

# Environmental Enforcement

in the U.S.-Mexico Border Region

*A Community Guide to  
Enforcement in Texas  
and Chihuahua*





---

# **Environmental Enforcement in the U.S.–Mexico Border Region**

*A Community Guide to Enforcement  
in Texas and Chihuahua*

Environmental Law Institute

Southwest Network for Environmental and Economic Justice

## ACKNOWLEDGMENTS

This handbook is a product of the Community Environmental Law Initiative—a collaborative project of the Southwest Network for Environmental and Economic Justice and the Environmental Law Institute (ELI). The Southwest Network and ELI would like to thank the following members of the Network who contributed generously of their time and experience in the development of this handbook: Susana Almanza (PODER/People Organized in Defense of Earth and her Resources); José Bravo (Just Transition Alliance); Diana Bustamante (Colonias Development Council); Helga Garza (Kalpulli Tlapalcalli); Cipriana Jurado Herrera (CISO/Centro de Investigación y Solidaridad Obrera); Carlos Loya López (FEDECO/Frente de Consumidores); and Rubén Solís (Southwest Workers' Union). The Southwest Network and ELI would also like to thank the many other individuals who made an important contribution to this project by providing comments on earlier drafts of the handbook, and Rini Templeton, who contributed the cover art.

The preparation and publication of this handbook was supported by the U.S. Environmental Protection Agency Region 6, under Assistance Agreement No. X4-96601501-0. The views expressed herein should not be attributed to EPA, nor should any official endorsement be inferred.

## COPYRIGHT AND LIMITED LICENSE TO COPY

Copyright © 2007 Environmental Law Institute® and Southwest Network for Environmental and Economic Justice.

ISBN 978-1-58576-120-3, ELI project code 052101

Community organizations and other non-profit institutions may make and distribute photocopy reproductions of this handbook for non-commercial purposes. The notice of the copyright must appear on each copy and each copy must be complete. All other rights reserved.

An electronically retrievable copy (PDF file) of this handbook may be obtained for no cost from the Environmental Law Institute web site ([www.eli.org](http://www.eli.org)), click on Publications. [Note: ELI Terms of Use will apply and are available online.]

---

# Contents

<b>CHAPTER 1: INTRODUCTION</b>	<b>1</b>
<b>CHAPTER 2: COMMUNITY ENVIRONMENTAL ENFORCEMENT IN THE U.S.</b>	<b>6</b>
Overview of Environmental Law in the U.S.	7
Requesting Information from the Government	21
Legal Tools for Community Enforcement	31
• <i>Filing a Public Complaint</i>	
• <i>Participating in Government Enforcement Actions</i>	
• <i>Filing a Citizen Suit</i>	
<b>CHAPTER 3: COMMUNITY ENVIRONMENTAL ENFORCEMENT IN MEXICO</b>	<b>45</b>
Overview of Environmental Law in Mexico	46
Requesting Information from the Government	61
Legal Tools for Community Enforcement	71
• <i>Filing a Public Complaint</i>	
• <i>Filing an Appeal for Administrative Review</i>	
• <i>Filing an Amparo Lawsuit</i>	
• <i>Other Tools: Criminal Complaints and Human Rights Complaints</i>	
<b>CHAPTER 4: BI-NATIONAL MECHANISMS FOR COMMUNITY ENVIRONMENTAL ENFORCEMENT</b>	<b>85</b>
Submissions to the North American Commission for Environmental Cooperation	85
Community Participation in the U.S./Mexico Border 2012 Program	90
Complaints to the Inter-American Commission on Human Rights	95
<b>APPENDICES</b>	<b>98</b>
1. Selected Federal, State and Municipal Environmental Agencies in the U.S.	
2. Selected Federal, State and Municipal Environmental Laws in the U.S.	
3. TCEQ Web Site – Home Page and Complaint Form	
4. Sample Information Requests—U.S.	
5. Citizen Suits—Resources for Further Information	
6. Selected Federal, State and Municipal Environmental Agencies in Mexico	
7. Selected Federal, State and Municipal Environmental Laws in Mexico	
8. Mexican Federal and State Online Information Request Forms	
9. Mexican Federal Form for Filing a Public Complaint Online	
10. Mexican Attorney General Form for Filing a Criminal Complaint Online	



---

# Chapter 1

## *Introduction*

The U.S.-Mexico border is home to nearly 12 million people. Most live in one of 14 sister cities, from San Diego and Tijuana in the west, to Brownsville and Matamoros in the east. People living in the border region are connected by history, family and culture. They are also connected by diverse geographic features and by common airsheds, watersheds and underground aquifers.

Over the last 20 years, population has grown rapidly in the border region, and so has industrial activity. This growth is due in part to the *maquiladora* program and the North American Free Trade Agreement (NAFTA). Rapid urban development has resulted in many serious environmental and public health problems. According to the U.S.-Mexico Border 2012 program, these problems include

unplanned development, greater demand for land and energy, increased traffic congestion, increased waste generation, overburdened or unavailable waste treatment and disposal facilities, and more frequent chemical emergencies. Residents in rural areas suffer from exposure to airborne dust, pesticide use and inadequate water supply and waste treatment facilities. Border residents also suffer disproportionately from many environmental health problems, includ-

ing water-borne diseases and respiratory problems.

See U.S.-Mexico Border 2012 Framework (Introduction), available at: <http://www.epa.gov/usmexicoborder/intro.htm>.

There are many laws in the U.S. and Mexico for ensuring that productive activities do not harm the environment or public health and for requiring those responsible to repair damage they have caused and to prevent harm in the future. The laws create minimum standards for how much pollution can be released to the air, soil and water, as well as requirements for handling and disposing of toxic chemicals. Yet, even these minimum standards required by law are often violated. The impact of these violations on the health and environment of neighboring communities can be devastating.

This handbook is about environmental *enforcement*—the set of actions that governments and communities take to make sure that individuals and companies comply with environmental laws. Effective enforcement is vital to making sure that illegal practices are stopped and environmental problems are fixed. It is also important for discouraging future violations. The laws that establish environmental requirements provide the government with legal tools to use if there are

violations—tools such as issuing a fine, revoking a permit, or closing a facility. But government agencies do not have the resources to identify every violation of the law. And the government has some discretion in establishing its enforcement priorities. The government usually cannot be forced to take enforcement action or to take a particular type of enforcement action.

The handbook focuses on the role of the *community* in environmental enforcement. It discusses legal tools that community residents can use to persuade the government to take enforcement action or, in some cases, to bring an enforcement action directly. These tools include requesting governmental information, filing a public complaint, participating in government enforcement actions, and bringing a legal action to enforce the law. (The handbook does *not* discuss a different type of legal action—a private lawsuit for monetary damages, which individuals may be able to bring against polluting facilities in some cases.)

Environmental laws give communities some tools for participating in the enforcement process, but it is not always easy to understand how these laws work in practice. The handbook is designed as a resource so that residents of border communities can use the enforcement tools and processes established in the law to fight pollution in their neighborhoods, workplaces, and anywhere else it may be a problem.

The handbook focuses mainly on environmental enforcement at the federal and state levels, and uses the states of Texas and Chihuahua as examples. In some cases, municipal laws and agencies play a role as well, and examples from the cities of El Paso and Juárez are included. The handbook also

covers some of the bi-national legal instruments and processes that may be useful in addressing border enforcement problems. Although the geographic focus is limited to two states, other border communities can use the handbook to learn more about national and bi-national enforcement tools, and also as a general resource for understanding how their own state and local laws might be used.

The handbook does not address all of the environmental laws that exist, since there are many different laws across a wide range of topic areas. It focuses primarily on air pollution, water pollution, and solid and hazardous waste. When reading this handbook, it is very important to remember that the legal tools described here often are not enough, by themselves, to solve an environmental problem. As the following case study shows, strong community organizing is vital to addressing serious environmental justice issues. An organized community can determine when—and whether—the legal tools described in this handbook can be most effective.

### **Colonia Moreno and the Case of Presto Lock<sup>1</sup>**

Colonia Moreno is a working-class community located in northeastern Ciudad Juárez, near the Ysleta-Zaragoza International Bridge. One day in June 1993, a young girl was playing near her home in the Colonia. She stepped in a puddle in the street and immediately received severe burns on her feet.

The residents of Colonia Moreno had already been fighting against the pollution caused by Candados Presto, a maquiladora in their community that was owned by a parent company in New Jersey. The injury suffered by this young girl as a result of the company's



irresponsible handling of wastes was the straw that broke the camel's back. The residents decided to take stronger actions against the conditions they were living with. Led by a neighborhood committee, and supported by other non-governmental organizations, the residents started a campaign to pressure the company, the governmental authorities, and the public at large to clean up the contamination and relocate the facility.

One of the first things the community did was to submit a complaint to the Municipal Water and Sewer Authority (*Junta Municipal de Agua y Saneamiento*) about the company's discharges to the sewer system. The Water and Sewer Authority was responsible for monitoring discharges to the city's sewer system, including industrial discharges from maquiladoras such as Presto Lock. The Authority's response turned out to be important in helping to address the problem. Officials conducted an investigation and documented the maquila's mishandling of its wastes. This not only attracted media attention, but also led the Authority to refer the case to PROFEPA (*Procuraduría Federal de Protección al Ambiente*), the federal environmental enforcement agency.

PROFEPA conducted initial inspections and found serious violations of Mexico's environmental law. These violations included dumping of toxic chemicals such as cyanide and improper storage of materials containing heavy metals such as nickel and chromium. Large amounts of hazardous wastes were found both inside and outside the facility. The agency ordered the company to close temporarily its lines of production and to export its wastes, as required by federal law. After time passed, the facility was allowed to open some of its lines of production and to conduct a third-party environmental audit

(paid for by Presto Lock as part of the government's economic sanction) to monitor the company's operations.

Over the next several months, the neighborhood committee was very active in urging the federal government to close the facility and clean up the site. Community residents found it difficult to get information about the case from PROFEPA, but information from other officials and from workers convinced the residents that the company was still violating the law. The neighborhood committee used the media in Mexico and the U.S. to keep the problems at Presto Lock in the public eye while the government gave the company a chance to fix the problems. Residents arranged a meeting with the Governor of the state of Chihuahua. Working closely with other organizations and colonias, the community organized demonstrations at the facility and at government offices. Two bi-national marches at the Zaragoza International Bridge included over 200 people and more than 20 different groups from the U.S. and Mexico, including the Southwest Network for Environmental and Economic Justice.

In addition, the organization CISO (*Centro de Investigación y Solidaridad Obrera*) conducted a health survey of the Colonia and documented over 80 cases—half of them children under 18 years—of illnesses believed to be related to the environmental contamination at Presto Lock. The most common health problems documented were nose bleeds, allergy and asthma symptoms, headaches, high blood pressure, and rashes. CISO presented these findings to federal health officials. The organization also analyzed soil samples that confirmed high levels of contamination.

Eventually, PROFEPA determined that the company was still not complying with the

legal requirements for storing and disposing of its wastes, and the government ordered Presto Lock to close permanently and to pay a large fine. The company was also ordered to export the remaining wastes and restore the environmental damage it had caused.

The permanent closure of Presto Lock was a victory for the residents of Colonia Moreno, who fought hard for months to make sure that the government took appropriate actions to protect the community. But the closure was not the end of the story. Indeed, enforcement cases often do not completely solve environmental problems. In the years since Presto Lock left Colonia Moreno, other businesses have opened at the same location. The community is aware that there has not been any comprehensive remediation of the site and residents do not know what contamination remains.

Since the Presto Lock enforcement case, over ten years ago, some of the environmental laws in Mexico have changed. Some new legal tools have been created that can assist communities like Colonia Moreno. For example, there are new federal and state laws establishing the right to get information from government agencies. A new federal law on waste management was adopted a few years ago, establishing the responsibilities of the federal, state and municipal governments, and new regulation was recently adopted under the law. And the process for submitting public complaints has been clarified in the laws and in practice. In the area of criminal justice, there now exist three special federal prosecutors for environmental crimes within the Federal Attorney General's office. At the bi-national level, new tools have also been created, such as the citizen submission process of the North American Commission for Environmental Cooperation. These legal tools—and the corre-

sponding tools in the U.S.—are described in detail in this handbook.

