

PETITION BEFORE THE COMMISSION FOR ENVIRONMENTAL COOPERATION, UNDER
ARTICLES 13, 14 AND 15 OF THE NORTH AMERICAN AGREEMENT FOR
ENVIRONMENTAL COOPERATION

Petitioners:

COMITÉ CIUDADANO PRO RESTAURACIÓN DEL CAÑÓN DEL PADRE Y SERVICIOS
COMUNITARIOS, A.C. AND ENVIRONMENTAL HEALTH COALITION

I. PURPOSE

II. FACTUAL BACKGROUND

III. ARGUMENT

A. PURSUANT TO ARTICLES 14 AND 15 OF NAAEC

1. FAILURE OF MEXICO TO EFFECTIVELY ENFORCE ARTICLE 170 OF
THE LEY GENERAL DEL EQUILIBRIO ECOLÓGICO Y PROTECCIÓN AL
AMBIENTE (GENERAL LAW)
2. FAILURE OF MEXICO TO EFFECTIVELY ENFORCE ARTICLE 134 OF
THE LEY GENERAL DEL EQUILIBRIO ECOLÓGICO Y PROTECCIÓN AL
AMBIENTE (GENERAL LAW)

B. PURSUANT TO ARTICLE 13 OF NAAEC

IV. CONCLUSION

V. EXHIBITS

Pursuant to Articles 13,14 and 15 of the North American Agreement for Environmental Cooperation, Petitioners state under penalty of perjury that the following is true and correct:

Name and address of Petitioners: COMITÉ CIUDADANO PRO RESTAURACIÓN DEL CAÑÓN DEL PADRE Y SERVICIOS COMUNITARIOS A.C. (hereafter Comité Ciudadano) and ENVIRONMENTAL HEALTH COALITION, to receive responses or notifications: 1717 Kettner Bld. Suite 100, San Diego, CA 92101, United States of America; telephone: 619/235-0281; facsimile: 619/232-3670

Purpose of the Petition: To request the CEC to initiate a formal investigation to determine Mexico's lack of effective enforcement of its General Law on Ecological Balance and Environmental Protection (General Law) Articles 170 and 134, Penal Code Article 415, its Law on International Extradition Article 3 and the Extradition Treaty Between the United States of America and the United Mexican States Articles 1 and 2, and;

To request the Secretariat to the CEC to prepare a report to promote the protection of human health and the environment and to facilitate enforcement cooperation between governments.

Case which prompts Petition: Company known as METALES Y DERIVADOS (Registro Federal de Causantes (RFC) MDM 7202211/2), located at Calle 2 Oriente No. 119, Ciudad Industrial Nueva Tijuana, Tijuana, Baja California, Mexico. U.S. Parent Company's name: New Frontier Trading Corporation, 3045 Rosecrans #203/4, San Diego, California.

Governmental Agencies Responsible for the Enforcement and Application of the Law: La Procuraduría General de la República (PGR);
La Procuraduría Federal de Protección al Ambiente (PROFEPA);
La Secretaría de Medio Ambiente, Recursos Naturales y Pesca (SEMARNAP);
El Instituto Nacional de Ecología (INE);

La Dirección de Ecología del Estado de Baja California.

I. PURPOSE

Comité Ciudadano Pro Restauración del Cañón del Padre y Servicios Comunitarios and Environmental Health Coalition (hereafter Petitioners) respectfully request that the Secretariat for the Commission for Environmental Cooperation (hereafter Secretariat), upon consideration of this submission, request the government of Mexico to issue a response, and obtain authorization from the CEC Council to prepare a factual record pursuant to Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC). In the alternative, Petitioners request that the Secretariat prepare a report pursuant to Article 13 of the NAAEC. This submission is based on two general arguments: 1) Mexico has failed to effectively enforce its environmental laws with respect to the abandoned lead smelter site known as METALES Y DERIVADOS pursuant to Articles 14 and 15 of NAAEC, and 2) this matter is related to the cooperative functions of Commission for Environmental Cooperation (hereafter CEC) under Article 13 of NAAEC.

II. FACTUAL BACKGROUND

In 1972, New Frontier Trading Corporation, a San Diego-based wholesale metals company, initiated lead smelting operations in Tijuana, Baja California Mexico under the name of Metales y Derivados (hereafter Metales). The company's principal operation in Mexico consisted of recovering lead, copper and phosphorous through the smelting of used lead acid batteries and other scrap materials that were brought from the United States into Mexico as recyclable products. New Frontier Trading Corporation, through

Metales, processed these materials to produce lead ingots for resale in the United States.

