

Secretariat of the Commission for Environmental Cooperation

REQUEST FOR INFORMATION for Preparation of a Factual Record Submission SEM-03-004 (ALCA-Iztapalapa II) 16 November 2005

I. The factual record process

The Commission for Environmental Cooperation (CEC) of North America is an international organization created under the North American Agreement on Environmental Cooperation (NAAEC) by Canada, Mexico and the United States. The CEC operates through three organs: a Council, made up of the highest-level environmental official in each member country; a Joint Public Advisory Committee (JPAC), composed of five citizens from each country; and a Secretariat located in Montreal.

Article 14 of the NAAEC allows residents in North America to inform the Secretariat, in a submission, that any member country (hereinafter, a Party) is failing to effectively enforce its environmental law. This initiates a process of review of the submission, after which the Council may instruct the Secretariat to prepare a factual record in connection with the submission. A factual record seeks to provide detailed information to allow interested persons to assess whether a Party has effectively enforced its environmental law with respect to the matter raised in the submission.

Under Articles 15(4) and 21(1)(a) of the NAAEC, in developing a factual record, the Secretariat shall consider any information furnished by a Party and may ask a Party to provide information. The Secretariat also may consider any relevant technical, scientific or other information that is publicly available; provided by JPAC, the Submitters or other interested persons or nongovernmental organizations; or developed by the Secretariat or independent experts.

On 9 June 2005, in Council Resolution 05-05, the Council decided unanimously to instruct the Secretariat to develop a factual record in accordance with Articles 14 and 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the *Guidelines*). The Secretariat is now requesting information relevant to matters to be addressed in the factual record. The following sections provide background on the submission and describe the kind of information requested.

II. The ALCA-Iztapalapa II submission and Council instructions

The submission, along with its support materials, asserts that Mexico is failing to effectively enforce its environmental law with respect to the operation of a footwear

materials factory owned by the company ALCA, SA de CV (“ALCA”), located on property neighboring the Submitter’s home in the Santa Isabel Industrial neighborhood of Iztapalapa Delegation in Mexico City. The Submitter asserts that the factory’s air pollution and ALCA employees’ handling of hazardous substances and wastes violate Article 150 of the General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA) and Articles 414, first paragraph and 415, Section I of the Federal Penal Code (*Código Penal Federal*—CPF).

In particular, the Submitter asserts that the company is illegally carrying on the storage, disposal and discharge of environmentally harmful hazardous substances without applying prevention and safety measures. The Submitter also claims that ALCA does not apply prevention or safety measures to prevent the atmospheric release or discharge of environmentally harmful gas, smoke, dust or pollutants. The Submitter asserts that the company is failing to manage hazardous materials and wastes in accordance with LGEEPA and the Mexican Official Standards (*Normas Oficiales Mexicanas*—NOMs) issued by the Secretariat of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat). The Submitter asserts that these alleged violations are causing pollution that harm his and his family’s health. He further asserts that the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa), despite having found violations during a factory inspection, terminated a citizen complaint filed by the Submitter without taking action necessary to stop the alleged violations.

On 9 September 2003, the Secretariat determined that the submission met the requirements of Article 14(1) of NAAEC and requested a response from the Party in question (Mexico), pursuant to Article 14(2).

Mexico submitted its response on 4 December 2003. With respect to the citizen complaint filed in 1995, in which the Submitter alleged ALCA’s violations of Article 150 of the LGEEPA, Mexico asserts in its response that the corresponding process was concluded by Profepa pursuant to law. Mexico further reported that the file was lost due to a flood in the Profepa file room, but noted that the citizen complaint did not give rise to a criminal investigation. With respect to another citizen complaint filed by the Submitter in 2000, Mexico asserts that it concluded the process with the issuance of an administrative ruling, fining ALCA \$2,421.00 pesos. As regards ALCA’s alleged violations of Article 415 paragraph 1 of the CPF, Mexico states that agents of the Public Prosecutor (*Ministerio Público*) issued a technical opinion stating that the investigations “did not clearly establish a crime as set forth and penalized under Article 415, Section I of the CPF nor the probable liability of the suspects, as we deduce from the acts that although the asserted facts may constitute a crime, it is impossible to determine whether the crime exists due to irreparable material hindrance, because the proof provided is insufficient to evidence the crime.”

On 23 August 2004, the Secretariat notified the CEC Council that in light of Mexico’s response, the submission warranted developing a factual record.