Still, the experience of Colonia Moreno emphasizes a key point about community enforcement—whether in Mexico, the U.S. or bi-nationally: **Strong community organizing is the key to successful community enforcement.** Community organizing is important for a number of reasons.

First, enforcement cases can take a long time to resolve. Communities that are well organized can keep the problem in the public eye during the months or years that a case progresses. They can make sure that the government follows through with the case until the company complies and that the government's decisions are consistent with the law. Second, it is important that government enforcement officials understand the full scope of the problem and that they require appropriate measures to protect public health. Conducting community health surveys, as well as working jointly with groups on both sides of the border, are ways to help make sure that officials know the seriousness of the problems. Finally, the struggle to protect the community's health and environment will continue well beyond the particular enforcement case. An organized community is necessary for responding to new threats to the community's health and environment. And an organized community can be more effective in influencing what types of facilities are allowed to move into residential communities in the future.

### Structure of the Handbook

This handbook describes enforcement tools that communities can use to help supplement their organizing activities to address

serious environmental threats. The rest of the handbook is divided into three parts. **Chapter 2** presents opportunities for community enforcement in the state of Texas. It describes the roles of federal, state, and municipal agencies in environmental protection, provides an overview of federal, state, and municipal environmental laws, and explains how to use key enforcement tools. **Chapter 3** turns to Mexico, providing information about the federal, state and local laws and agencies that operate in the state of Chihuahua. The chapter describes in detail how to use the main community enforcement tools available in Mexico. **Chapter 4** explores bi-national and international mechanisms for environmental enforcement in the border region, including the Border 2012 U.S.-Mexico Environmental Program and the NAFTA Commission on Environmental Cooperation.

At the end of the handbook are **Appendices** that contain different types of information, such as the names and addresses of key agencies; a summary of the main laws and regulations; and sample forms.

### Notes

1. This information was provided by the Centro de Investigación y Solidaridad Obrera (CISO), a non-governmental organization based in Ciudad Juárez that played a central role in the case.

---

## Chapter 2

# *Community Environmental Enforcement in the United States*

Industrial and commercial facilities use and produce materials that may damage the environment and public health. Under both U.S. and Mexican environmental laws, these facilities must comply with legal and technical standards that are intended to control air, water and soil pollution from the facility's operations. When a facility does not meet these standards, the government is responsible for taking action to enforce the law. This can mean requiring a facility to change its practices, pay a fine, or correct problems that it has caused.

This chapter describes how communities can use legal tools to help enforce U.S. environmental laws against polluting facilities in the U.S. It is important to note that this handbook does not address the unique issues raised by environmental enforcement on tribal lands. Tribes are a separate level of government with their own environmental programs, and the relationship between tribal governments and the federal government is governed by an entire body of law that is outside the scope of this handbook. The chapter focuses on environmental enforcement in the state of Texas, and also uses the city of El Paso to illustrate enforcement at the municipal level.

Located in the southern United States alongside the Mexican border, Texas ranks second in the country by size and population (over 22 million people as of 2004). Numerous Texas cities line the border between the U.S. and Mexico, with El Paso, Brownsville and McAllen among the largest. These border cities are characterized by significant commercial, transportation, and distribution activity, a substantial government presence, and relatively high poverty rates. These factors can combine to produce serious environmental problems in the Texas border communities.

The chapter is divided into three sections. Section I provides an overview of environmental protection in Texas, including the main federal and state environmental laws that apply in Texas and the agencies that enforce them. Section II discusses how the public can get information from the government about polluting facilities. Section III discusses some of the common legal tools and processes that community residents can use to help enforce the law—from filing complaints and participating in government enforcement actions, to bringing an enforcement lawsuit in court.

## **SECTION I: OVERVIEW OF ENVIRONMENTAL LAW IN THE U.S.**

---

The environmental protection framework in the U.S. is composed of many different laws and programs that operate at the federal, state, and local level. This section gives an overview of the main laws and agencies involved in environmental protection in the state of Texas, and how those agencies enforce the environmental laws. The handbook cannot provide detailed information about every single environmental law and program, but it discusses the general legal framework in the areas of air, water and waste.

### **Federal, State and Municipal Roles in Environmental Protection**

In the United States, the federal government, the states, and municipal authorities (such as cities, counties and townships) all play a role in environmental protection. Under the system of federalism, established by the U.S. Constitution, authority to regulate the environment is shared between the federal government and the states. Often, the federal government sets minimum standards through federal laws, while the states determine how they will meet these standards through their own state laws. In some cases, the states will share their authority with municipalities, which may also pass laws of their own.

The goal behind this division of authority is to allow each level of government to regulate within its area of responsibility. For the federal government, this means regulating issues of national importance and ensuring uniform application of federal standards. The

federal government's powers are limited to those given in the Constitution, although these powers may be interpreted broadly. The remaining authority is left to the States and to the people. States and municipalities address issues that fall within their borders. This model gives states the flexibility to act on issues not covered by federal laws and decide how they will meet federal standards—and, in most cases, allows them to go beyond what the federal government requires.

Both the federal government and the states have passed a number of environmental laws. Starting in 1970, Congress enacted laws that set requirements and standards for clean air, clean water, waste cleanup, and other issues. Many of these federal laws allow for, and even require, a certain amount of state participation. Some give the Environmental Protection Agency (EPA, the main federal environmental agency) the authority to delegate, or transfer, its pollution control programs to qualifying states, if the states can show that they are capable of handling the program. For example, under the Clean Water Act, EPA may allow states to assume responsibility for the program that requires permits for wastewater discharges into oceans, rivers, lakes, streams, and other water bodies.

In this way, most states become the primary enforcers of many federal environmental laws. Not all states seek to assume this control, because it can be quite burdensome, and certain federal laws are more easily delegated than others. Even after delegating a program to a state, EPA will continue to oversee how the state runs the program—such as by reviewing (even vetoing) environmental permits that the state intends to issue. If a state is not enforcing the law sufficiently, EPA

can even withdraw the state program, although it does this only rarely.

In addition to enforcing federal standards and requirements, states can pass their own environmental laws. These laws may be based on the federal laws, or they may be passed to fill in the gaps left by a federal law. They may also address environmental issues that the federal government lacks authority to regulate, such as cleanup in mining areas or groundwater protection. Even where a federal law exists, states can often choose to establish stricter requirements—but they cannot require *less* than the federal law. Since a single issue (such as clean water) may be covered by both state and federal laws, it can be difficult to figure out what the legal requirements are. This handbook will summarize some of the main legal requirements for clean air, clean water, and waste disposal, and how community residents can help enforce these requirements.

### **Environmental Agencies— Federal, State and Municipal**

When the federal government wants to regulate in an area such as the environment, Congress passes one or more laws to establish requirements and standards. Even though Congress creates many environmental laws, it is difficult for the laws to address all of the complex, technical issues involved in regulating different types of industries and activities. For this reason, Congress often relies on administrative agencies to help it regulate. Administrative agencies are the government offices that carry out the laws. In addition to environmental agencies, there are federal agencies in many different areas—common examples include the Internal Revenue Service (IRS) and the Department of Housing and Urban Development (HUD). State and

local governments also have administrative agencies that carry out state and local laws.

Administrative agencies can write rules and regulations to fill in the details about how to apply the laws. For example, agencies can determine how to translate the broad standards that Congress established in the laws (such as the Clean Air Act’s standard to protect human health) into specific requirements and limitations that can be imposed on industries and others. Agencies also oversee *compliance* with the law, as well as *enforcement* of the law against those who violate it. For example, agencies may monitor permit holders to make sure they are meeting the law’s pollution standards, and they may take enforcement action against those who fail to follow the law.

Following is a description of the primary environmental agencies at the federal, state and municipal levels. Appendix 1 contains the contact information and websites for these agencies.

#### *Federal Environmental Agencies*

**THE ENVIRONMENTAL PROTECTION AGENCY (EPA).** The EPA is the primary federal environmental agency. It was created in 1970 in response to growing public concern about the impact of pollution on environmental quality in the U.S. Some of EPA’s major roles and responsibilities include:

- writing rules and regulations to help put federal environmental laws into action;
- establishing and running the permitting process for different types of environmental permits (clean air, clean water, waste disposal, and others);
- enforcing environmental laws against polluters;

- overseeing the administration of federal environmental programs that are delegated to state environmental agencies;
- directing and supervising cleanups of hazardous waste sites; and
- conducting environmental research, monitoring, and analysis.

The EPA's work is broken down into a number of programs, organized roughly around the following topic areas: Air & Radiation; Pesticides; Pollution Prevention; Toxics & Chemicals; Water; and Wastes & Recycling. In addition, the Office of Enforcement and Compliance Assurance (OECA) enforces EPA's rules and standards and helps industries, business owners, and others to comply with these rules and standards. This office also contains EPA's Office of Environmental Justice (OEJ), which coordinates efforts to integrate environmental justice concerns into EPA's policies, programs, and activities.

The EPA is headquartered in Washington, D.C. and contains ten regional offices across the country. Region 6, based in Dallas, is responsible for environmental protection in Texas, Louisiana, Arkansas, Oklahoma, and New Mexico.. In addition to working on air, water, and solid and hazardous waste issues, Region 6 helps states construct wastewater and drinking water facilities in or near *colonias* and other border communities.

**OTHER FEDERAL AGENCIES.** Although EPA is responsible for enforcing almost all of the federal pollution-control laws, many other federal agencies are also involved in environmental protection. These include the **U.S. Department of the Interior** and its member agencies, such as the **Fish and Wildlife Service** (conservation of fish, plants, and wildlife), **National Park Service** (administration of national parks), **Office of Surface**

**Mining** (regulation of coal mining), and **Bureau of Land Management** (public lands management). Other agencies include the **U.S. Army Corps of Engineers** (maintenance of waterways and permits for placing material in waters), the **USDA Forest Service** (protection of federal forests and forest resources), and the **National Oceanic and Atmospheric Administration** (protection of coastal and marine environments). It is important to remember that all federal agencies are required to *comply* with the federal environmental laws, regardless of whether they *enforce* any of these laws themselves.

#### *State Environmental Agencies*

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).** The TCEQ, formerly known as the Texas Natural Resource Conservation Commission, is the primary environmental agency in Texas. The TCEQ is responsible for applying and enforcing environmental laws within the state, including the laws governing air, water, and solid and hazardous waste. The TCEQ administers several federal environmental permitting programs under the Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act, among others.

The TCEQ is headed by three commissioners, who are appointed for six-year terms by the governor. The Commissioners hire an Executive Director, who runs the day-to-day operations of the agency. There are five major offices within the TCE, with the Executive Director's staff located mainly in the permitting and enforcement/compliance offices.

*Office of Permitting, Remediation, & Registration.* This office is responsible for managing the permitting programs for air, water, and waste under federal and state law. It also oversees the investigation and cleanup of

hazardous pollutants and manages the reporting process for certain facilities.

*Office of Compliance and Enforcement.* This office enforces Texas' environmental laws against polluters. Its job is to see that permits and rules are followed. The office handles citizen complaints, investigates environmental violations, and brings enforcement cases. The office also monitors air and water quality, responds to emergency events and natural disasters, and oversees the operation of TCEQ's regional offices throughout the state.

*Office of Legal Services.* This office provides the agency with legal support on environmental law, enforcement actions, and general agency operations. It helps ensure that agency rules and decisions follow the law and are applied consistently.

*Office of Administrative Services.* This office provides non-legal, administrative services and support to TCEQ. Its divisions include Financial Administration, Human Resources and Staff Development, Information Resources, and Support Services.

*Chief Engineer's Office.* This office develops and implements statewide and regional plans, rules, strategies, and technical guidance to help ensure that standards for air, surface water, and groundwater are met within the state. Among other things, it assesses risks to human health from air pollution, water pollution, and the cleanup of polluted sites; implements plans to protect and restore air and water quality; and reviews plans, permits, and regulations for scientific accuracy and their ability to be implemented.