Metales first began its operations in the area known as Los Pinos Industrial Center, in Tijuana, Baja California. Approximately in the early 1980's, the company moved to Ciudad Industrial Nueva Tijuana, also known as Mesa de Otay Industrial Park where it operated until its closure. This site is situated approximately 150 yards from the edge of the mesa.

With complete disregard of Mexican law and the La Paz Agreement, which require the return of wastes produced by maquiladoras to their country of origin, New Frontier, through its subsidiary Metales, accumulated and stockpiled the hazardous waste produced by the smelting operations rather than returning it to the United States.

In 1992, Metales was temporarily closed by the Attorney General's Office on Environmental Protection (Procuraduría Federal de Protección al Ambiente [PROFEPA]) for failing to comply with Mexican environmental laws and regulations. (See exhibit 4-b). In 1993 PROFEPA closed Metales for a second time after finding several violations of the law. (See exhibit 4-b). Also in 1993, PROFEPA filed a complaint in federal court against José Kahn, owner of Metales. Finally, in 1994, PROFEPA closed Metales indefinitely for failing to correct the specific violations for which they were formerly cited. (See exhibit 4-b).

The owner and operators abandoned the company upon its closure and returned to the United States, leaving behind an estimated 6,000 metric tons of lead slag, waste piles of by-products (mainly broken battery cases made of polypropylene, battery internal components made of polyvinyl chloride and metal scrap), sulfuric acid, and heavy metals such as antimony, arsenic, cadmium and copper from the

battery recycling operations. (See exhibits 3 and 4-b).

Immediately below the Mesa de Otay and approximately 150 yards from the Metales site lies Colonia Chilpancingo, a community of about 1,000 residents. While in operation, residents of this community repeatedly complained to Mexican authorities about Metales' polluting activities, its illegal hazardous waste disposal practices and the frequent health problems related to skin and eye irritations as well as gastrointestinal problems in the community. (See exhibits 1-b and 1-c). Community residents were also concerned that underground water sources were being contaminated by the Metales site. (See exhibit 1-d).

Petitioner Comité, acting as the community liaison, repeatedly reported to and requested action from authorities about residents' constant complaints of dizziness, nausea and other symptoms associated with lead and toxic exposure. (See exhibit 4-d). Moreover, Petitioner Comité identified several cases of infants with some form of serious health condition ranging from asthma and chronic skin irritations, to birth defects such as babies born without the uvula (the soft tissue hanging down the middle of the soft palate above the back of the tongue which produces the vibration needed for speech), and babies born with hydroencephaly (a fatal congenital malformation where the brain cavity is continuously filled with fluid).

Petitioners now contend that these health problems could have been caused or are being exacerbated by the Metales hazardous waste site.

The typical process of "recycling" lead batteries consists of breaking the used battery, separating its components, smelting and refining the lead. (See exhibit 5-a). This process produces several types of hazardous wastes including lead oxides, lead sulfites and lead dioxide in the form of dust, soil, sediments and

sludge. Sulfuric acid and acid leachates, heavy metals such as antimony, arsenic, cadmium, and copper are also common by-products of battery recycling as well as contaminated battery casings, metal scrap and contaminated building structures and equipment. (See U.S. Environmental Protection Agency, *Selection of Control Technologies for Remediation of Lead Battery Recycling Sites*, Engineering Bulletin, September, 1994 exhibit 5-a).

Lead affects almost every organ and system in the human body. It is a well-documented neurotoxin which most severely affects young children. Because it resembles calcium in humans, lead is absorbed in greatest quantities by children during their developmental years. (See *Environmental Health Perspectives* "Growing Pains", Vol. 104, No. 2, February 1996, exhibit 5-b). Lead predominantly affects the central nervous system and some of its harmful effects include premature births, smaller babies, decreased mental ability in the infant, learning difficulties, and reduced growth in young children. In adults, lead can cause abortion and damage to the reproductive system. It may also decrease reaction time, cause weakness in fingers, wrists, ankles and can affect memory. At high levels, lead can cause kidney dysfunction, coma and even death. (See Agency for Toxic Substances and Disease Registry (ATSDR) *Lead Fact Sheet*, CAS# 7439-92-1 April, 1993, exhibit 5-c).