On 9 June 2005, in Council Resolution 05-05, the Council decided unanimously to instruct to Secretariat to develop a factual record with respect to the matters raised in the submission, in accordance with NAAEC Article 15 and the Guidelines.

The Council ordered to Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and the opportunity to comment on that plan. The Council further instructed that in developing the factual record the Secretariat should take into account considerations noted in Council Resolution 05-05. The Council stated that the Secretariat may include, in its preparation of a factual record, any relevant facts that existed prior to the entry into force of the NAAEC 1 January 1994.

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.”

III. Request for information

The Secretariat of the CEC requests information relevant to the facts concerning:

- (i) ALCA’s alleged violations of Article 150 of the LGEEPA and Articles 414 first paragraph and 415 Section I of the CPF;
- (ii) any inspection visits, administrative proceedings or other governmental actions conducted with ALCA before and after 2001 with respect to its history of (1) releases of toxic chemicals and the continuation of such releases, and (2) the handling of hazardous wastes and substances; and
- (iii) whether Mexico is failing to effectively enforce Articles 150 of the LGEEPA and 414 first paragraph and 415 Section I of CPF in the case of ALCA.

IV. Examples of relevant information

1. Information on any municipal, state or federal environmental enforcement policies or practices that are applicable to ALCA’s alleged violation of Article 150 of the LGEEPA and of Articles 414, first paragraph and 415, Section I of the CPF.
2. Information on the applicable land use of the property where the Submitter’s home is located (at Cerrada de Vaqueros No. 11, Colonia María Isabel Industrial, Delegación Iztapalapa in Mexico City) and the property where the ALCA plant is located, as well as information on whether the plant is located in an area not suitable for industrial activities. The submission states that ALCA was constructed on the property near the Submitter’s home around 1960.
3. Information on the urban development plan applicable to ALCA and any other similar plans or zoning rules applicable to the property, in effect from 1932 to date.

4. Information on whether ALCA's air pollution releases and its handling of hazardous wastes and substances fall under the provisions of Article 150 of the LGEEPA and Articles 414, first paragraph and 415, Section I of the CPF, as applicable. In particular, information as to whether ALCA carries on the following:
 - (i) generation, storage, disposal and discharge of environmentally harmful hazardous substances and/or wastes without applying prevention and safety measures;
 - (ii) atmospheric release or discharge of environmentally harmful gas, smoke, dust or pollutants without applying prevention and safety measures; and/or
 - (iii) management of hazardous materials and wastes without complying with the LGEEPA and the NOMs issued by Semarnat.
5. Information on the acts undertaken by municipal, state or federal health, environmental, labor, social development or any other authority and any administrative files kept thereby, in respect of the reported health effects on the Submitter, his family and other residents in the area, allegedly caused by ALCA's alleged atmospheric release of pollutants and its alleged mismanagement of hazardous substances.
6. Information on how the potential effects and risks of ALCA's operations on the environment and on the neighboring residents' health have been evaluated.
7. Information that ALCA has reported to municipal, state or federal authorities with respect to its releases and handling of hazardous wastes and substances, including any information submitted in statements, studies, samplings, log-books, monitoring data, reports, notices, requests and renewals of permits and licenses from the time its operations began up to the present.
8. Information on the criteria applied by the relevant authority (in general terms and specifically with regard to ALCA) in considering repeat offenses in the enforcement of Articles 150 of the LGEEPA and 414, first paragraph and 415, Section I of the CPF.
9. Any other technical, scientific or other information that could be relevant in the development of this factual record.

V. Additional background information

The submission, Mexico's response, the determinations by the Secretariat, the Council Resolution, the overall plan to develop a factual record and other information are available in the Registry and Public Files section of Citizen Submissions on Enforcement Matters on the CEC website <<http://www.cec.org>>, or may be requested from the Secretariat.

VI. Where to send information

Relevant information for the development of the factual record may be sent to the Secretariat until **15 February 2006**, to either of the following addresses:

Secretariat of the CEC
Submissions on Enforcement
Matters Unit (SEM Unit)
393, rue St-Jacques Ouest,
bureau 200
Montreal QC H2Y 1N9
Canada
Tel. (514) 350-4300

CCA / Mexico Liaison Office
Atención: Unidad sobre Peticiones
Ciudadanas (UPC)
Progreso núm. 3,
Viveros de Coyoacán
México, D.F. 04110
México
Tel. (5255) 5659-5021

For any questions, please send an e-mail to the attention of Rosa Blandon, at rblandon@cec.org.