TCEQ works in sixteen regions throughout the state, with a headquarters office in each region. For example, the El Paso area is locat-

ed in TCEQ Region 6. A map of these regions and contact information is on the TCEQ website: <http://www.tceq.state.tx.us/about/directory/>.

**OTHER STATE AGENCIES.** In addition to the TCEQ, several other Texas agencies work on issues involving natural resources and the environment. For example, the **Texas Water Development Board** is involved in planning for dams and reservoirs. The **General Land Office (GLO)**, headed by one statewide elected official, is responsible for coastal zone management and oil spill cleanup. The **Texas State Soil and Water Conservation Board** is responsible for addressing nonpoint source pollution from agricultural sources. The **Railroad Commission of Texas (RRC)**, headed by three statewide elected commissioners, oversees the state's oil and gas industry, as well as many aspects of surface mining of coal and uranium. The RRC's Oil and Gas Division manages abandoned site remediation and abandoned well plugging programs, while the Surface Mining and Reclamation Division is responsible for reclaiming abandoned mines.

The **Texas Department of State Health Services** is also involved in environmental issues. The Department oversees a number of environmental and consumer safety programs, such as food production and handling; drugs and medical devices; asbestos; lead; mold; certain volatile chemicals; and general sanitation. It also contains the Texas Tier II Chemical Reporting Program, which maintains hazardous chemical inventory reports and emergency planning letters required under the Emergency Planning and Community Right-to-Know Act. In addition, the Department is responsible for enforcing rules and laws related to radiation, and for testing fish for toxics, such as mercury.



### *Municipal Agencies*

There are also agencies in Texas that handle environmental issues at the municipal level. In El Paso, the **El Paso City-County Health and Environmental District** (EPCCHED) works on air quality and sewage issues within the El Paso region. The EPCCHED contains an Environmental Quality Division that has five programs—Air Quality Control, Animal Regulations & Disease Control, Environmental General, Environmental Food, and On-Site Sewage Facilities. The EPCCHED’s Air Quality Program monitors El Paso’s air quality, enforces federal and state rules and regulations, and participates in inter-governmental border activities. In addition to air quality, the District works to protect the environment from sewage discharges. The On-Site Sewage Facilities Program conducts inspections, investigates nuisance complaints involving unauthorized wastewater discharges, and enforces all state and local regulations relating to on-site sewage facilities.

### **Principal Environmental Laws— Federal, States and Municipal**

In the U.S., environmental laws are generally organized according to the type of pollution they address. This section will provide a brief overview of the main federal and state environmental laws that apply in the Texas in the areas of air, water, and waste. There are several other types of laws that relate to environmental protection, but that are not covered in this report—for example, laws about natural resource protection, pesticides and environmental impact assessment.

Even though they focus on different subject areas, most environmental laws have

three important parts: (1) pollution-control standards (often stated very generally) for protecting public health, safety, and the environment; (2) a permitting program that requires businesses and others to meet the pollution-control standards; and (3) an enforcement system to make sure that industries, businesses, governments, and others comply with the standards and requirements. In addition, each law has rules and regulations (written by agencies such as the EPA or TCEQ) that spell out the requirements in more detail.

As mentioned earlier, the EPA has delegated a number of federal environmental programs to states such as Texas. This means that Texas has primary responsibility to enforce portions of the main laws discussed in this handbook, including the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act (waste). The following is an introduction to these major federal environmental laws, along with the state laws and regulations that implement them. The final part of Section I then explains the government enforcement process for these laws. Sections II and III of this Chapter will discuss how communities can use the laws to help make sure that environmental requirements and standards are enforced in border communities.

Appendix 2 contains a table listing the federal, state, and local laws and regulations and how to find them.

### *Air Pollution*

**FEDERAL—CLEAN AIR ACT.** The Clean Air Act (CAA) is the federal law that regulates emissions (releases) into the air from a variety of sources, in order to protect public health and decrease air pollution. Congress passed the

Clean Air Act in 1970, recognizing that air pollution can cause or contribute to a number of serious diseases, including heart disease and lung cancer.

*Standards.* The Clean Air Act requires EPA to set allowable levels in the air for certain pollutants. These levels are known as national ambient air quality standards (NAAQS), and are based on the amount of pollution that will not harm even individuals who are particularly sensitive to pollutants.<sup>1</sup> After setting the NAAQS, EPA determines which areas of the country are meeting the standards, and which areas are not. Areas that meet the standards are called “attainment areas,” while areas that do not are called “non-attainment areas.” The state of Texas is in “attainment” for some air pollutants and in “non-attainment” for others. El Paso is currently in non-attainment for particulate matter (PM) and carbon monoxide (CO). In order to reach attainment for all relevant pollutants, each state must develop (and revise) a State Implementation Plan (SIP) describing how it will manage its emissions.<sup>2</sup> The Texas SIP can be viewed at <http://www.tceq.state.tx.us/nav/eq/sip.html>.

In addition to the NAAQS described above, EPA sets other national standards for the release of air pollutants by facilities. These include performance standards for new or substantially modified sources of air pollution (known as new source performance standards or NSPS).<sup>3</sup> EPA also lists categories of sources of certain hazardous air pollutants (known as HAPs) and sets national emission standards for them (known as NESHAPs).<sup>4</sup> Under the Urban Air Toxics Program, EPA also develops strategies for reducing emissions of hazardous air pollutants in urban areas.

The standards described above all relate to stationary (fixed in place) sources, such as power plants and factories. Under the Clean Air Act, EPA also regulates mobile sources, which include automobiles, trucks, buses, aircraft, and non-road engines.

*Permits.* The Clean Air Act’s standards are applied to an individual facility that releases air emissions through a *permit*. There used to be a number of different permits issued under the Clean Air Act, but these have now been combined into a single operating permit (known as a “Title V permit”). Facilities that do not yet have a Title V operating permit may be operating under a new source review (NSR) permit or a prevention of significant deterioration (PSD) permit. States can apply to EPA for authority to administer the Title V permit program within their boundaries, and Texas has received permission from EPA to do so.

*Monitoring and Reporting.* Under the Clean Air Act, monitoring is carried out by EPA, state and regional air pollution control agencies like TCEQ, and by polluting facilities themselves. The Act requires facilities that release pollutants into the air to monitor their releases, keep records about the releases, and report the information to EPA or the appropriate state agency (in this case, TCEQ).<sup>5</sup> The monitoring reports help EPA monitor the facilities’ compliance with the Act. EPA can also make some of this information available to interested members of the public. Air pollution monitoring stations have also been set up around the country to collect information on various pollutants.

**STATE—TEXAS CLEAN AIR ACT.** The Texas Clean Air Act was originally passed before the federal Clean Air Act. Today, the state law is designed to meet the federal Clean Air Act requirements, as TCEQ has received authori-

ty from EPA to run the federal clean air program. The Texas Clean Air Act gives TCEQ authority to issue permits and other authorizations to build or modify facilities that may release air pollutants.<sup>6</sup>

**MUNICIPAL AUTHORITY.** The Texas Clean Air Act gives municipalities authority to conduct inspections (including the power to enter public and private property) and make recommendations to the TCEQ on enforcing the Texas Clean Air Act.<sup>7</sup> Municipalities can also enforce their own clean air laws, as long as they do not conflict with the Texas Clean Air Act.<sup>8</sup>

Although El Paso does not have any clean air laws of its own, it does have an Air Quality Program. This program, which operates under the Texas Clean Air Act, monitors air quality in El Paso County and enforces certain clean air violations through TCEQ. The program currently maintains twelve monitoring sites in El Paso and Ciudad Juárez. These sites transmit information daily to air pollution control authorities at TCEQ and EPA Region 6. Based on this information, authorities may conduct investigations and take enforcement action for air quality violations in El Paso.

#### *Water Pollution*<sup>9</sup>

**FEDERAL—CLEAN WATER ACT.** The Federal Water Pollution Control Act (Clean Water Act or CWA), provides legal tools that the federal government, states, and tribes can use to reduce the amount of pollution in the surface waters of the United States (such as rivers, lakes, streams, and oceans). To control and eliminate pollution of U.S. waters, the law uses a permit system and national standards set by EPA.

*Standards.* Under the Clean Water Act, EPA is charged with adopting standards that

restrict the discharge of water pollutants. Some standards (“technology-based standards”) are applied to the release of pollutants from “point sources”—things such as pipes, ditches, channels, tunnels, vessels, and other pathways for pollutants to enter water bodies. Other standards (surface “water quality standards”) set the levels of pollutants that can exist in specific water bodies. These water quality standards, which are set by states or tribes, are applied to water bodies such as lakes, rivers, and streams. In cases where the technology standards for discharges from point sources will not adequately protect the receiving water bodies, the water quality standards are used to place additional restrictions on the discharge. A third type of standard, known as the toxic effluent standard, is used to set allowable levels for certain toxic pollutants.

Under the Total Maximum Daily Load (TMDL) Program, states must identify waters that are not meeting the water quality standards. For these waters, the states must calculate the maximum level of pollutants that can enter the water on a daily basis, so that water will meet water quality standards. After EPA approves the TMDLs, states must incorporate them into their water quality planning.

*Permits.* The main permitting feature under the Clean Water Act is known as the National Pollutant Discharge Elimination System (NPDES). All facilities that discharge pollutants into U.S. waters from a point source must obtain a NPDES permit in order to operate.<sup>10</sup> Under the NPDES framework, EPA or states/tribes that have qualified for delegation from EPA (such as Texas) may issue permits for releases of pollutants that meet the Clean Water Act’s standards, described above. These permits are required for all point sources, including wastewater treatment plants, min-

ing operations, industrial activities, stormwater collection systems in urbanized areas, and construction sites. The permits are used to impose specific limits on the release of pollutants by each point source.

The second type of permit available under the Clean Water Act is the Section 404 dredge-and-fill permit, issued in most states by the U.S. Army Corps of Engineers. This permit is used to regulate the dredging (digging) and filling (primarily resulting from construction activities) of U.S. waters and wetlands that are connected to these waters.

In order to obtain a federal permit, such as a Section 404 permit, facilities must also obtain what is known as a “state water quality certification.”<sup>11</sup> To obtain this certification, a facility must show the state that its activities will not violate any state or federal water quality standards. These standards are used to help protect the quality of surface waters (lakes, rivers, streams, etc.) within the state of Texas.

*Monitoring and Reporting.* Like the Clean Air Act, the Clean Water Act imposes monitoring and reporting requirements on facilities that receive a permit to operate. These include preparing discharge monitoring reports (DMRs) on a daily or monthly basis. In addition, EPA and TCEQ may visit facilities to conduct inspections.<sup>12</sup>

**STATE—TEXAS WATER QUALITY ACT.** The Texas Water Quality Act establishes permitting procedures, sets water quality standards, provides for emergency orders, and contains a number of other requirements to protect water quality.

EPA has delegated to Texas the authority to administer its own pollution permitting pro-

gram, the Texas Pollutant Discharge Elimination System (TPDES). This program, which is run by TCEQ, issues permits for releases of all pollutants into Texas waters, except for discharges linked to oil, gas, and geothermal exploration and development activities (which are regulated by the Railroad Commission of Texas).<sup>13</sup> Texas has authority to issue the state water quality certifications described above, which are required for anyone seeking a TPDES permit.<sup>14</sup>

Although this chapter does not focus on groundwater contamination, the Texas Water Code gives the state authority to address groundwater issues. The Water Code charges the Texas Water Development Board with developing a statewide water plan and administering various water assistance and financing programs within the state. The code also established the Texas Groundwater Protection Committee, which has developed the Texas Groundwater Protection Strategy.<sup>15</sup>

Other Texas agencies also implement groundwater protection programs. For example, TCEQ addresses groundwater contamination through its solid and hazardous waste, wastewater and storm water permitting, Petroleum Storage Tank, and underground injection control programs, as well as its oversight of public drinking water systems. The Railroad Commission of Texas addresses groundwater protection when issuing permits to drill oil and gas wells, cleaning up contaminated properties, and by performing a groundwater impact assessment as part of the surface coal mining permitting process.

