

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submission I.D.: SEM-00-005 (Molymex II)
Submitters: Academia Sonorense de Derechos Humanos, A.C.
Domingo Gutiérrez Mendivil
Party: Estados Unidos Mexicanos
Date of this plan: 28 May 2002

Background

On 6 April 2000, the Academia Sonorense de Derechos Humanos, A.C., and Domingo Gutiérrez Mendivil (the “Submitters”) filed a submission with the Secretariat of the Commission for Environmental Cooperation (CEC) in accordance with Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The submission asserts that Mexico is failing to effectively enforce its environmental law in relation to the operation of a molybdenum plant by the company Molymex, S.A. de C.V. (“Molymex”), located in the municipality of Cumpas, Sonora, Mexico.

On 17 May 2002, the Council decided unanimously to instruct the Secretariat to develop a factual record, in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the NAAEC (Guidelines)*, with respect to the assertions set forth in Submission SEM-00-005, that Mexico is failing to effectively enforce Articles 28 paragraph III, 29 paragraphs IV and VI, 32 and 112 of the General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*),¹ governing environmental impact and the definition of zones in which polluting facilities may be sited, and Mexican Official Standard NOM-022-SSA1/1993,² regarding the concentration of SO₂ in ambient air, with respect to the operation of the molybdenum plant by the company Molymex, S.A. de C.V., located in the municipality of Cumpas, Sonora, Mexico. The Council directed the Secretariat, in developing the factual record, to consider whether the Party concerned “is failing to effectively enforce its environmental law” since the entry into

¹ The transcriptions appearing in the submission correspond to the text of the LGEEPA in force prior to the reform published in the *Official Gazette of the Federation* on 13 December 1996. This, however, does not substantially affect the force of the Submitter’s arguments, due both to the nature of the arguments and also to the fact that the previous Articles 28, 29 and 32 are incorporated into the current LGEEPA Articles 29 and 30. See also the SEM-00-005 (Molymex II) Article 15(1) notification (20 December 2001), p. 7.

² *NOM-022-SSA1/1993 –Environmental Health. Criterion for the assessment of ambient air quality with respect to sulfur dioxide (SO₂). Standard value for sulfur dioxide (SO₂) concentration in ambient air, as a public health protection measure.* Published in the *Official Gazette of the Federation* on 23 December 1994.

force of the NAAEC on 1 January 1994. In considering such alleged failure, relevant facts existing prior to 1 January 1994 may be included in the factual record.

Under Article 15(4) of the NAAEC, in developing a factual record, “the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information: (a) that is publicly available; (b) submitted by interested nongovernmental organizations or persons; (c) submitted by the Joint Public Advisory Committee; or (d) developed by the Secretariat or by independent experts.”

Overall Scope of the Fact Finding:

The submission asserts that Mexico is failing to effectively enforce its environmental law in relation to Molymex, in the municipality of Cumpas, Sonora. The submission asserts the alleged failure to effectively enforce Articles 28 paragraph III, 29 paragraphs IV and VI, 32 and 112 of the LGEEPA, governing the assessment of the environmental impact of Molymex’s resumed activities in 1994. The Submitters also assert that Molymex is located in an improper zone and that Article 112 paragraph II of the LGEEPA, establishing the municipal authority’s responsibility to define the zones where polluting facilities may be sited, has not been effectively enforced. Lastly, the Submitters assert the alleged failure to effectively enforce NOM-022-SSA1/1993, establishing the maximum concentration of SO₂ in ambient air as a human health protection measure.

To prepare the factual record, the Secretariat will gather and develop information relevant to the facts concerning:

- i) the alleged violations by Molymex of Articles 28 paragraph III, 29 paragraphs IV and VI and 32 of the LGEEPA and of NOM-022-SSA1/1993; and the alleged failure by the Municipality of Cumpas to enforce Article 112 of the LGEEPA;
- ii) Mexico’s enforcement of these provisions, in the case of Molymex; and
- iii) the effectiveness of Mexico’s enforcement of these provisions, in the case of Molymex.

Overall Plan:

Consistent with Council Resolution 02-03, execution of the overall work plan will begin no sooner than 12 June 2002. All other dates are best estimates. The overall plan is as follows:

- Through public notice or direct invitation, the Secretariat will invite the Submitters, JPAC, members of the community of Cumpas, Sonora, the local, state and federal authorities and the general public, to submit relevant information within the scope of the fact-finding described above. The Secretariat will explain the scope of the fact-finding, providing sufficient information to enable interested persons or nongovernmental

organizations or JPAC to provide relevant information to the Secretariat (section 15.2 of the *Guidelines*) [**mid June 2002**].

- The Secretariat will request information relevant to the factual record from the appropriate federal, state and municipal Mexican authorities, and will consider any information provided by a Party (Articles 15(4) and 21(1)(a) of the NAAEC) [**late June 2002**]. Information will be requested relevant to the facts regarding:
 - i) the alleged violations by Molymex of Articles 28 paragraph III, 29 paragraphs IV and VI and 32 of the LGEEPA and of NOM-022-SSA1/1993, and the alleged failure by the Municipality of Cumpas to enforce Article 112 of the LGEEPA;
 - ii) Mexico's enforcement of these provisions, in the case of Molymex; and
 - iii) the effectiveness of Mexico's enforcement of these provisions, in the case of Molymex.
- The Secretariat will gather the relevant technical, scientific or other information that is publicly available, including from existing databases, information centers, libraries, research centers and academic institutions [**July through October 2002**].
- As appropriate, the Secretariat will develop, through independent experts, technical, scientific or other information relevant to the factual record [**July through October 2002**].
- As appropriate, the Secretariat will gather relevant technical, scientific or other information for the development of the factual record, from interested persons or nongovernmental organizations, JPAC or independent experts [**July through October 2002**].
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed [**November through December 2002**].
- The Secretariat will submit a draft factual record to Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5) [**January 2003**].
- As provided by Article 15(6), the Secretariat will incorporate, as appropriate, any such comments in the final factual record and submit it to Council [**March 2003**].
- The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, in accordance with Article 15(7).

Additional Information

The submission, Mexico's response, the Secretariat determinations, the Council Resolution, and a summary thereof are available in the Registry on Citizen Submissions in the CEC home page at <www.cec.org> or upon request to the Secretariat at the following address:

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