Sulfuric acid is commonly used as an electrolyte in batteries. It is a strong or absolute irritant chemical. Due to its strong dehydrating and corrosive properties, sulfuric acid reacts with many organic materials with which it comes into contact. This reaction causes, upon contact, immediate and severe tissue damage, respiratory damage as well as irreparable eye damage. Low level exposure to sulfuric acid causes irritation to the eyes and mucous membranes such as nose and respiratory tracts. Frequent respiratory

infections, emphysema, and digestive disturbances have been related to long term exposure to sulfuric acid.

(See *Toxicological Profile for Sulfur Trioxide and Sulfuric Acid*, Draft for Public Comment, U.S.

Department of Health and Human Services, ATSDR September, 1997, exhibit 5-d).

Cadmium is a heavy metal that can enter the human body through air, contaminated water or food.

Cadmium can irritate the stomach and can lead to vomiting and diarrhea. In high levels, it severely damages the lungs and can cause death. Long term exposure to lower levels of cadmium in air, food, or water leads to a build up of cadmium in the kidneys and can lead to kidney disease. Other long term effects are lung damage and fragile bones. Cadmium has been determined to be a carcinogen. (See Agency for Toxic Substances and Disease Registry (ATSDR) *Cadmium Fact Sheet*, CAS#7440-43-9, April 1993, exhibit 5-e).

Arsenic is found as an impurity in many metals and is a by-product of lead smelting operations.

Arsenic compounds are corrosive to the skin. Skin abnormalities may be attributed to arsenic exposure such as discoloring or spots on the skin, and skin cancer. Other effects related to arsenic include liver and kidney injury, impaired nerve function and birth defects. (See Agency for Toxic Substances and Disease Registry (ATSDR) *Public Health Statement, Arsenic*, March, 1989, exhibit 5-f).

All of these hazardous wastes likely remain on the site completely exposed to the natural environment as the result of Metales' toxic reckless operations and abandonment. Seasonal winds and rainfall can carry these wastes to nearby communities. Colonia Chilpancingo faces great risk of exposure to the runoff that may carry toxic chemicals from Metales because it is located downhill from and almost adjacent to the abandoned toxic site.

In 1995, PROFEPA built a cement containment wall around Metales and covered the piles of lead slag with a plastic tarp to minimize the escape of the waste to the environment. However, part of the wall has either corroded from the sulfuric acid on site, or has been fractured from the weight of the slag. (See exhibits 3). The plastic cover has similarly degraded, leaving the lead slag exposed again. Because there are no signs to warn people about the potential health risks that the site poses to human health, many have made openings in the walls and entered the premises. (See exhibit 3). Additionally, many residents of Colonia Chilpancingo use a path adjacent to the facility as a regular walkway to travel from their homes to work, thus potentially exposing themselves to air borne lead particulates or runoff water that emanate from the Metales waste site. (See exhibit 3).

More recently, Petitioners have seen on various occasions people entering the Metales site to remove some of the debris. Petitioners have learned that a local bus company is attempting to occupy the site to turn it into a garage to provide maintenance to the buses. Petitioners believe that these people have no knowledge of the dangerous conditions of the site and continue to enter the premises with little concern for their health. PROFEPA has not taken any further steps to remediate the Metales site or protect people from exposure to the toxic waste despite numerous requests by the Petitioners.

On or about May 5, 1993, PROFEPA filed a formal criminal complaint against the owners and operators of Metales before the Federal Attorney General's Office (PGR). On August of 1995, a federal judge issued arrest warrants for José Khan, owner of New Frontier and other persons involved in the operations of Metales. Mr. Khan escaped to the United States to avoid prosecution. To date, Mexico has not successfully prosecuted Mr. Khan or the rest of the parties responsible for Metales' pollution.

According to Petitioners records, New Frontier remains an active San Diego-based corporation and is reporting estimated sales of \$700,000 to 1 million. (See exhibit 6-a).

In the meantime, the health risks of Colonia Chilpancingo and other nearby communities continue to increase each year the site is left exposed to the environment. The toxic materials present on Metales do not break down, they are cumulative by nature. Seasonal rains produce significant runoff through Colonia Chilpancingo and carry these materials down to the community. More recently, Tijuana has experienced recent heavy storms generated by unusual weather patterns, and the Metales' toxic waste may have run off at higher concentrations thus exposing the residents of Colonia Chilpancingo to grave toxic risks.

III. ARGUMENT

A. PURSUANT TO ARTICLES 14 AND 15 OF THE NAAEC:

1. MEXICO FAILED TO EFFECTIVELY ENFORCE ITS ENVIRONMENTAL LAWS BY NOT PURSUING THE EXTRADITION OF THE OWNER(S) OF METALES.

