination pursuant to Article 24.27(2) and (3), at §29.

⁸² IBWC (1990), *Minute 283*, *supra* at 1, at: <https://bit.ly/min_283>.

⁸³ IBWC, *Minutes*, 270 (30 April 1985), 283 (2 July 1990), 298 (2 December 1997), 320 (5 October 2015), 328 (19 July 2022) & 333 (15 December 2025), International Boundary and Water Commission United States and Mexico, at: <https://bit.ly/min_270>, <https://bit.ly/min_283>, <https://bit.ly/min_298>, <https://bit.ly/min_320>, <https://bit.ly/min_328> and <https://bit.ly/min_333>; IBWC (undated), “Minutes between the United States and Mexican Sections of the IBWC,” International Boundary and Water Commission United States and Mexico, at: <<https://bit.ly/4aDZrGG>>; IBWC (undated), “Minute 320,” International Boundary and Water Commission United States and Mexico, at: <<https://bit.ly/4rRQVJZ>>; Gobierno de México (2022), “Mexico and US welcome the entry into force of IBWC Minute 328,” Secretaría de Relaciones Exteriores, Press Release 311, 18 August 2022, at: <<https://bit.ly/4cuOKjg>>.

⁸⁴ CILA (2021), *supra* at: <<https://bit.ly/46ETWF8>>; CILA (2021), *Formulación del Programa de Saneamiento de la Frontera Norte a Nivel Gran Visión*, Comisión Internacional de Límites y Aguas entre México y Estados Unidos, Informe especial, at: <<https://bit.ly/401euE8>>; IBWC (2017), *supra* at: <<https://bit.ly/3MfAtUQ>>.

⁸⁵ ASF (2024), *supra* at: <<https://bit.ly/4qJ8TNU>>.

environmental law and whether the harm is related to environmental protection.⁸⁶ Determinations issued by the Secretariat under USMCA/CUSMA Article 24.27 and that have concluded with the preparation of a factual record confirm that consideration of harm is linked to the alleged failure to effectively enforce environmental law.⁸⁷

95. The submission asserts that wastewater contamination in Tijuana “has created a severe and persistent public health crisis affecting many thousands of residents”;⁸⁸ that the impacted waters contain “extremely high concentrations of bacteria, viruses, hepatitis, and chemicals”;⁸⁹ that aerosolization of sewage and concerning spikes in hydrogen sulfide are well-documented; that beaches in San Diego, Tijuana and Rosarito have been severely impacted due to sewage spills.⁹⁰
96. The Submitter contends that the Tijuana River National Estuarine Research Reserve has been impacted by the “continuous sewage influx”;⁹¹ that untreated sewage causes oxygen depletion and nutrient loading rendering waters unsuitable for aquatic life, recreation and shellfish harvesting;⁹² that contamination extends to the coastal waters in the Pacific Ocean with untreated sewage and that bottle nosed dolphins have been documented to have died from sepsis caused by a bacteria transmitted through contact with feces or urine in contaminated water, food or soil.⁹³
97. The Submitter asserts that Mexico is failing to enforce several provisions in the Constitution, federal laws, and international obligations, and explains that federal authorities in Mexico are responsible for law enforcement, including Semarnat, Conagua, and Profepa with different levels of authority to enforce the environmental law in question. The Submission establishes that there is an “evidentiary pattern” showing government awareness of the “deficiencies in the Tijuana wastewater system and of their environmental impacts, as reflected in official communications, technical assessments, binational coordination agreements, and successive plans and programs.”⁹⁴
98. The Secretariat finds that the submission meets the criterion of USMCA Article 24.27(3)(a).

b. the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter;

⁸⁶ SEM-19-004 (*Barred Owl*), Article 14(1) and (2) Determination (21 November 2019), §28; SEM-11-002 (*Sumidero Canyon II*), Article 14(1) and (2) Determination (6 September 2012), §36; SEM-13-001 (*Tourism Development in the Gulf of California*), Article 14(1) and (2) Determination (23 November 2013), §62. *Cf.* Guidelines, paragraph 7.4.

