

15 June 2012

COUNCIL RESOLUTION: 12-03

Instruction to the Secretariat of the Commission for Environmental Cooperation regarding the consolidated submissions on enforcement matters SEM-06-003 and SEM-06-004 asserting that Mexico is failing to effectively enforce Articles 134, 135, paragraph III, 136, 139, 150, 151, 152 bis, 169, and 170 of the *Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA)*; 68, 69, 75 and 78 of the *Ley General para la Prevención y Gestión Integral de los Residuos (LGPGIR)*; 421 of the *Código Penal Federal (CPF)*, as well as Articles 415, paragraph I, and 416, paragraph I, of the CPF as in force before February 6, 2002; Articles 8, paragraph X, 10 and 12 of the *Reglamento de la LGEEPA en Materia de Residuos Peligrosos (RRP)*, and Mexican Official Standards (*Normas Oficiales Mexicanas*) NOM-052-SEMARNAT-1993¹ and NOM-053-SEMARNAT-1993²

THE COUNCIL:

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

CONSIDERING the submission filed on 17 July 2006 by Myredd Alexandra Mariscal Villaseñor, Justina Domínguez Palafox, Félix Segundo Nicolás, Karina Guadalupe Morgado Hernández, Santos Bonifacio Contreras Carrasco, Florentino Rodríguez Vaira, Valente Guzmán Acosta, María Guadalupe Cruz Ríos, Cruz Ríos Cortés and Silvestre García Alarcón; the submission filed on 22 September 2006 by Mr. Roberto Abe Almada, and the response provided by the Government of Mexico on 10 January 2007;

HAVING REVIEWED the 12 May 2008 notification by the Secretariat recommending the development of a factual record with respect to certain assertions made by the submitters;

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

FURTHER MINDFUL that a factual record should only be prepared on assertions of a Party's failure to effectively enforce a law in force at the time the facts asserted in the submission occurred,

¹ This *Norma Oficial Mexicana* was originally issued under the name "*NOM-CRP-001-ECOL/93*, which establishes the characterization of hazardous wastes, a listing of hazardous wastes, and their maximum acceptable levels of toxicity", was later renamed "*NOM-052-ECOL-1993*", and it is currently in effect under the name *NOM-052-SEMARNAT-2005*).

² This *Norma Oficial Mexicana* was originally issued under the name "*NOM-CRP-002-ECOL/93*, which establishes the procedure to examine the components of a hazardous waste in order to determine its toxicity levels", was later renamed "*NOM-053-ECOL-1993*", and is currently in effect under the name *NOM-053-SEMARNAT-1993*.

TAKING INTO ACCOUNT that the LGPGIR entered-into-force on 6 January 2004; and

FURTHER TAKING INTO ACCOUNT that LGPGIR *Transitory Article 4*, expressly prohibits the application of the LGPGIR to facts and actions pre-dating the entry-into-force of the legislation as well as any ongoing consequences of such actions.

HEREBY UNANIMOUSLY DECIDES:

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

- a) Article 170 of the LGEEPA in connection with the alleged illegal dumping of hazardous waste in the community of Ex Hacienda de Nuestra Señora de la Concepción El Hospital, in the Municipality of Cuautla, State of Morelos, and the alleged crimes against the environment, during the operation, shutdown and dismantling of the facility operated by the company BASF Mexicana, S.A. de C.V.;
- b) Articles 134, 135, paragraph III, 136, 139, 150, 151, 152 bis, and 169 of the LGEEPA; 421 of the CPF, as well as Articles 415 paragraph I, and 416 paragraph I, of the CPF as in force before February 6, 2002; Articles 8 paragraph X, 10 and 12 of the RRP; and Mexican Official Standards NOM-052-SEMARNAT-1993 and NOM-053-SEMARNAT-1993, regarding the alleged illegal dumping of hazardous waste in the Facility and the alleged illegal dumping of hazardous waste in the community of Ex Hacienda de Nuestra Señora de la Concepción El Hospital, in the Municipality of Cuautla, State of Morelos, and the alleged crimes against the environment, during the operation, shutdown and dismantling of the facility operated by the company BASF Mexicana, S.A. de C.V.

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

APPROVED BY THE COUNCIL:

Dan Mc Dougall
Government of Canada

Enrique Lendo Fuentes
Government of the United Mexican States

Michelle DePass
Government of the United States