In 1993, Mexico initiated criminal proceedings against Mr. José Khan, owner of Metales. In 1995, a federal district judge issued arrest warrants for him as well as for other people involved in the operation of Metales. However, since then, Mr. Khan abandoned Mexico and the PGR has been unable or unwilling to resume the prosecution against him. The failure to successfully prosecute the responsible parties and secure fines for cleanup and other penalties for the commission of environmental crimes results in the ineffective enforcement of the law contrary to the NAAEC.

Article 3 of Mexico's Law on International Extraditions provides in pertinent parts:

“Extraditions that the Mexican Government solicits from foreign states, will be governed by existing treaties or in their absence, by articles 5, 6, 15, and 16 of this law.

Petitions for extradition that are prepared by the competent federal authorities, . . . , will be submitted through the Secretary of Foreign Relations by the Federal Attorney General's Office." (Emphasis added).

Article 1 of the Extradition Treaty Between the United States of America and the United Mexican States entitled "*Obligation to Extradite*" states:

"1. The Contracting Parties agree to mutually extradite, subject to the provisions of this Treaty, persons who the competent authorities of the requesting Party have charged with an offense or have found guilty of committing an offense, or are wanted by said authorities to complete a judicially pronounced penalty of deprivation of liberty for an offense committed within the territory of the requesting Party." (Emphasis added).

Article 2 of the same treaty further asserts:

1. Extradition "shall take place, subject to the Treaty, for willful acts which fall within any of the clauses of the Appendix, are punishable, in accordance with the laws of both Contracting Parties by deprivation of liberty, the maximum of which shall not be less than one year. (Emphasis added).

Point 15 of the Treaty's Appendix specifies offenses against the laws relating to the control of poisonous chemicals or substances injurious to health. Furthermore, article 415 of the Mexican Penal Code penalizes anyone who harms or can harm the public health, natural resources, flora or fauna with activities that use hazardous materials or produces hazardous wastes with 3 months to 6 years in prison. See Penal Code, article 415, DOF, 12/13/96.

In this case, Mr. Khan operated a smelter facility in Mexico, generated and abandoned hundreds of tons of hazardous wastes and returned to the United States to escape prosecution. Mr. Kahn's actions are the type contemplated under the extradition laws and amount to criminal acts according to Mexican law. Additionally, the plain language of the Extradition Treaty such as "**Obligation to Extradite**" contained in the title of article 1, and "**extradition shall take place**" found in article 2, mandates Mexico to solicit the

United States the extradition of Mr. Kahn based on his criminal acts.

Furthermore, Mr. Kahn and New Frontier Trading Corporation continue to openly operate in San Diego California. New Frontier reported an estimated \$700,000 to \$1 million in sales. New Frontier Trading Corporation's location is known and current. Accordingly, PGR has, or can readily obtain, all the necessary elements to proceed with extradition with relative ease. Mexico has therefore failed to effectively enforce its environmental laws by its inability or unwillingness to continue the criminal proceedings against Mr. Kahn by means of formal extradition.

2. MEXICO FAILED TO EFFECTIVELY ENFORCE ARTICLE 170 OF THE GENERAL LAW BECAUSE IT HAS NOT TAKEN THE PROPER SAFETY MEASURES TO PREVENT THE METALES Y DERIVADOS SITE FROM POSING AN IMMINENT RISK TO THE ECOLOGICAL BALANCE AND TO PUBLIC HEALTH .

Mexico did not effectively enforce its environmental law by failing to remediate the Metales y Derivados site. Article 170 of the Ley General del Equilibrio Ecológico y Protección al Ambiente (General Law) provides in part:

When an imminent risk to the ecological balance exists, or a harm or serious deterioration of natural resources, cases of contamination posing dangerous repercussions to the ecosystems, its components or to public health, the Secretary, with probable cause, could order one or more of the following safety measures:

- I. The temporary, partial or total closure of the sources of contamination, as well as the facilities that handle or store wild flora or fauna species, forestry resources, or activities that create what is described in the first paragraph of this Article,

- II. The precautionary securement of hazardous materials and wastes, as well as wild flora or fauna specimens, products or byproducts or their genetic material, forestry resources, as well as the assets, vehicles, equipment and instruments that are directly associated with the activity that gives rise to the imposition of the safety measure, or
- III. The process of neutralizing or other analogous action that prevents the materials or hazardous wastes from creating the effects named in the first paragraph of this Article. Likewise, the Secretary may promote before the competent authority, the implementation of one or some of the safety measures found in other regulations.