⁸⁷ The Secretariat considered the admissibility of the assertions related to harm to the loggerhead turtle in light of fishing vessel activities and enforcement of the law in question *Loggerhead*, at §57 at: <<https://bit.ly/4c6WOOH>>; as well as danger from fishing gear to the North Atlantic right whale *Right Whale* at §81 at: <<https://bit.ly/49Ygtiz>>; and danger of extinction to the vaquita porpoise due to illegal fishing activities, at *Vaquita porpoise* at §41 at: <<https://bit.ly/4aclbad>>.

⁸⁸ Submission, at 5.

⁸⁹ *Id.* at 6.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 7.

⁹⁴ *Id.* at 9.

99. Article 24.2(2) of the USMCA/CUSMA states that the objectives of Chapter 24 of the Agreement are “to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation, in furtherance of sustainable development.”
100. The Secretariat finds that submission SEM-26-002 (*Tijuana Wastewater Management*) raises questions about the effective enforcement of the environmental law in question directly in connection with public health and environmental impacts from the alleged mismanagement of wastewater in Tijuana, Mexico. The submission raises matters related to large-scale water pollution and wastewater treatment deficiencies, points to a lack of large-scale capacity to treat wastewater, and alleges institutional inaction. Further study of these issues contributes to meeting the goals of USMCA/CUSMA Chapter 24 in promoting high levels of environmental protection and effective enforcement of environmental laws.
101. The Secretariat concludes that the submission satisfies USMCA/CUSMA Article 24.27(3)(b).

c. private remedies available under the Party’s law have been pursued; and

102. The Secretariat has found that pursuing private remedies can be interpreted broadly and this criterion can be met by filing a complaint or referencing a complaint filed by another person, organization, or entity.⁹⁵ The Secretariat found in past determinations that this criterion is evaluated according to a standard of reasonableness, keeping in mind that in some cases barriers exist to pursuing such remedies.⁹⁶
103. This criterion is evaluated according to a standard of reasonableness, keeping in mind that in some cases barriers exist to pursuing such remedies.⁹⁷ In this sense, the Secretariat considers that it is sometimes impossible to initiate judicial or administrative proceedings

⁹⁵ SEM-21-001 (*Fairview Terminal*), Determination (27 April 2021), § 30-31, at: <<https://bit.ly/4bv5dvj>> (finding that filing a complaint with the Canadian Transportation Agency met the criterion of USMCA Article 24.27(3)(c)).

⁹⁶ SEM-18-001 (*Transboundary Agricultural Burning*), Article 14(1) and (2) Determination (19 February 2018) (“In similar situations, the Secretariat has considered if reasonable actions were taken prior to file a submission. It has also considered that in some cases, the lack of resources may limit a submitter’s ability to undertake private remedies before filing a submission. The Secretariat considers that a barrier to a private remedy may include economic and social factors.”); SEM-23-002 (*Avocado Production in Michoacán*), Determination (6 March 2023), § 74-77, at: <<https://bit.ly/3ZF2gAU>> (finding that the submission complies with Article 24.27(3)(c) since the Submitter provided a reasonable explanation of the impossibility of seeking remedies in relation to the issue under Mexican law); SEM-23-007 (*Vessel Pollution in Pacific Canada*), Determination pursuant to Article 24.27(2) and (3), § 49, at: <<https://bit.ly/4trhNSP>> (finding that a letter sent to the ministry was not sufficient to satisfy the criterion that private remedies have been pursued).