**MUNICIPAL AUTHORITY.** The Texas Water Quality Act authorizes local governments to conduct inspections of wastewater discharges and to submit recommendations to TCEQ. Local governments may enter into agree-

ments with TCEQ to share authority over water quality management, inspection, and enforcement functions. The Act also allows (and in some cases requires) municipalities to adopt a water pollution control and abatement program to deal with water pollution caused by non-point sources (such as stormwater runoff from cars, pesticides and fertilizers used in lawn care, agricultural practices, forestry, mining, and other sources). El Paso has adopted such a program.

#### *Hazardous Waste*

**FEDERAL—RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).** The Resource Conservation and Recovery Act (RCRA) was passed in 1976 to protect human health and the environment from waste disposal, reduce waste generation, and ensure that wastes are managed in an environmentally-sound manner. Subtitle C of RCRA addresses hazardous waste, while Subtitle D addresses non-hazardous waste.

*Standards.* Wastes that meet the law's definition of hazardous wastes are subject to "cradle-to-grave" regulation, from their generation to their transportation, treatment, storage, and ultimate disposal. Any person who creates hazardous waste (called a "generator") must manage and store these wastes in accordance with EPA regulations. Those who generate and transport waste are also subject to other requirements, such as disposing of hazardous waste in a permitted hazardous waste facility. The most extensive RCRA requirements apply to hazardous waste treatment, storage, and disposal facilities. The RCRA law also has provisions addressing underground storage tanks that contain hazardous substances and petroleum products.

*Permitting.* Most facilities that deal with hazardous waste (whether by creating it and storing it on-site for more than 90 days, or as a treatment, storage, or disposal facility) must have a permit issued under RCRA. As part of a RCRA permit, any facility that has hazardous waste on-site from past operations (including spills) must evaluate the environmental impact of that remaining waste and propose "corrective action" to clean it up as part of the permit.

**STATE—TEXAS SOLID WASTE DISPOSAL ACT.** Texas has been authorized to administer its own Hazardous Waste Management Program under RCRA Subtitle C.<sup>16</sup> Texas has also received authority to run its own Underground Storage Tank (UST) program under Subtitle I of RCRA. However, EPA is still able to conduct inspections and enforcement for the UST program.

While TCEQ has authority over most of the solid and hazardous waste in Texas, the Railroad Commission of Texas (RRC) has authority over oil and gas wastes, such as those related to the exploration, development, and production of oil, gas, or geothermal resources.

#### *Hazardous Substance Cleanup*

**FEDERAL—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION & LIABILITY ACT (CERCLA).** CERCLA (also known as "Superfund") is the federal program for the cleanup of uncontrolled or abandoned hazardous waste sites. The law authorizes EPA to investigate any release (or threatened release) of hazardous substances into the environment, and to take actions to clean up the release. In conducting investigations and cleanups of sites, EPA can use money from the federal Superfund and

then try to collect it from the parties who are responsible for the release or threatened release of hazardous substances. EPA can also enter into agreements with the responsible parties to have them conduct the investigation and cleanup at their expense, or order the responsible parties to conduct a cleanup.

Apart from its cleanup provisions, the Superfund statute also requires anyone spilling more than a “reportable quantity” of hazardous substances into the environment to file reports with federal and state emergency officials.

*National Priorities List.* Under Superfund, EPA maintains a list of sites that may require cleanup (the National Priority List or NPL). The list of federal NPL sites in Texas is available on the EPA Region 6 website (<http://www.epa.gov/earth1r6/6sf/6sf-tx.htm>) and is organized by county on the main EPA site (<http://www.epa.gov/superfund/sites/npl/tx.htm>). Sites may be nominated for the list by a resident, a member of TCEQ or EPA Region 6, or by anyone else.

Once a site is discovered, it is entered into an EPA database known as the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS). Before a site is recommended for the NPL, it undergoes a full evaluation. Once a site is placed on the NPL, EPA generally follows a process that involves multiple steps: preliminary assessment and site investigation (PA/SI) to determine whether a significant release or threat of release exists; remedial investigation and feasibility study (RI/FS) to explore the nature and extent of contamination, and to study various cleanup options; record of decision (ROD), in which EPA documents the cleanup option it has

selected; remedial design and remedial action (RD/RA), in which EPA designs and conducts the cleanup; and long-term operation and maintenance (O&M) of the cleanup. EPA can use its “removal” authority to do faster, but smaller, cleanups at any sites that pose a more immediate threat, whether they are listed on the NPL or not.

*Technical Assistance Grants (TAGs).* The Superfund statute also makes grants available to community groups to help them participate in the cleanup decision-making process at certain Superfund sites. These grants, known as TAGs, can be used to hire independent technical advisors to help communities understand complex technical information about a nearby Superfund site. For more information about these grants, see <http://www.epa.gov/superfund/tools/tag/>.

**STATE CLEANUP AUTHORITY.** States generally are viewed as EPA’s partners in Superfund cleanups. A state may take the lead in administering the Superfund process at a particular site, but final authority for determining the cleanup remedy remains with EPA. In Texas, TCEQ’s Superfund Site Discovery Assessment Program (SSDAP) works with EPA to decide whether a site should be listed on the NPL. Sites that do not make it onto the NPL may still be placed on the Texas Superfund Registry, a state list of contaminated sites. TCEQ follows a process similar the federal NPL process to evaluate potential sites for cleanup under the state Superfund program. Sites that may pose an immediate and substantial threat to public health and safety or the environment are placed on the Texas list for cleanup. Cleanups of these state-listed sites are paid for by state funds or through agreements with responsible parties.

*Non-hazardous Solid Waste*

**FEDERAL—RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).** Solid wastes that are not hazardous receive more lenient treatment under a program that is carried out mainly by the states. Subtitle D of RCRA requires the development of state or regional solid waste plans to manage the disposal of “solid waste,” which includes municipal garbage, non-hazardous industrial wastes, and waste from construction and demolition. EPA also has developed technical construction standards for “sanitary landfills”—facilities that accept solid waste for treatment and disposal. Finally, Congress required that “open dumps” (places where garbage was put on the ground without any environmental protections) must be closed or upgraded.

For more information about wastes and RCRA, see a list of waste-related topics at <http://www.epa.gov/epaoswer/osw/index.htm>. You might also try RCRA Online (<http://www.epa.gov/rcraonline/>), a database of information about RCRA.

**STATE—TEXAS SOLID WASTE DISPOSAL ACT.** TCEQ has jurisdiction over municipal solid waste.<sup>17</sup> The agency imposes record-keeping and reporting requirements on operators of municipal solid waste disposal facilities. The state charges fees on the disposal of municipal solid waste. Some of these “tipping fees” are used for the state’s permitting, enforcement, and solid waste management programs. Half of the funds collected are provided to the state’s 24 local Councils of Governments (COGs); individual cities and counties can then apply for these funds from their COGs.<sup>18</sup> TCEQ also provides technical assistance to local governments on managing municipal solid waste.

**MUNICIPAL AUTHORITY.** The city of El Paso also regulates the generation, storage, collection, transportation, and disposal of non-hazardous solid waste.<sup>19</sup> The city requires a variety of permits for the handling of solid waste. Enforcement measures include citations, orders to remove trash or take other necessary actions, and monetary penalties. In addition, El Paso recently launched a Curbside Recycling Program for aluminum, steel, plastic, and paper, and the city is constructing a recycling facility.

**Government Enforcement of Environmental Laws**

The preceding pages described how some of the environmental laws regulate the activities of facilities and other sources that may release pollution into the environment. These laws aim to protect the environment by establishing standards that limit the types and amounts of pollution that can be released. The standards are applied to facilities and other polluters through the permits that authorize the facilities’ activities. If a facility is releasing pollution into the environment without having the required permit, or in violation of its permit, the agencies are responsible for taking enforcement action to make sure the violation is corrected.

As noted earlier, TCEQ regulates many environmental activities in Texas, applying state laws that are based largely on the federal programs. EPA is the regulator in a few situations where Texas has not adopted state counterparts to federal laws (such as the wetlands permitting program), or where enforcement against a facility began before TCEQ received delegated authority. Even for delegated pollution-control programs, EPA retains

oversight and often works together with TCEQ on enforcement. Regulation of oil and gas activities and their environmental impacts falls under control of the Railroad Commission of Texas.

*What is the state's enforcement process?* TCEQ may learn about an environmental violation through an inspection, a review of a company's records, or a public complaint (discussed later). EPA may also alert TCEQ to an enforcement problem based on a complaint that EPA has received.

Once TCEQ discovers a possible violation, the first thing it will do is to conduct an investigation. This may include a visit to the site or facility; interviews with the owner, manager, and/or other workers; interviews with outside persons who may have observed the pollution; and a review of any permits that the facility has received. If TCEQ concludes that a violation has occurred, it may bring an enforcement action against the individual or company responsible for the violation. For possible air quality violations, TCEQ may also share information about a complaint with local officials in the El Paso Air Quality Program, who may conduct their own investigation and limited enforcement response.

To begin an enforcement action, TCEQ will issue either a Notice of Violation (NOV) or a Notice of Enforcement (NOE) to the business or individual responsible for the violation. The notice describes the violation and asks for a response, such as any evidence that no violation has occurred. A Notice of Violation will be issued if TCEQ rules have been violated, but the violation is not considered serious enough to require an enforcement order and is expected to be easily resolved. On the other hand, if TCEQ finds a substantial violation of

its rules, it will issue a Notice of Enforcement, signaling that it is bringing an enforcement action against the violator.

There are two types of enforcement actions: civil and criminal. Civil enforcement actions include administrative cases (those taking place largely within TCEQ) and judicial cases (those taking place in the courts). Most enforcement cases are brought at the administrative level. In certain cases, TCEQ may refer a case to the Texas Attorney General's office, which can also order a person or company to take specific action to stop a violation, or help TCEQ enforce its orders against a polluter.

If the violator cooperates with TCEQ during the enforcement proceeding, TCEQ will prepare an *administrative order* describing the violation, any actions that must be taken to correct it, and the amount of any penalties. The order usually proposes to settle the case if the individual or company complies with the order. If the violator chooses to contest the enforcement action, there may be an administrative hearing before a state administrative law judge at the State Office of Administrative Hearings. The judge will make a recommendation to the TCEQ Commissioners about an enforcement order. (The judge could also find that no violation actually occurred.) The TCEQ Commissioners will decide whether to issue, deny, or modify the judge's decision. The enforcement process ends once the violator complies with the TCEQ's order, including the payment of any penalties. A detailed explanation of this process is available at <http://www.tceq.state.tx.us/compliance/enforcement/process.html>.

Criminal enforcement procedures differ in many ways from civil enforcement. TCEQ has special investigators for environmental



crimes, known as Peace Officers. After conducting an investigation, a Peace Officer may submit a written request to TCEQ for review of a possible environmental crime.<sup>20</sup> Within 45 days, the agency must decide whether to pursue criminal environmental enforcement. The agency's decision is based on such factors as the nature of the violation; its impact on air quality, water quality, or human health; the cause of the violation; and any response actions by the violator.

If TCEQ decides that criminal enforcement is appropriate, it can refer the case for criminal prosecution to the appropriate authority. At the state level, this is the district attorney. In El Paso, it is the El Paso County Attorney's Environmental Crime Unit ([http://www.co.el-paso.tx.us/CA/ca\\_environ.htm](http://www.co.el-paso.tx.us/CA/ca_environ.htm)). The County Attorney prosecutes mainly misdemeanor violations of local and state environmental laws in local Justice of the Peace or County Courts.

Since 1991, environmental criminal enforcement in Texas has been led by the Texas Environmental Enforcement Task Force, a partnership formed to improve federal and state cooperation in prosecuting criminal violations of environmental laws. The Task Force is composed of staff from various local, state, and federal agencies involved in prosecuting environmental crimes. These agencies cooperate in conducting searches, taking and analyzing samples, and performing other functions needed to support criminal investigations. Many of the cases developed by the Task Force are prosecuted at the federal level by the U.S. Department of Justice.

Additional information about the TCEQ's enforcement of environmental crimes, including links to enforcement status reports,

may be found at <http://www.tceq.state.tx.us/legal/si/crime.html>.