In this particular case, the Metales site is a severely contaminated area that is presently creating an imminent risk to the surrounding ecological balance and to public health. Mexico failed to enforce Article 170 subsection II because to date, it has not taken or ordered adequate measures to properly confine or secure the hazardous materials and wastes from Metales y Derivados to prevent an imminent risk to the ecological balance and to public health. To date, mounds of lead slag sit exposed to the natural environment threatening nearby communities. Seasonal winds and rainfall continue to carry these substances to nearby communities. Runoff water from the Otay Mesa industrial park flows down the mesa carrying the hazardous substances from Metales y Derivados through Colonia Chilpancingo and into the Tijuana River.

Furthermore, Mexico has not complied with subsection III of Article 170 of the General Law. Lead, cadmium, phosphorous, sulfuric acid as well as metal and plastic scrap are found in piles within the premises of the site, completely unattended and untreated. There are no signs to warn people about the potential health and environmental risks that the site may pose even though the Metales toxic waste site is located next to a frequented path used by people to get to and from work. (See exhibits 3). Therefore, Mexico failed to effectively enforce Article 170 of the General Law by not taking appropriate measures to either contain or neutralize the hazardous waste generated by Metales y Derivados in order to prevent an imminent risk of harm to the environment and to public health.

2. MEXICO FAILED TO EFFECTIVELY ENFORCE ARTICLE 134 OF THE
GENERAL LAW BECAUSE IT HAS NOT TAKEN APPROPRIATE ACTIONS TO

CONTROL OR PREVENT SOIL CONTAMINATION IN AND NEAR THE
METALES Y DERIVADOS SITE.

Article 134 of the General Law states in pertinent part:

For the prevention and control of soil contamination, the following criteria will be considered:

- I. It is the responsibility of the State and society to prevent soil contamination;
- II. Wastes must be controlled since they constitute the principal source of soil pollution
...
- V. Proper actions shall be taken to restore or reestablish the quality of soil that is contaminated by the presence of hazardous materials or waste, in such a manner that it can be used or restored in whatever type of activity contemplated in the appropriate urban development program or ecological regulation.

As stated above, Mexico has not taken the proper actions to prevent or control the hazardous materials now present in and around the Metales site. Although Mexico did permanently shut down the facility's operations, build a containment wall and attempt to cover the lead slag mounds with a plastic cover, these measures do not constitute effective or adequate actions to restore and reestablish the quality of soil contaminated by hazardous materials or waste. Instead, because of the types and amounts of hazardous waste that remain in the site abandoned, higher levels of ground water or soil contamination are likely to take place. Consequently, pursuant to Article 134 of the General Law, Mexico is in violation of its law because it has not taken corrective measures to control and prevent soil contamination in and around the site.

B. PURSUANT TO ARTICLE 13 OF NAAEC:

1. THE SECRETARIAT SHOULD PREPARE A REPORT ON THE METALES CASE BECAUSE IT IS A MATTER RELATED TO THE COOPERATIVE FUNCTIONS OF NAAEC AND IT IS WITHIN THE SCOPE OF THE COMMISSION'S ANNUAL PROGRAM.

Aside from Article 14 of NAAEC, the Secretariat also has authority to prepare a report to assess the Metales toxic waste case as a matter related to the cooperative functions of NAAEC under Article 13.

Article 13 of the Act allows the Secretariat to prepare a report for the Council "on any matter within the scope of the annual program" based on relevant technical, scientific or other information, including information submitted by interested non-governmental organizations and persons. Under this Article, the report does not need to be based solely on a claim of a Party's failure to enforce its environmental laws and regulations.

The case of Metales merits a report by the Secretariat because it falls under two principal strategic programs of the 1996 Annual Program. One program is aimed at protecting human health and the environment and the other focuses on enforcement cooperation. A report on the current situation of Metales will promote both strategic programs.

First, the 1996 Annual Program states in part: "[t]he CEC approach to protecting human health and the environment focuses on reducing pollution risks and minimizing the impact of existing pollution across the continent." CEC 1996 Annual Report, pg. 15. The Secretariat can prepare a report to determine the contamination levels as well as the environmental and health risks associated with the Metales site that currently impact the nearby communities. More importantly a report can also explore alternatives to

remediate the site through joint binational cooperative strategies.

