

Secretariat of the Commission for Environmental Cooperation

**Determination of the Secretariat in accordance with Article 14(1)
of the North American Agreement on Environmental Cooperation**

Submitter: [REDACTED] [name withheld pursuant to NAAEC
Article 11(8)]
Party: United Mexican States
Date received: 22 January 2016
Date of the determination: 2 March 2016
Submission no.: **SEM-16-001 (*Agricultural Waste Burning in Sonora*)**

I. INTRODUCTION

1. Articles 14 and 15 of the North American Agreement on Environmental Cooperation (“NAAEC” or the “Agreement”) provide for a process allowing any nongovernmental organization or person to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. The Secretariat of the Commission for Environmental Cooperation (the “Secretariat” of the “CEC”) ¹ initially considers submissions to determine whether they meet the requirements in NAAEC Article 14(1). When Secretariat finds that a submission meets these criteria, it then determines, pursuant to the provisions of NAAEC Article 14(2), whether the submission merits a response from the concerned Party. In light of any response from the Party and in accordance with the NAAEC, the Secretariat determines whether the matter warrants the preparation of a factual record. If it so determines, it then notifies the CEC Council and explains the reasoning for its recommendation in adherence with Article 15(1); should the Secretariat determine instead that the preparation of a factual record is not warranted, it shall proceed no further with the submission.²
2. On 22 January 2016, [REDACTED] [name withheld pursuant to NAAEC Article 11(8)] (the “Submitter”) filed a submission to the Secretariat pursuant to Article 14(1) of the NAAEC. The Submitter asserts that every year around 100 tons of agricultural waste are burned, generating almost 13,000 hectares of farmland in the vicinity of Caborca, Sonora. The Submitter maintains that the burning of agricultural waste, done after the asparagus harvest, creates air pollution and that the environmental authorities fail to control this polluting activity and are not protecting the environment.
3. Submission SEM-16-001 (*Agricultural Waste Burning in Sonora*) asserts that Mexico is failing to effectively enforce the provisions of the General Climate Change Act (*Ley General de Cambio Climático*) and the Ecological Balance and Environmental

¹ The Commission for Environmental Cooperation (CEC) was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC) signed by Canada, Mexico, and the United States (the “Parties”) and [NAAEC]. The constituent bodies of the CEC are its Council, Secretariat and the Joint Public Advisory Committee.

² For detailed information on the various stages of the submission process, as well as on the Secretariat’s determinations and factual records, please consult the CEC website: <www.cec.org/submissions>.

Protection Regulation (*Reglamento de Equilibrio Ecológico y la Protección al Ambiente*) of the municipality of Caborca, Sonora.³

4. After analyzing the submission, the Secretariat has determined that it does not meet all admissibility requirements under Article 14(1) of the Agreement, and hereby notifies the Submitter in accordance with Guideline 6.1 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”).
5. Pursuant to Guideline 6.2, the Submitter has sixty working days to submit a revised submission. The Secretariat cannot continue to process submission SEM-16-001 if it does not receive a revised submission before **31 May 2016**.

II. ANALYSIS

6. Article 14 of the NAAEC authorizes the Secretariat to consider submissions from any nongovernmental organization or person asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. As stated by the Secretariat in prior determinations made under NAAEC Article 14(1), this article is not intended as a procedural examination that places a significant burden on Submitters.⁴ The Secretariat reviewed the submission in question with regard to this perspective.

A First paragraph of Article 14(1)

7. The first sentence of Article 14(1) allows the Secretariat to consider submissions “from any nongovernmental organization or person asserting that a Party is failing to effectively enforce its environmental law”. This submission includes the Submitter’s name and sufficient information to contact him. There is no information in the submission indicating that the Submitter is part of the government or under its direction.

1) Environmental law in question

8. The Secretariat has determined that not all provisions cited in the submission qualify for analysis, and that in some cases a clarification by the Submitter is necessary. The Secretariat further identified several provisions that, while not expressly referenced in the submission, are marked in the documentation forwarded by the Submitter. A revised submission may clarify whether he intends to cite such provisions.⁵
9. With respect to Articles 2 and 26 of the General Climate Change Act, while they may qualify as environmental law, the Secretariat finds that the submission does not refer to how the Mexican government actions or inactions, with respect to the activity in

³ Revised submission, pp. 6 and 11.

⁴ See SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998) and SEM-98-003 (*Great Lakes*), Article 14(1) and (2) Determination (8 September 1999).

⁵ See, for example, Articles 5, 6, 7, 8, 43, 70, 150, 167, 172, 264, 271, 284 and 315 of the Caborca Municipal Ecological Balance and Environmental Protection Regulation, and the 4 January 2016 exhibit, citizen letter addressed to the municipal president of Caborca, State of Sonora.

question, are geared toward a “low-carbon economy”⁶ or how the Mexican State has failed to address the adverse effects of climate change. In light of these deficiencies, ; these provisions are not considered for further analysis, unless addressed in a revised submission.