*What role does EPA play in enforcement?* Since TCEQ has primary authority to implement the federal air, water, and hazardous waste programs, most enforcement cases in Texas are brought by TCEQ rather than EPA. Even where TCEQ is the primary enforcement authority, EPA may work closely with TCEQ to investigate potential violations and determine whether to pursue enforcement. The TCEQ will sometimes refer an enforcement case to EPA if the case is particularly complex or raises political concerns. In addition, EPA still has ultimate oversight of the programs it has delegated to TCEQ, and EPA can take enforcement action where TCEQ has failed to respond to a significant enforcement concern in a "timely and appropriate" manner. Finally, EPA will sometimes undertake a nationwide enforcement initiative targeting a particular industry, for which it may take over existing state enforcement cases.

Like TCEQ, EPA can hold administrative proceedings (for which it has its own administrative law courts and judges) or refer a case for civil or criminal enforcement in the courts. For more information on the EPA enforcement process, see EPA's "Environmental Enforcement: A Citizen's Guide," at <http://www.epa.gov/region4/air/enforce/citizenf.htm>. More information about the enforcement process is also provided at <http://www.epa.gov/compliance/civil/index.html>.

*Does El Paso carry out any enforcement activities?* El Paso municipal authorities play an active enforcement role in the area of air pollution. The city's Air Quality Program shares enforcement authority with TCEQ for certain air quality violations. For example, if a resi-

dent notices a foul odor coming from a manufacturing facility, she can submit a complaint to the Air Quality Program. The Program will then investigate the complaint and may issue a Notice of Violation or Notice of Enforcement to the facility operator if there has been a violation. The Air Quality Program follows the same administrative enforcement process as the TCEQ and can impose fines and other sanctions just like TCEQ.

*What kinds of sanctions are available?* The environmental laws provide for a range of enforcement measures, depending on the seriousness of the violation. Individuals or companies may be ordered to take specific steps to stop polluting activities or to clean up contamination they have caused. In addition, environmental laws and regulations provide for monetary fines, permit suspension/revocation, and imprisonment (in the case of criminal violations).

Monetary fines are a common sanction. Under Texas law, the government can issue a fine up to a maximum of \$2,500—\$25,000 per day for civil violations, depending on the violation. The maximum amount for criminal violations is \$1,500,000.<sup>21</sup> Each day that a violation continues counts as a separate violation.

TCEQ considers a number of factors in determining how much a violator must pay. These factors include the “nature, circumstances, extent, duration, and gravity” of the violation.<sup>22</sup> Special attention is paid to whether the violation harmed any water rights or created a hazard to public health or safety. Other factors include the impact of the violation on air quality, water quality, or people; whether there have been past violations by the same facility; whether the facility has taken steps to fix the cause of the violation and help those who have been affected by it; and whether the facility received any economic benefit as a result of the violation.<sup>23</sup>

## SECTION II: LEGAL TOOLS FOR REQUESTING INFORMATION FROM THE GOVERNMENT

---

*The neighborhood of Lincoln Park, on the outskirts of the city of El Camino, has recently seen an influx of new development, including several manufacturing plants and small businesses. These include auto body and paint shops, several dry cleaners, and a textile plant. The shops and stores have sprung up along the community's Main Street, while the textile plant has set up operations on the edge of the neighborhood. A few neighbors have heard that a chemical manufacturing plant may be moving to the area as well.*

*People are concerned about the effects of these new facilities on the community. There is talk of chemicals being dumped onto the ground behind the auto body shop, and at times there are strange smells coming from the textile plant. Residents want to know more about the companies' activities and what kind of pollution they may be causing.*

If you suspect that polluting activities, such as the ones in this hypothetical scene, are taking place in your neighborhood, one of the first things you can do is to collect information about the problem. The information you collect can help you to understand possible risks to the health and environment of your community. Once you know more about the problem, you can work with others in your community to decide how to respond. In some cases, you may discover that a facility is violating the law. Section III will discuss the legal tools you can use to help make sure the laws are enforced when you suspect that there are violations.

One way to get information about a polluting activity is by collecting it yourself. For

example, if you notice that an auto body shop is dumping substances onto the ground, you can write down what you have observed. You can include the date, time, and location (address) of the activity; the name of the company or person who owns the property; and the type of substance that was dumped (as best you can identify it). Other evidence, such as date-stamped photographs, may also be helpful. If you take pictures, it is a good idea to keep notes about the time of day, how far away you were standing, the weather, etc.

While certain events (such as liquid flowing into a waterway, or substances being dumped onto the ground) may suggest that an environmental law is being broken, it can be difficult to know for sure what is happening. Another important piece of information to collect is whether the particular business or facility has obtained a permit from the government. Most permits allow for some releases of pollutants within specific limits. It is important to determine whether the activity complies with the permit. On the other hand, if the business or facility has not obtained a permit, there is a good chance that the activity is in violation of the law.

For questions like this, there are many sources of environmental information available through the internet, public libraries, and state and federal agencies. These include databases of environmental information for a particular region, county, or state; information on emissions and releases under specific laws, like the Clean Air Act or Clean Water Act; and reports that regulated companies are required to file about their activities. EPA and TCEQ collect a lot of this information and make it available on their websites.

Even though a lot of information is already published, communities may not always be

able to get the information they need. In the hypothetical example, the residents of Lincoln Park may not be able to figure out whether the textile plant has received a permit under the Clean Air Act. For this reason, there are federal and state laws that allow you to ask for information directly from the government. The following sections will discuss the types of information available and how you can get it.

### **Environmental Information that the Government Publishes**

If you have access to the internet, you can get a lot of information about pollution in your community. TCEQ and EPA make a lot of information available online, though a few non-governmental websites have re-packaged some of this data to make it easier to read. Many of these websites contain the same types of information about air, water, and toxic waste emissions, but they present the information in different ways. If you are looking for information about a particular facility, such as the hypothetical auto body shop in Lincoln Park, it may be helpful to visit all of the different sites. Although it may take some time to learn how to use the different websites described below, they can provide valuable information and can assist you in gathering data for enforcement.

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY.** If you want information about a particular environmental problem in a Texas community, a good place to start is the TCEQ website: <http://www.tceq.state.tx.us/>. Under the “Search TCEQ Data” link at the top right corner you can search for many different types of information held by TCEQ. For example, the residents of Lincoln Park could use the website to look for information about

the textile plant in their neighborhood, including:

- permits and permit applications for the plant;
- licensing, training, and registration records for the plant; and
- enforcement activities, including the status of complaints and pending enforcement actions against the plant.

Appendix 3 contains a copy of the TCEQ web page, which shows the different types of information that are available. Although the website contains a lot of environmental information, some of the information possessed by TCEQ is not available online. In some cases, you may have to make a request under Texas’s open records law. This law is discussed in more detail in the next section.

**ENVIROFACTS:** <http://www.epa.gov/enviro/>. The Envirofacts website is run by EPA. It provides information about air quality, toxic releases, hazardous waste activities, and water discharges. The site can be used in a couple of ways. You can use the “Quick Start” section to get some basic information about your particular area (by city, state, or zip code). Or, you can use the more detailed “topic” searches to find out information about facilities in your area.

**ENFORCEMENT AND COMPLIANCE HISTORY ONLINE (ECHO):** <http://www.epa.gov/echo/index.html>. The ECHO website allows people to see environmental compliance records for facilities in a particular community. You can search by zip code, city, or county. The ECHO site provides a “Quick Search” option that will return a list of all facilities within a particular zip code and their enforcement history. This information can show whether EPA or a state/local government has conducted

### USING EPA'S ENVIROFACTS DATABASE

Using the Envirofacts database, you can perform "topic" searches, to get the following data by city/state, county/state, or zip code:

**WASTE:** a list of Superfund sites, a list of facilities that have reported hazardous waste activities

**WATER:** a list of companies that have permits to discharge wastewater

**TOXICS:** a list of facilities with toxic releases

**AIR:** a list of facilities with air emissions

**LAND:** a list of brownfield sites, a list of facilities that have reported hazardous waste activities

**COMPLIANCE:** compliance records of larger facilities

SEE <http://www.epa.gov/enviro/>

inspections, whether violations were found, and whether any enforcement actions were taken. You can search for all data, or specifically for air, water, or hazardous waste data.

**SCORECARD:** [www.scorecard.org](http://www.scorecard.org). The Scorecard website is a good stop for general information about environmental conditions in a particular community, including its major pollution sources. The site is run by a nonprofit organization called Environmental Defense. Its information comes from data about polluters that EPA has collected. Although more complete versions of this data may be available from EPA (for example, on the Envirofacts or ECHO websites), Scorecard presents the information in a clearer manner. It may be a good idea to begin with Scorecard, and then look at additional sites if necessary.

You can get information from Scorecard in a couple of ways. First, by entering your zip

code, you can get a pollution report that covers toxic chemicals, air quality, and water quality in your community. Second, you can learn about general environmental conditions in your community in six main areas: Toxics, Air, Water, Agriculture, Environmental Justice, and Health Hazards from chemicals.

Although Scorecard does not contain information collected by states or municipalities, a related site does. **Texas Environmental Profiles** (<http://www.texasep.org/index.html>), run by Environmental Defense along with the Texas Center for Policy Studies, contains state summaries and county-specific information on water quantity, water quality, land, wildlife and biodiversity, air quality, waste, energy, and pesticides. Visitors to the site can also create printable maps of environmental and geographic data, grouped into three themes: (1) water quantity and quality; (2)

land, wildlife, and biodiversity; and (3) air, energy, and waste.

**TOXICS RELEASE INVENTORY (TRI):** <http://www.epa.gov/tri/>. TRI is an EPA database that provides information about toxic chemical that facilities release to the air or water or transfer off-site. This is information that must be reported annually by federal facilities and by certain industries, such as manufacturing, metal and coal mining, electric utilities, and commercial hazardous waste treatment facilities. The TRI reporting requirements were established under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and expanded by the Pollution Prevention Act of 1990.

On the TRI website, you can search for information on chemical releases by clicking the “TRI Explorer” link under the “Search TRI Data” button on the right-hand side of the screen, or by going to the website: <http://www.epa.gov/triexplorer/>. You may search for information by zip code, county, or state; by chemicals released; or by industry. Although EPA collects the data each year, it takes more than a year before the information is compiled and published. In addition to EPA sites such as TRI Explorer and Envirofacts, several organizations make TRI information available through their own websites, including Scorecard, described above. If you do not have access to a computer, you can get written TRI reports by calling the TRI User Support Service at 202-566-0250.

**TEXAS TOXIC CHEMICAL RELEASE REPORTING ACT.** Texas has incorporated the federal TRI requirements into its own law. The Texas Toxic Chemical Release Reporting Act requires certain facilities to submit a toxic chemical release form to TCEQ. Reports submitted by facilities are available to the public.

**EMERGENCY PLANNING INFORMATION.** The federal EPCRA requires facilities to report three main types of information relating to emergency planning. First, facilities must report to state and local emergency response committees about how they manage and store certain hazardous chemicals. Second, facilities must provide emergency notification for releases of certain designated hazardous materials into the environment, along with any response measures taken. Third, certain facilities must report information about hazardous chemicals stored or used in the work place, including a material safety data sheet (MSDS). This information is available to the public with certain limited exceptions, such as the protection of trade secrets.<sup>24</sup>

**SUPERFUND IN TEXAS:** [www.tceq.state.tx.us/remediation/superfund/index.html](http://www.tceq.state.tx.us/remediation/superfund/index.html). This site contains (1) federal Superfund sites in Texas, and (2) a Texas Superfund Registry that lists sites identified for cleanup under the Texas Superfund law. It also has links to the Texas Superfund laws; Superfund contact information for reporting emergencies and spills, and accessing Superfund hotlines; and a description of TCEQ’s Superfund Site Discovery and Assessment Program (SSDAP).

**EPA SUPERFUND INFORMATION:** <http://www.epa.gov/superfund/sites/>. This site contains the CERCLIS database, which has information on hazardous waste sites, potentially hazardous waste sites and remedial activities across the nation. The CERCLIS database includes sites on the National Priorities List (NPL) for cleanup, and sites that are being considered for the NPL. You can search by site name, address, state, county, zip code, and type of contaminant. The database also contains site-specific documents and records such as Records of Decision (RODs), Five-Year Reviews and fact sheets for many sites.