For example, as of 1992, 29 lead battery recycling sites in the United States were classified under the Superfund Program by U.S. Environmental Protection Agency (EPA), and EPA has identified treatment alternatives to remediate these sites. (See exhibit E). In other words, the U.S. has had ample experience with pollution caused by battery recycling sites and thus with remediation technology.

These U.S. Superfund sites can be compared to Metales with respect to the type of toxic substances on site that could be similarly remediated. The Secretariat can identify existing treatment alternatives and resources such as in the case of the United States to assist Mexico in remediating Metales. As parties to the NAAEC, both Canada and the United States can assist Mexico in preventing it from following the same path of the United States of having numerous battery recycling sites to be remediated. Therefore, a report on Metales by the Secretariat clearly falls within the objectives of the strategy to protect human health and the environment of the Annual Program and in accordance to Article 13 of the NAAEC.

Second, a detailed report conducted by the Secretariat can provide recommendations on how to assist Mexico in enforcing its laws more effectively to prevent disinterested companies from contaminating their sites and abandoning them as in the case of Metales. The CEC is directed through its Enforcement Cooperation and Law strategy to "facilitate the development of law, policy and economic instruments for alternative approaches to compliance, effective enforcement, and to promote greater public participation and transparency in decision-making." (See CEC 1996 Annual Report, pg. 20).

For example, one problem confounding the case of Metales is the fact that the company's

responsible parties fled Mexico and returned to the United States to shelter themselves from any civil or criminal complaint from the government of Mexico. To the best of Petitioners' knowledge, this has been one reason why Mexico has been unable to prosecute or sanction these individuals.

The Secretariat can fulfill its enforcement cooperation and law objectives by conducting a careful analysis of the Metales case to identify opportunities for joint enforcement actions, such as facilitating extradition efforts to bring to justice those who commit environmental crimes in one country and escape to another country, such as in the case of Metales.

A report on the Metales case under Article 13 of the NAAEC will therefore assist Mexico in remediating this severely contaminated site and can also serve to recommend cooperative enforcement actions to prevent similar cases from recurring in the future.

IV. CONCLUSION

Metales y Derivados, a U.S.-owned and abandoned lead smelter, presently poses serious risks to human health and the environment in Tijuana, Baja California Mexico. The lead contamination however, does not stop there. It may also be affecting the United States as the waste can be washed away by rainfall, enter the Tijuana River system and travel north over the international border. This case poses serious threats to human health and the environment for both Mexico and the United States. Because there has not been any corrective actions to extradite the culprits, clean up the site or protect the surrounding communities from further toxic exposure, Petitioners request that the Secretariat prepare a factual record and a report to assess the case.

Various technologies to remediate lead battery recycling sites do exist. For example, the U.S. EPA

has identified several approaches to remediate lead battery recycling sites. Alternatives such as immobilization of the lead waste (solidification or stabilization), separation of the contaminants (soil excavation and off-site disposal) and specific innovative treatment technologies are some of the known viable options to clean or secure lead contaminated sites similar to Metales.

Mexico failed formally pursue the extradition of Jose Kahn as mandated by the Law on International Extradition and the Extradition Treaty between Mexico and the United States. Mexico further failed to take adequate measures to properly confine or secure the hazardous materials and wastes from Metales to prevent an imminent risk to the ecological balance and to public health contrary to Article 170 of its General Law. Mexico also failed to prevent or control the hazardous materials now present in and around the Metales y Derivados site contrary to Article 134 of the General Law. Consequently, the Secretariat has the authority to investigate this case under Articles 14 and 15 of the NAAEC and to recommend clean up alternatives.

The Secretariat also has the authority to prepare a report on the Metales y Derivados case under Article 13 of NAAEC because it is a matter related to the cooperative functions of this Agreement, and to do so would promote the objectives of the Annual Program.

More importantly, the NAAEC's first objective in its first article is "to foster the protection and improvement of the environment in the territory of the Parties for the well-being of present and future generations." The cleanup of the Metales toxic waste site can only be achieved through cooperative actions. The CEC must assume such a role and assist Mexico in the resolution of this severe case of lead contamination. Failure to clean up Metales y Derivados and to prevent similar toxic pollution from recurring

in the future is contrary to the main intent and purpose of this Agreement and this institution. Therefore, Petitioners request that the Secretariat commence a factual record or a report regarding the case of Metales y Derivados as stipulated in this Agreement.

Date: October 21, 1998

Respectfully submitted,

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Comité Ciudadano Pro Restauración
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A.C.

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