10. As regards the environmental protection provisions of the Municipal Ecological Balance and Environmental Protection Regulation of Caborca, Sonora, the Secretariat finds it to be an environmental law under the NAAEC. Article 142 of the Regulation establishes the jurisdiction of the municipality of Caborca on several matters. In this respect, the Secretariat considers only sections III and IV for the analysis, as they refer to open-air burning as being under municipal jurisdiction, and the performance of inspection visits. Article 143 provides that persons who release pollutant emissions must obtain the corresponding permits and undertake the applicable control measures. Article 144 lists various criteria to be considered in the prevention and control of air pollution. Article 145 identifies emissions sources under municipal jurisdiction, while Article 146 lists the municipal duties, including those relating to the control of air quality.
11. The provisions cited above qualify as environmental law, as they govern the control of air pollution in accordance with the definition contained in the NAAEC. However, the submission does not refer to provisions related to air quality provisions in the context of burning of agricultural products. A revised submission may provide greater specificity in this regard, by citing the provisions directly applicable to the matter raised in the submission.

B The six requirements of NAAEC Article 14(1)

12. The Secretariat evaluated submission SEM-16-001 in light of the six requirements of Article 14(1) of the NAAEC, and determined that it does not meet all requirements listed therein. The Secretariat’s reasoning is explained below.
 - a) *[whether] it is in writing in a language designated by that Party in a notification to the Secretariat*
13. The submission meets the requirement of Article 14(1), as it is written in one of the languages designated by the Parties for making submissions, namely Spanish.
 - b) *[whether] it clearly identifies the person or organization making the submission*
14. The submission satisfies Article 14(1)(b), since the Submitter provides his name, address and other means of contact, which is sufficient for the Secretariat to identify him clearly and communicate with him.
 - c) *[whether] it provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based*

⁶ Article 2: Section VII of the General Climate Change Act establishes that the purpose of the law is to “promote transition to a competitive, sustainable and low carbon emissions economy.”

15. The Submitter includes electronic copies of the environmental laws cited in the submission.⁷ He also includes a copy of the minutes of a meeting with representatives in Caborca, Sonora from the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (*Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación*—Sagarpa), various affected parties and the head office of the Sustainable Development District Council 139-Caborca. These minutes allude to items discussed, which match the Submitter's key concerns, as they:

[...] state the problem of the burning of asparagus foliage and the effects on the inhabitants of the farm communities and the city, [as] evidenced in videos how the uncontrolled smoke affects road visibility and health issues, [showing] photos that will be made available to the district [and asking] how food safety permits are being issued for products that affect the population.⁸

16. The submission also includes the minutes of a meeting held to establish the ordinance governing the controlled burning of asparagus foliage (2015-2016 season) in the Caborca region. These minutes present various defects:

The person indicated to authorize this type of issues, according to the Ecological Balance and Environmental Protection Regulation for the municipality of Caborca, Sonora, is the municipal government through the Bureau of Urban Development and Ecology, [...] if the councilor [...] has a conflict of interest and should have recused from participating in the signature of said document, since he is an asparagus producer [...] the document does not contain the environmental impact statement required by the regulations, to authorize any method that may cause an ecological imbalance [...] it does not mention the comprehensive environmental license to be issued by the Bureau [...] enterprises that cause an ecological imbalance must monitor air quality so as to not exceed the limits prescribed by the respective standard.⁹

17. The submission also includes a letter addressed to the Caborca municipal president, in which the signing citizens state that their claims

[...] have not been addressed by any authority [...] have yet to be enforced to date, as environmental contingencies have arisen in recent days, keeping the city of Caborca immersed in a dense layer of smoke for several hours.¹⁰

18. The submission further includes various photographs showing the uncontrolled smoke resulting from the burning of asparagus waste, which supposedly affects health; a study showing that the burning of agricultural waste is a source of dioxins;¹¹ slides from a conference regarding ecological protection in the Caborca region and practical

⁷ Enclosures with the submission contain the relevant provisions of both the General Climate Change Act and the Municipal Ecological Balance and Environmental Protection Regulation of Caborca, Sonora.

⁸ Sagarpa, Sonora State Delegation, minutes of meeting with the head of District 139-Caborca, Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food, 8 January 2015.

⁹ Town Hall of Caborca, Sonora, meeting minutes (24 November 2015).

¹⁰ Letter from affected citizens, addressed to the Caborca, Sonora municipal president, to state the facts giving rise to their claims, 4 January 2016.