*JavaScript:disclwin()*You can also access CERCLIS directly at <http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm>.

Even if you lack access to a computer, you can still obtain information about Superfund and the Emergency Planning and Community Right-to-Know Act by calling EPA's Superfund and EPCRA Call Center at 1-800-424-9346 [1-800-553-7672 (TDD)].

**OTHER EPA ONLINE INFORMATION.** The EPA also lists different hotlines and clearinghouses for environmental information, at <http://www.epa.gov/epahome/hotline.htm>.

### **Requesting Specific Information from State and Federal Agencies**

The internet sites listed above contain a lot of information about environmental pollution in Texas. However, there may be situations where more specific information is needed. In the hypothetical case of Lincoln Park, residents could use the TCEQ website to check what type of permit the textile facility has received, and whether it has ever been the subject of an enforcement action. However, detailed information about what requirements are contained in the permits, or copies of air emissions reports filed by the facility, may not be available online. In these cases, it may be necessary to request information directly from TCEQ or EPA.

There are two types of laws dealing with access to information in Texas. First, some state environmental laws require TCEQ to make certain information available to the public. For example, the Texas Water Quality Act<sup>25</sup> and the Texas Clean Air Act<sup>26</sup> both allow the public to view all information, documents, and data (with certain exceptions)

collected by TCEQ in the performance of its duties. Similarly, hazardous waste records submitted to TCEQ by owners of solid waste facilities are also available for public viewing under the Texas Solid Waste Disposal Act.<sup>27</sup>

The second type of law is known as a "freedom of information" law. These laws require government agencies like TCEQ to provide information about their work to the public, upon request. In Texas, this law is known as the Public Information Act (PIA). At the federal level, EPA and other federal agencies are subject to a similar law, known as the Freedom of Information Act (FOIA). In some cases, you may need to use these laws to get the information you are seeking. Sample information requests are included in Appendix 4.

### *Obtaining Information from TCEQ*

If you are trying to get information about an environmental issue in Texas, you should start with TCEQ. In certain cases, you may need to go to EPA instead—for example, where EPA is still the primary regulator (for federally-owned facilities, or facilities with a history of EPA enforcement), or where TCEQ has not been able to provide you with the information you need. Sometimes, you might want to ask both TCEQ and EPA for the same information, just to cover your bases. As a practical matter, however, EPA may refer to TCEQ any requests it receives for information falling under the authority of TCEQ.

To get information about facilities in your community, you can file a formal, written request under the Texas Public Information Act (PIA).<sup>28</sup> The next page describes how to do this.

An alternative, and often quicker, way is to try calling the nearest TCEQ regional office to

### LEARN MORE ABOUT FEDERAL AND STATE INFORMATION LAWS

Information about the Texas Public Information Act can be found online at <http://www.oag.state.tx.us/opinopen/opengovt.shtml#govlaws> (“Open Government”).

Through that website, you can also get a copy of the 2006 Public Information Handbook, which spells out in detail the procedures behind the Public Information Act. The TCEQ website also contains detailed information on how to submit a request for information, called an “Open Records” request. See <http://www.tceq.state.tx.us/admin/data/reqinfo.html> for more information.

Information about the federal Freedom of Information Act can be found in EPA’s FOIA Manual, available online at <http://www.epa.gov/foia/>. The manual describes the process for responding to requests and the availability of fee waivers. This site also contains a Reference Guide explaining how to submit FOIA requests.

ask for the information you need (see Appendix 1 for contact information). If you call TCEQ for information, you should provide the facility’s name and address and explain exactly what kind of information you are looking for, such as the facility’s environmental permits, monitoring reports, and records of any past enforcement actions. You may still be asked to put your request in writing in order to clarify what documents you are seeking. You should ask the person when you can expect to receive the information, and follow up if you do not hear anything within that time period.

Another option, for people who live near Austin, is to visit TCEQ’s Central File Room, which contains most of the information that TCEQ is required to make available to the public. You can view documents at the Central File Room for free, or photocopy them for ten cents a page. For more information, see <http://www.tceq.state.tx.us/admin/data/fileroom.html>, which lists the types of records located in the Central File Room.

#### *Getting Information from EPA*

If you are seeking information from EPA, it is probably best to start by submitting a request under the federal Freedom of Information Act (FOIA),<sup>29</sup> which applies to all federal agencies. (Although you can still try to request information by phone, particularly if you know someone personally at EPA, the agency may require a more formal request). Information about the FOIA office in EPA Region 6 may be found online at <http://www.epa.gov/earth1r6/6md/foia/index.html>. The site contains a link for submitting FOIA requests online, although you can also email, mail, or fax them to the agency (see contact information in Appendix 1). If you submit your request online through the EPA website, you should be sure to save a copy of your request or print it out before you send it in, since the system will not save a copy for you. If you are concerned about keeping a record of your request and the date you submitted it, you may wish to make your request by letter.



*Procedures for Filing Requests for Information with EPA and TCEQ*

Following is some specific information about how to submit environmental information requests under the Texas Public Information Act and/or the federal Freedom of Information Act.

*What should you put in your request?*  
Requests should be written and include the following information:

- Your name and mailing address;
- A telephone number that the agency can use to contact you directly if there are questions about your request (for TCEQ, you can choose to provide your email address instead);
- The name of the company or facility that you are interested in;
- The permit number or other identifying number for the company or facility, if you have that information;
- The street address of the facility;
- A list or description of the specific information you want (more information about this is provided below); and
- Information about whether you are seeking a fee waiver (this is explained below).

The agency may have a lot of information about a facility that would be helpful to you. For example, under the federal Clean Water Act or Texas Water Quality Act, the agency may have copies of permits to discharge pollutants into a water body. These may be NPDES/TPDES discharge permits or dredge-and-fill permits for projects that involve construction in a wetland or water body. The agency may also have Discharge Monitoring Reports (DMRs) that a facility is required to file. These monthly reports list the amounts of pollutants that the facility has discharged,

allowing you to determine whether it has violated the terms of its permit.

In addition, under the federal Clean Air Act or Texas Clean Air Act, the agency may have Title V Permits (or in some cases a New Source Review or Prevention of Significant Deterioration permit), as well as Annual Emissions Reports. Under RCRA or the Texas Waste Disposal Act), the agency may have Permits to treat, store, or dispose of solid or hazardous waste, as well as Annual Reports for Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities

It is important to phrase your request in terms that are broad enough for the agency to identify all information that may be relevant to your search. At the same time, the request must be narrow enough to help the agency limit its search to a specific group of documents. For example, if you are interested in learning about air emissions from the textile factory in Lincoln Park, you could ask for all documents, correspondence, emails, faxes, and memoranda relating to the emission of pollutants from the plant (be sure to provide the name and location) under the Clean Air Act, including all permits, permit applications, and records of decision.

*How will the information be provided to you?*  
The agency will normally send the information to you in the mail. However, if the information you have requested involves a lot of documents, or a detailed file review, then the agency may ask you to come in and view the documents at its offices, and photocopy the ones that you want to take with you.

If you have access to a computer, it is always a good idea to ask if documents can be sent electronically (such as through email or a CD-ROM), particularly if they are already

available in electronic format. This might save time for both you and the agency staff.

*Will you have to pay any fees?* Agencies will normally charge a fee for searching their files and photocopying any documents that they may send to you. Administrative labor fees range from \$15-\$41/hour (TCEQ) and \$16-\$41/hour (EPA), with copying fees of ten cents (TCEQ) to fifteen cents (EPA) per page. If the estimated cost of the search and copies will exceed a certain amount (\$40 for TCEQ, \$25 for EPA), the agency will contact you before pulling the documents from its files. You must then tell the agency whether it may proceed. (TCEQ will withdraw your search if it does not hear from you within 10 days; EPA will simply not act on your request). In addition, TCEQ may require a deposit for charges that exceed \$100 before it will make copies. Note, however, that EPA will provide two hours of searching and 100 pages free. TCEQ generally will provide up to 50 pages without charge.

However, some agencies may *waive their fees*. They may do this for requests that are considered to be in the public interest because the information would primarily

benefit the general public—that is, the information will not be used for commercial purposes and will help the public to understand the workings of the government. The Texas PIA directs all state agencies, including TCEQ, to waive fees for requests that will primarily benefit the general public.<sup>30</sup> EPA provides a waiver upon the showing of certain factors. If you would like to request a fee waiver from EPA, it is important to explain why the information you are seeking will help you understand the operations or activities of the federal government.

If you ask for a fee waiver, you should also ask the agency to contact you if it decides not to grant your request. That way, you can decide whether you want the agency to go ahead with the search and bill you for the charges. Another way to cut back on costs (and the time it takes the agency to respond, as noted above) is to ask whether you can view relevant documents at the agency's offices, rather than having the agency copy everything that might relate to your request. That way, you can see for yourself which documents are important, and only copy the ones you need.

#### FOIA AND FEE WAIVERS

Be sure to request a fee waiver if you are seeking information.

Under the federal FOIA law, factors that EPA will consider include (1) the subject of the request (whether it concerns “the operations or activities of the government”); (2) the value of the information being sought (whether it is “likely to contribute” to an understanding of government operations or activities); (3) whether the information will contribute to “public understanding” (as opposed to just one person); and (4) whether the information will contribute “significantly” to public understanding of government operations or activities.

Examples of fee waiver language are provided in the sample letters in Appendix 4.

*Where should you send your request?* If you are seeking information about a facility in Texas that may have been granted a federal permit (such as a federally-owned facility), you should send your request to the EPA Region 6 office. If you are seeking information about a facility in Texas that may have been granted a state permit, you should send your request to the TCEQ. If you are unsure whether your request involves state or federal environmental law, it is a good idea to send it to both the EPA and TCEQ, just to cover your bases (see Appendix 1 for contact information).

*When will you get a response?* Under the federal Freedom of Information Act, EPA and other federal agencies have 20 working days (not counting weekends and holidays) to respond to a request for information. An additional 10-day extension is available for “unusual circumstances.” However, this does not mean you will receive all the information you requested within this time period. The agency may respond initially to let you know that it received your request and provide an estimated timeline for locating the documents. If you do not hear anything from the agency within 3-4 weeks of submitting your request, you should contact the agency’s FOIA officer to follow up. You may also need to follow up if the information is not provided to you.

The Texas Public Information Act directs agencies to make requested information available “promptly,” which has been defined to mean “as soon as possible under the circumstances, that is, within a reasonable time, without delay.” If an agency cannot produce the requested information within 10 business days, it must inform you in writing and set a date and time when the records will be made available.

TCEQ has established a policy of responding to all requests for public information within 10 days. See <http://www.tceq.state.tx.us/admin/data/reqinfo.html> (under TCEQ Public Information Act Request Procedures). Keep in mind that the agency will not send you an acknowledgement of your request.

*What if the agency refuses to release a document you have requested?* Under both state and federal law, agencies do not have to share all of the information that is covered by your request. They can withhold, or refuse to release, various types of information, including personal information such as names, addresses, and phone numbers; certain information used in litigation and settlement discussions; financial information; and other documents made confidential by law. Sometimes, an agency can simply block out part of the information on a document, if not everything on the page is restricted.

If TCEQ wishes to withhold certain documents, it must seek a ruling from the Texas Attorney General’s office stating whether it can withhold any of the requested information. TCEQ must seek this ruling within ten days of getting your information request and inform you that it has done so.

If you decide to appeal an agency’s decision not to release one or more documents, you should follow the agency’s internal appeal procedures. For example, EPA requires that you mail a letter of appeal to the agency’s FOIA office within 30 days after learning of its intent to withhold information (you can also use this process to appeal the denial of a fee waiver). After receiving your appeal, the agency’s Office of General Counsel will review it and determine whether the records were properly withheld. If the

Office upholds the agency's decision, your only remedy is to file a lawsuit against the agency in court. Although people do bring lawsuits against agencies, this can be very expensive and time-consuming.

