

## **Secretariat of the Commission for Environmental Cooperation**

### **Process for Gathering Information for the Preparation of the Factual Record on Submission SEM 98-007 June 2000**

#### **I. Institutional Framework**

The Commission for Environmental Cooperation (CEC) is an international organization created under the North American Agreement on Environmental Cooperation (the 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 country; a Joint Public Advisory Committee (JPAC), comprised of five citizens from each country; and a Secretariat with its seat in Montreal.

Article 14 of the Agreement allows citizens residing 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, in which the Council may instruct the Secretariat to prepare a factual record in connection with a submission. A factual record seeks to provide its readers with the necessary information to assess the effectiveness with which a Party has enforced its environmental law, with respect to the matter raised in the submission.

#### **II. Background**

Within the above referenced institutional framework, on 23 October 1998, the Environmental Health Coalition and the Comité Ciudadano Pro Restauración del Cañón del Padre y Servicios Comunitarios, A.C., filed a submission pursuant to Article 14 of the NAAEC. The submission claims that Mexico is failing to effectively enforce its environmental law in the case of an abandoned lead smelter in Tijuana, Baja California, commonly known as Metales y Derivados.

On 6 March 2000, the Secretariat notified the Council that some of the allegations of this submission warrant preparation of a factual record. Namely, those concerned with enforcement of articles 170 and 134 of the Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA).

On 16 May 2000, the Council unanimously instructed the Secretariat to develop a factual record on this matter. In its instructions, the Council directed the Secretariat “to consider whether the Party concerned is ‘failing to effectively enforce its environmental law’ since the entry into force of the NAAEC on 1 January 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to 1 January 1994, may be included in the factual record.”

### **III. Sources of information for the preparation of a factual record**

Under Article 15(4) and 21(1)(a) of the NAAEC, in developing a factual record, the Secretariat shall consider any information furnished by a Party. The Secretariat may also request further information. Additionally, the Secretariat may consider: any relevant technical, scientific or other information that is publicly available; that is submitted by the Joint Public Advisory Committee or by interested nongovernmental organizations or persons; or information that is developed by the Secretariat and independent experts.

### **IV. Scope of the information being gathered for the preparation of the factual record on submission SEM 98-007**

The Metales y Derivados, S.A. de C.V. lead smelter operated until March 1994. The enforcement measures in regard to this plant were taken mainly between 1993 and 1995. However, according to the submission, approximately 6,000 metric tons of hazardous wastes remain abandoned in the site, and the consequent contamination continues to represent a risk to public health, particularly to the population of Colonia Chilpancingo, located approximately 150 yards downhill from the site where the wastes are located.

Articles 170 and 134 of LGEEPA empower environmental authorities to take safety measures to respond to cases representing an imminent risk to the environment or contamination with dangerous repercussions to ecosystems or to public health, and establish criteria to prevent and control soil contamination, including restoration.

The Secretariat is gathering information on the effective enforcement of Articles 170 and 134 of the LGEEPA with respect to Metales y Derivados. In particular, information is being gathered regarding the efforts and actions taken by the Party to prevent the contamination of the site and to impede consequences to public health; on the current situation at the site and its surroundings; and on the effects or risks to public health from such contamination. Also, information is being gathered on potential obstacles the Party may have been facing for the effective enforcement of its environmental law with respect to Metales y Derivados.

### **V. Additional information**

The submission, the determinations by the Secretariat, the Council Resolution, a summary of these and the overall plan to develop the factual record are available in the Registry and Public Files section of Citizen Submissions on Enforcement Matters on the CEC website: <<http://www.cec.org>>. These documents may also be requested from the Secretariat.

Relevant information for the development of the factual record may be sent to the Secretariat until 30 September 2000, to any of the following addresses:

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

CEC/ Liason office in Mexico:  
Attn: Submissions on Enforcement  
Matters Unit (SEM Unit)  
Progreso núm. 3,  
Viveros de Coyoacán  
México, D.F. 04110  
Mexico  
Tel. (52-5) 659-5021

For any questions, please send an e-mail to the attention of Carla Sbert, at:  
<info@cemtl.org>.