¹¹ Irina Ize, *Agricultural Waste Burning: Source of Dioxins (La quema de residuos agrícolas: fuente de dioxinas)*, Commission for Environmental Cooperation, Montreal, January 2014.

solutions in the management of asparagus burning;¹² and an executive summary on the development of asparagus foliage in Caborca, Sonora.¹³

19. The submission is accompanied by a document issued by the Attorney General for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa), referring to a complaint received on 7 January 2014, which alleges the burning of agricultural waste in Caborca. However, the complaint is not enclosed with the submission, and the document included is incomplete and undated, making it impossible to determine whether it is the same matter. The Submitter may include a physical or electronic copy or the hyperlink corresponding to the complaints connected with the matter raised in the submission.

d) *[whether] it appears to be aimed at promoting enforcement rather than at harassing industry*

20. The submission satisfies Article 14(1)(d), as it appears to be aimed at promoting enforcement rather than at harassing industry. Guideline 5.4 guides the Secretariat, when determining that the submission is aimed at promoting enforcement rather than at harassing industry.
21. A reading of the submission shows that it is aimed at controlling air pollutant emissions due to the burning of agricultural waste in Caborca, Sonora. It is then focused on the acts or omissions of a Party to control air emissions rather than on compliance by the agricultural sector. The Submitter does not appear to be a competitor that may stand to benefit economically from the submission and the submission does not present a frivolous matter.

e) *[whether] it indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any*

22. The submission includes a copy of an online complaint filed with the Office of the Federal Attorney for Environmental Protection *Procuraduría Federal de Protección al Ambiente*—Profepa), in which a resident of Caborca describes the problem of asparagus burning during a thermal inversion and holds that “this causes serious episodes of air pollution with grave health consequences.”¹⁴
23. The submission includes various official documents, including one from Profepa, in which the State Attorney for Environmental Protection (*Procuraduría Ambiental del Estado de Sonora*—Profepa) personnel state that they conducted a walkthrough along the Puerto Peñasco-Caborca Highway and found no evidence of the burning indicated in the complaint. Documents in the Submission show that the Profepa

¹² Sonora Transparente, A.C., Environmental Ecological Protection of the Region and Practical Solutions in the Handling of Asparagus Burning (*Protección ecológica ambiental de la región y soluciones prácticas en el manejo de la quema del espárrago*), conference, 30 October 2015.

¹³ Rogelio Ausencio Juárez González, Clemente León Félix and Guillermo Cepeda Vázquez, Development of Asparagus Foliage (*Elaboración de forrajes de espárrago*), Mexico, 2012.

¹⁴ Profepa, Online Complaint Management System (*Sistema de administración de denuncias realizadas por Internet*), Office of the Federal Attorney for Environmental Protection, undated.

delegate in the state of Sonora requested to report to Sagarpa;¹⁵ a request from the Profepa delegate in the state to the Sagarpa delegate to forward the complaint “to whom it may concern, to address the matter of reference;”¹⁶ and another communication sent by the head of the Sagarpa legal area in Sonora to the head of Rural Development District 139-Caborca, requesting the latter’s “involvement to identify the roster of producers of the crop of reference, notifying them by ruling that they are to refrain from carrying out such burning.”¹⁷

f) [whether] the submission is filed by a person or organization residing or established in the territory of a Party

24. The submission complies with Article 14(1)(f), as it is submitted by a nongovernmental person established in the territory of one of the NAAEC Parties.

III. DETERMINATION

25. For the foregoing reasons, the Secretariat has determined that submission SEM-16-001 (*Agricultural Waste Burning in Sonora*) does not meet all admissibility requirements of Article 14(1) of the NAAEC. However, the Submitter may submit a revised submission in which he addresses the following matters:
- i) clarification of the provisions cited in the submission (paragraph 11) which addresses the concerns raised by the Secretariat, and
 - ii) further information on the citizen complaint filed with Profepa on 7 January 2014 (paragraph 19).
26. In accordance with Guidelines 6.1 and 6.2, the Secretariat hereby notifies the Submitter that he has up to sixty working days to provide a submission that conforms to all requirements of Article 14(1). If such revised submission is not received by **31 May 2016**, the Secretariat will terminate the process with respect to this submission.
27. The Submitter is invited to submit such revised version, and any further information, to the email address sem@cec.org, or through the submissions portal at www.cec.org/portalSEM. He is also reminded that the revised submission should not exceed 15 typewritten pages.

¹⁵ Proaes, Office of the Deputy Environmental Attorney, Ruling No. OSA-058/14, addressed to Profepa in Sonora, Office of the Sonora State Environmental Attorney, 4 August 2014.

¹⁶ Profepa, State of Sonora, Complaint Processing, Ruling PFPA-32.7-8C 17 4-2 0018-14, addressed to Sagarpa delegate in Sonora, Office of the Federal Attorney for Environmental Protection, 9 September 2014.

¹⁷ Sagarpa, letter from the head of the legal area, addressed to the head of Rural Development District 139-Caborca, Sonora, Ministry of Agriculture, Stockbreeding, Rural Development, Fisheries and Food, 11 September 2014.

Secretariat of the Commission for Environmental Cooperation

(signature in original)

Per: Robert Moyer
Director, Submissions on Enforcement Matters Unit

(signature in original)

Per: Paolo Solano
Legal Officer, Submissions on Enforcement Matters Unit

CC: Enrique Lendo, Alternate Representative of Mexico
Louise Métivier, Alternate Representative of Canada
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Submitter