If you believe TCEQ or another Texas agency has wrongly withheld documents under Texas's Public Information Act, you can file what is called a "suit for a writ of *mandamus*." The case must be filed in the district court for Travis County, where TCEQ's main offices are located. You can ask for a judgment from the Attorney General that TCEQ is obligated to give you the documents, or a ruling that instructs TCEQ to provide the documents.

Alternatively, you can file a complaint with the district or county attorney in Travis County. The complaint must: be in writing and signed by you; state the name of the agency (for example, TCEQ) that you believe has violated the Public Information Act; state the time and place of violation, and describe the violation. Within 31 days after receiving your complaint, the district or county attorney will decide whether a violation was committed and whether to bring an action against the violator. The district or county attorney will inform you of the decision in writing. If the attorney decides not to file an action and returns your complaint, you can

still file the case in district court asking for a judgment from the attorney general within 31 days.

#### *Strategic Considerations for Filing Information Requests*

Because it is not always possible to get a fee waiver, especially in Texas, you should be prepared to pay any fees that the agency may charge if you wish to receive the information in a timely manner.

Even when you are prepared to pay the required fees, it can often take agencies a while to respond to your request. This means that you may have to wait for a significant period of time to receive the information. As mentioned above, one way to cut down on this time is by asking if you can view the documents at the agency's office.

It is important to be persistent when seeking public information. You will probably need to follow up with the agency if you do not hear back about your request, or if you do not receive the information you need. It is probably easiest to follow up by calling the agency's contact person for information requests. When you call the agency, have a copy of your information request with you, as well as any letters or emails you have received from the agency.

### SECTION III: LEGAL TOOLS FOR COMMUNITY ENFORCEMENT

---

*Residents in the community of Terrace View, near the city of El Camino, often like to fish in Silver Creek. Recently, people have noticed foul smells coming from the creek, with the smells worse on rainy days. Over the last few weeks, several people have seen dead fish near a popular fishing spot. A large furniture factory is located a few miles upstream of Terrace View, and residents are now worried that the plant is polluting the creek.*

The community has reason to be concerned. Under the federal Clean Water Act and the Texas Water Quality Act, factories such as this furniture plant must have a permit to discharge any material into a creek. Even if it has a permit, the plant may be releasing pollutants in amounts that are greater than what the permit allows. Since a discharge permit is supposed to meet Texas water quality standards, foul smells and dead fish could signal that the plant has violated its permit.

The previous section showed how you can gather information about possible environmental violations, as a first step in responding to a problem. This section describes how to use some of the legal tools for enforcing the laws. These tools include filing a public complaint, participating in a government enforcement action against a facility, and filing a “citizen suit” against a facility to enforce the environmental laws.

The legal tools described in this section may not provide a solution to all environmental problems. But used strategically, these tools may help advance your community organizing efforts around specific environmental problems. At the same time, commu-

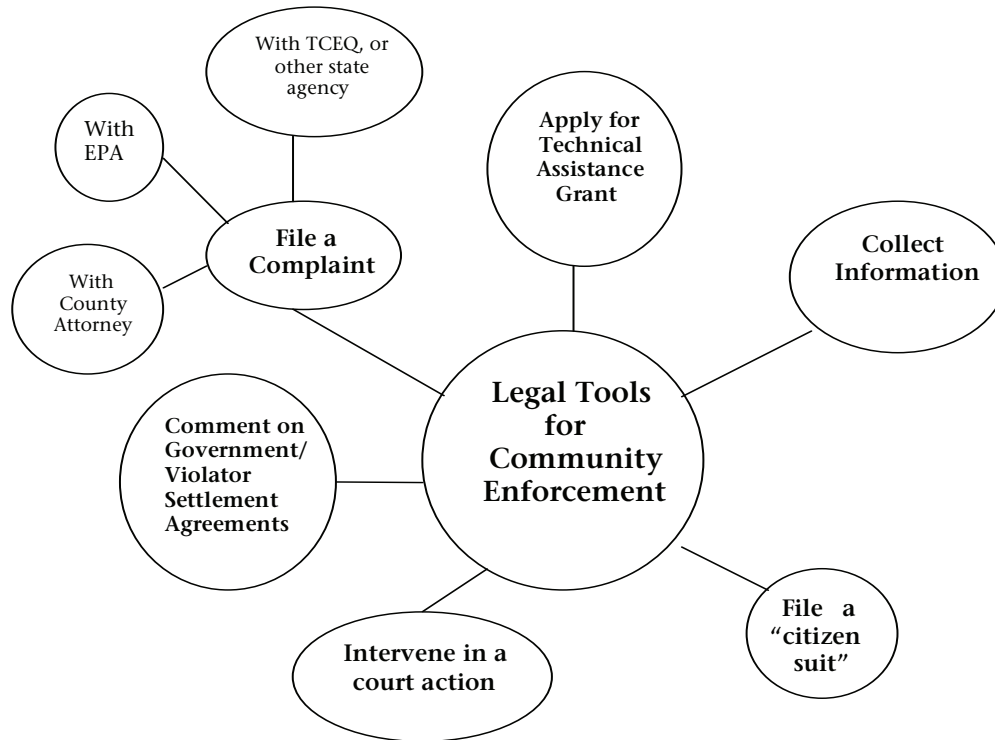
nity organizing is vital to the effectiveness of these legal strategies. In the hypothetical example of Terrace View, the government will probably pay a lot more attention to the foul smells and dead fish in Silver Creek if it receives complaints from many residents, rather than from just one person. An organized community will be in a better position to stick with the case even if it takes a long time for the government to take action. And a strong community can monitor to help make sure that new problems are addressed.

The figure on the following page illustrates some of the key tools available to communities.

#### Filing a Public Complaint

If you see or smell something suspicious, such as a foul smell or dead fish in the creek where you go fishing, one of the first things you can do is report it to a state or federal agency. Filing such a report, also known as a public complaint, is one way to inform the agency about a possible environmental problem.

In most cases, you should file your complaint with TCEQ, the primary environmental enforcement authority in Texas. For example, a complaint about the hypothetical furniture factory in Terrace View and its impacts on Silver Creek would fall under TCEQ’s jurisdiction. While EPA also accepts complaints, it will usually refer them to TCEQ for investigation (except where a federal facility or program is concerned). For air pollution complaints in El Paso, however, you should file a complaint with the El Paso Air Quality Program, part of the El Paso City-County Health & Environmental District. You can also file a complaint with the El Paso County Attorney for possible misdemeanor environmental violations under Texas law, such as



*Courtesy of: Ilan Levin and Stephanie Kodish, Environmental Integrity Project*

illegal dumping, open burning, septic tank violations, or public nuisances. If you are unsure where to file your complaint, you can send it to all three levels of government.

The TCEQ, the EPA, the El Paso Air Quality Program, and the El Paso County Attorney all have procedures for taking environmental complaints. The TCEQ complaint procedures are described in detail below, and some additional information is provided about filing complaints with EPA or the city of El Paso.

#### *Filing a Complaint with TCEQ*

*What kinds of things can I report?* Many different things can signal an environmental violation. These include:

- Strong, offensive, or unusual chemical odors
- Large numbers of dead animals, including birds or fish
- Pipes or valves that bypass wastewater treatment systems
- Tank trucks discharging into drains, man-holes or surface waters
- Oily slicks on bodies of water, or other signs of water pollution
- Corroded, leaking waste containers
- Barrels dumped at odd hours in out-of-the-way places
- Problems with your drinking water

These are not the only signs of an environmental problem, but they may give you an idea of the kinds of things to be aware of.

Additional examples of violations specifically under the Clean Water Act are provided by EPA Region 6 at <http://www.epa.gov/earth1r6/6en/w/cwacitz.htm>.

There are certain environmental issues that TCEQ cannot help you resolve because they are outside the agency's control. These include things like indoor air pollution, noise pollution, trash, oil well pollution, and other problems over which TCEQ lacks jurisdiction. TCEQ has listed these issues and the appropriate agencies to contact at [http://www.tceq.state.tx.us/compliance/complaints/type\\_complaint.html](http://www.tceq.state.tx.us/compliance/complaints/type_complaint.html).

*Who can file a public complaint?* Any person or group can file a complaint. You do not have to be a citizen or resident of the U.S.

*What should you include in your complaint?* Although you can make complaints by phone, it may be better to submit your complaint in writing (either online or through the mail), so that you have a record of it. It should include the following pieces of information:

- Your name and contact information. You are not required to provide your name, but if you leave this information out, officials will not be able to contact you to follow up.
- The date, time, and location of the environmental problem. If you observed something going into a river, lake, stream, or other water body, try to include the name of the water body.
- A description of the environmental problem—what you observed (such as an odor, waste, water pollution, etc.).
- Whether the pollution or problem had any impact on you or anyone else (for example, whether it made you sick).

*How should you file a complaint?* You can file a complaint by:

- calling TCEQ toll-free at 1-888-777-3186;
- going online to the TCEQ website (See Appendix 3): <http://www5.tceq.state.tx.us/oce/complaints>; or
- mailing the complaint to the agency (See Appendix 1 for addresses).

To report an environmental emergency, discharge, spill, or air release, you should call TCEQ's spill reporting hotline at 1-800-832-8224. (See <http://www.tceq.state.tx.us/response/spills.html> for more information.)

The TCEQ website provides more information about the process for filing a complaint—for example, an explanation of the types of complaints the agency can help you with, the procedure for filing a complaint (including how to file a complaint with information or evidence), how the agency will respond, and how to track the status of a complaint or enforcement action. See <http://www.tceq.state.tx.us/compliance/complaints/index.html>. The procedures are the same whether you are reporting a civil violation or an environmental crime. If TCEQ believes a crime has been committed based on the information you provide, it will refer the case to special criminal investigators.

*Can I submit evidence that I have collected?* TCEQ has a program, known as the Citizen-Collected Evidence Program, that allows members of the public to provide information (such as photographs or air, water, or soil samples) for use in an enforcement proceeding. However, you must follow strict requirements ("protocols") for gathering and handling this evidence in order to submit it. Information about these requirements may

be found at [http://www.tceq.state.tx.us/compliance/complaints/protocols/evi\\_proto.html](http://www.tceq.state.tx.us/compliance/complaints/protocols/evi_proto.html)

*What happens after my complaint is submitted?* Once TCEQ receives your complaint, an investigator will contact you to talk about what you observed. If you want to stay in touch with your investigator, be sure to write down the investigator's name and your complaint number. The agency will usually conduct an investigation to see if any laws or regulations have been violated. It will then decide whether to take any enforcement action, such as issuing a notice of violation or an order imposing a fine, or filing a lawsuit against the violator.

TCEQ will prioritize your complaint based on the relative threat posed to public health, safety, or the environment, and will respond accordingly. Depending on the priority assigned, you will hear from the agency in a time period ranging from immediately to 60 days.<sup>31</sup> The agency will investigate your complaint and decide whether any enforcement action is warranted. TCEQ may bring an enforcement action based on your complaint if the agency believes your complaint has "sufficient value and credibility."<sup>32</sup> In evaluating your complaint, the agency will consider the following factors:<sup>33</sup>

- Whether you are willing to submit a sworn affidavit attesting to what you observed, and to verify that any writings, recordings, or photographs that you submitted are genuine.
- Whether you are willing to testify in any enforcement proceedings regarding the alleged violations. If you provide information that the TCEQ later uses for an enforcement case, you may be called to testify.
- Whether, if you provided any physical or sampling data, this data was collected con-

sistent with TCEQ protocols (see below). TCEQ will not use any information that was gathered illegally.

TCEQ will notify you in writing about the results of the investigation, and will give you periodic reports on any enforcement action it takes, such as an action it might initiate against the furniture factory for any unlawful discharges into Silver Creek. For complaints submitted in writing, TCEQ must provide written updates every three months.<sup>34</sup> If TCEQ proposes an order for resolving the case—for example, directing the factory to treat its waste more efficiently before discharging it into the creek—you will have the opportunity to review and comment on this order. You can also track your complaint online at <http://www.tceq.state.tx.us/compliance/complaints/waci.html>, or you can call 1-800-687-4040 for more information. Even after the investigation is completed and the complaint is resolved, you should contact TCEQ if the problem happens again.