⁹⁷ See SEM-18-001 (*Transboundary Agricultural Burning*), Determination pursuant to Articles 14(1) and (2) of the NAAEC (19 February 2018), §§ 27-28 (“In similar situations, the Secretariat has considered if reasonable actions were taken prior to file a submission. It has also considered that in some cases, the lack of resources may limit a submitter’s ability to undertake private remedies before filing a submission. The Secretariat considers that a barrier to a private remedy may include economic and social factors.”).

in relation to a multiplicity of violators,⁹⁸ so litigation may not be a convenient strategy to deal with certain alleged violations;⁹⁹ that seeking specific remedies available to individuals with respect to the alleged widespread failure to enforce environmental law may be difficult;¹⁰⁰ that when the alleged failure to effectively enforce is of a generalized nature, the burden on the submitter to pursue remedies in relation to all violations is an important element in determining that “reasonable actions” have been taken,¹⁰¹ and that a legal explanation may be available.¹⁰²

104. In the submission, the Submitter maintains that their concerns have been communicated repetitively between IBWC and CILA and that IBWC Minutes 328 represents the formal binational acknowledgment of Tijuana’s inadequate wastewater infrastructure but that the majority of projects are inadequate and/or insufficient.
105. There is no mention in the submission of complaints or other filings raising these issues by Submitter or others in any judicial or administrative forum, other than information requests through the transparency mechanisms, which, in the Secretariat’s view, do not constitute a legal forum to address the matters raised in the submission. Nor is there a discussion of why it would be impossible to pursue private remedies in this situation. The referenced letter alone is not sufficient to satisfy this criterion. The Submitter should point to a complaint or legal filing raising these issues or explain why it is impossible to file such a complaint or action.
106. The Secretariat finds that the submission does not meet the criterion of USMCA/CUSMA Article 24.27(3)(c).

d. the submission is not drawn exclusively from mass media reports

107. With regard to Article 24.27(3)(d) of the USMCA/CUSMA, the Secretariat considers that the submission is *not* based on media reports. While the submission refers to news in the media, it reflects public attention to various issues of concern to the local community. The submission is based on documents and information that the Submitter collected, largely from scientific studies, official sources, technical documentation and requests for information on the environmental situation in question.
108. The Secretariat therefore concludes that the submission meets the criteria in USMCA/CUSMA Article 24.27(3)(d).

IV. DETERMINATION

109. For the reasons outlined in its analysis, the Secretariat determines that submission SEM-26-002 (*Tijuana Wastewater Management*) *does not* satisfy all the admissibility requirements set out in Article 24.27(2) and (3), and that additional information would be required in

⁹⁸ SEM-97-003 (*Quebec Hog Farms*), Notification under Article 15(1) of NAAEC (29 October 1999), at 9, at: <<https://bit.ly/ADVSEM-97-003>>.

⁹⁹ SEM-98-003 (*Great Lakes*), Determination pursuant to Article 14(1) and (2) (8 September 1999), at 10, at: <https://bit.ly/DET14_1_2_98-003> [available in English only].

¹⁰⁰ SEM-98-004 (*BC Mining*), Notification under Article 15(1) of the NAAEC (11 May 2001), at 16, at: <https://bit.ly/ADV15_1_98-004>.

¹⁰¹ SEM-09-005 (*Skeena River Fishery*), Determination under Articles 14(1) and (2) of the NAAEC (18 May 2010), § 44, at: <https://bit.ly/DET14_1_2_09-005> [available in English only].

¹⁰² Id.

order to continue the process and to request a response from the Government of Mexico in accordance with Article 24.27(3).

110. If the Submitter wishes to proceed with the submission, the Submitter must submit information on the pursuit of private remedies under Mexican law or the reasons why it has not been able to do so or why it is impossible to do so. The Submitter may also clarify any inconsistencies in the environmental law in question cited in the submission.
111. The Submitter has 60 calendar days from the date of this determination (i.e. until **27 April 2026**) to submit a revised submission containing the requested information. It is not necessary to re-submit the documents already provided with the original submission. The Secretariat will then proceed to reconsider whether submission SEM-26-002 (*Tijuana Wastewater Management*) meets the eligibility requirements.

Submitted respectfully for their consideration,

Secretariat of the Commission for Environmental Cooperation

(original signed)

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Director of Legal Affairs and Head of the SEM Unit

(original signed)

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