*What if I don't agree with the agency's resolution of my complaint?* Although you have the right to submit an environmental complaint to TCEQ, the agency is not required to take any particular action in response. There is an exception to this rule: The agency must hold an enforcement hearing to review a facility's compliance with its permit if it is shown that the facility has been in "substantial noncompliance" for a period of at least four months, or a shorter period of time if an emergency exists.<sup>35</sup> If you are not happy with the way TCEQ has resolved your complaint, you can contact the agency to discuss the problem, but you will not be able to force it to do anything.

*What is an Emergency Order?* Under Texas law, you can also seek an emergency order from TCEQ if you observe something that



### PROTECTION FOR “WHISTLEBLOWERS”

Public employees who “blow the whistle” on illegal behavior in the workplace are protected from retaliation under federal and state law.

In Texas, the Whistleblower Act (Chapter 554 of the Government Code) was enacted in 1983 to protect employees while promoting government compliance with the law. The Act applies to public employees working for state and local government agencies and prohibits employers from taking retaliatory action, such as suspension, discharge, or discrimination, against employees who make a good-faith report of illegal activity to the authorities. A “good faith” report means the employee reasonably believes that the conduct he or she reported was a violation, even if it turns out not to be illegal.

If you believe that you have been retaliated against for reporting a violation, you should speak to a lawyer about your rights and options.

needs to be addressed immediately. These orders are available for situations that pose a serious risk to human health or the environment, including emergencies involving air pollution, water pollution, and hazardous or non-hazardous waste.<sup>36</sup> Asking for an emergency order can be expensive. You must pay an application fee of \$500. You may also have to pay to give notice of any required hearings related to the order.

TCEQ may decide to give public notice and hold a hearing before granting the order. This would give any people who may be affected by the order the opportunity to weigh in on whether the order should be granted. If TCEQ grants the order without holding a hearing, it must hold a hearing to affirm, modify, or set aside the order as soon as possible after granting the order. Orders may only be issued for a “reasonable time,” and in any event not longer than 180 days, although they may be renewed a single time upon receipt of a new application.

As a practical matter, emergency orders to respond to an air, water, or hazardous waste

problem are not frequently requested or issued. In cases where urgent action is needed, TCEQ will often refer a case to the Texas Attorney General’s office, which can file a lawsuit seeking immediate action by the violator to correct the problem. Such cases typically raise health and human safety concerns, or involve a company’s failure to comply with an enforcement order issued by TCEQ.

#### *Filing a Complaint with the El Paso Air Quality Program*

To file a complaint about air pollution in the El Paso area, call the El Paso Air Quality Program at 915-771-5812. If you call after business hours, you will get a recording that prompts you to leave a message. The message should include your name, phone number, and a brief description of the problem. After you leave the message, an Air Quality investigator will be notified and will return your call. If warranted, the investigator will conduct an investigation and will inform you about the outcome. In most cases your complaint will also be recorded in TCEQ’s online

tracking system, explained below. For more information about the Air Quality Program, see <http://www.elpasocitycountyhealth.com/environment/AirQuaility/AirQuality.asp>.

#### *Filing a Complaint with the El Paso County Attorney*

The El Paso County Attorney's Environmental Crime Unit ([http://www.epcounty.com/CA/ca\\_envirn.htm](http://www.epcounty.com/CA/ca_envirn.htm)), which prosecutes certain environmental violations under local and state law, also accepts complaints for problems such as illegal dumping, open burning, septic tank violations, or public nuisances. You can file your complaint online at <http://www.epcounty.com/CA/form.htm>, or call the Environmental Hotline at 1-888-6-ELPASO. You can also send a written complaint (See Appendix 1 for contact information). After receiving your complaint, the office will investigate and decide whether or not to bring an enforcement action in court. The office may also refer your complaint to TCEQ or another state agency.

#### *Filing a Complaint with the Environmental Protection Agency*

EPA's Office of Enforcement and Compliance Assurance handles reports of environmental violations. These may be reported online at <http://www.epa.gov/compliance/complaints/index.html>. If you do not have access to a computer, you can call EPA's Region 6 Office at (214) 665-2210 or (800) 887-6063. As with TCEQ, there is a separate number for reporting environmental emergencies, such as oil and chemical spills and the release of radioactive materials. These should be reported immediately by calling the National Response Center at 1-800-424-8802. The EPA Region 6 office also has a reporting process for Clean Water Act complaints, available at

<http://www.epa.gov/Region6/6en/w/cwacitz.htm>.

#### *Strategic Considerations for Filing a Complaint*

Although filing a complaint is an important first step in trying to address an environmental problem, it may take the agency a while to respond. Community involvement in the process can help prompt the agency to investigate your case and respond more quickly. This will help show the agency that the community takes the violations seriously and expects a response.

It is also very important to follow up after filing a complaint. Agency staff are busy, and they may not always take time to share information with you about your case. Staying in touch with the agency, through phone calls or email, can help keep you informed about what is happening in your case. It is also a good way to share any additional information you may discover about the environmental problem.

Finally, it is important to remember that the agency is not required to investigate a matter based on your complaint. Agencies generally have discretion in deciding whether or not to bring an enforcement action. Even if an action is brought, it may not resolve the problem. Nevertheless, filing a complaint is a fairly easy way to bring a problem to the government's attention, and in some cases can lead to successful enforcement.

### **Participating in Government Enforcement Actions**

As discussed above, one way you can use legal tools to address environmental problems is by filing an environmental complaint,

or, in drastic situations, by seeking an emergency order. In some cases, your complaint or emergency order may prompt TCEQ or EPA to bring an enforcement action against a company. Once an environmental agency has initiated an enforcement action, the opportunities for public participation are limited. For one thing, many cases are settled informally between the agency and the violator, in a process that leaves little room for public input. Even for cases that involve agency hearings, the law provides few avenues for participation by the public. Nevertheless, there are things you can do to become involved. Following are some ways that you can try to affect the outcome of government enforcement cases.

#### *Tracking Enforcement Actions*

The TCEQ allows you to track pending enforcement cases online at <http://www.tceq.state.tx.us/compliance/enforcement/penfac/>. You can search this web site in different ways—for example, by TCEQ Case Number, by the name or number of the Regulated Entity, or by county, TCEQ region, or TCEQ program (such as Air Quality, Water Quality, or Industrial and Hazardous Waste). You can download a list of all pending enforcement actions from this website. You can also try calling TCEQ to find out if there is a pending enforcement case against a particular facility, and to ask about the status of the case. To search enforcement history through EPA, see the Enforcement and Compliance History Online site (<http://www.epa.gov/echo/>). If you cannot get the information you need online or by calling TCEQ, you may need to file a request for information under Texas's Public Information Act.

#### *Providing Comments on Settlements between the Government and Violators in Enforcement Cases*

As discussed above, many enforcement actions may end in a settlement between the government and the violator. In these settlements, the government agrees to end the enforcement process in exchange for an agreement by the violator to pay fines and take any other action that the government may require (such as cleaning up a contaminated site). Before finalizing any settlement agreements, TCEQ must publish a notice of the agreement in the Texas Register (see box below) and invite comments from members of the public for a period of 30 days.<sup>37</sup> Similarly, when EPA reaches a proposed settlement with a violator, it must give members of the public 30 days to submit comments on the terms of the settlement.<sup>38</sup> This opportunity allows people to let the agency know what they think of the proposed order, and whether they believe it is sufficient to remedy the violation.

Any comments submitted by the public will be filed with the administrative judge, and in some cases may even affect the terms of a settlement. For example, information about the harm done to a community as a result of a violation may affect the government's calculation of penalties that the polluter must pay. Public comments might also contain suggestions about how settlement funds can be used to improve the environment where the community lives. However, because public comments are received so late in the game (after an investigation has been conducted, settlement negotiations held, and a draft order agreed upon), in many cases they will not have a significant impact on a proposed enforcement order.

If the 30-day public comment period on a proposed settlement or enforcement order has closed, there is another opportunity to have input on the draft order. Before the order becomes final, it must be approved and signed by the Commission itself, at a meeting called an Agenda. Members of the public can attend the Agenda meetings and comment on proposed orders in person, whether or not they have previously submitted written comments. You may view a calendar of Commission Agendas and Work Sessions at [http://www.tceq.state.tx.us/comm\\_exec/agendas/index.html](http://www.tceq.state.tx.us/comm_exec/agendas/index.html).

#### *Participating in Hazardous Waste Cleanup*

For hazardous waste enforcement cases under the Superfund statute (CERCLA), EPA may provide Technical Assistance Grants to community groups. As mentioned earlier in this chapter, groups can use these TAG grants to hire independent technical advisors, who can help them understand and comment on hazardous waste cleanup decisions that directly affect their health, economic well-being, or recreational interests. The purpose of the TAG Program is to help communities living near hazardous waste sites to participate more effectively in cleanup decisions that may affect them. You can find TAG fact sheets on topics such as applying for a TAG, managing a TAG, and finding and selecting a technical

advisor at <http://www.epa.gov/superfund/tools/tag/resource.htm>.

#### *Intervening in Government Enforcement Cases in Court*

Another way the public can participate in government enforcement cases is by “intervening” when an enforcement action goes to court. This option is very limited, though, because most companies settle government enforcement actions before they ever go to court.

When you intervene in a case, you are actually joining the lawsuit as a party on the government’s side. To do this, you need to hire a lawyer, who will file papers and take other steps to represent your interests in the case.

Citizens are allowed to intervene in any government enforcement action under the Clean Water Act and Clean Air Act. Intervention under RCRA and CERCLA is more limited. In certain cases, you have to show that you have an interest in the subject of the enforcement proceeding, and that your interest is not adequately protected by the government or by another party in the case. Intervention is also allowed under Texas law, although it may be challenged by any parties to the case.<sup>39</sup> In all of these instances, you must also show that you have “standing” to

### **USING THE TEXAS REGISTER**

You can find out about opportunities for commenting on various administrative actions at TCEQ by reading the *Texas Register*. These agency actions include notices of settlement agreements, default enforcement orders, and public hearings on permit applications, rule revisions, and other actions. The Texas Register is published weekly, and may be viewed online at <http://www.sos.state.tx.us/texreg/issues.shtml>. Proposed TCEQ actions are listed under the heading “In Addition” towards the bottom of the page.

join the case. The issue of standing is explained in the last part of this section.

### *Requesting Supplemental Environmental Projects*

Supplemental Environmental Projects (SEPs) are another way that communities can participate in an enforcement action. Most enforcement cases are resolved by a settlement, or agreement, between the state or federal environmental agency and a company. As part of the settlement, the government usually issues a monetary fine against the company. In some cases, the company can perform a SEP and avoid part of the fine.

SEPs are projects specially designed to provide an environmental benefit — such as cleaning up an illegal dump site, restoring a wetland, or installing air quality monitoring equipment — in an area where an environmental violation has occurred. By performing a SEP related to its violation, for example, a company might be able to address the consequences of its wrongful behavior more directly than simply paying a fine. SEPs can also help provide an environmental benefit to communities that have suffered an environmental wrong.

Under the basic SEP procedure at TCEQ, the violator must voluntarily propose to do a specific SEP.<sup>40</sup> TCEQ will then review the proposed SEP and issue its approval before the SEP is incorporated into the settlement order. Remember that any SEPs performed under EPA's authority would be for environmental violations at federal facilities or for violations that otherwise do not fall under TCEQ's jurisdiction. Most SEPs in your area will likely be overseen by TCEQ.

**TYPES OF SEPS.** TCEQ administers two types of SEPs—*pre-approved* projects that are fully

designed and ready to be implemented, and *custom* projects that are individually designed in a specific case. A list of pre-approved SEPs is available on the TCEQ website at [http://www.tceq.state.tx.us/legal/sep/find\\_sep.html](http://www.tceq.state.tx.us/legal/sep/find_sep.html). The SEPs are organized into five different subject areas: (1) cleanup projects; (2) air projects; (3) wastewater, drinking water assistance, and water quality projects; (4) health-based projects; and (5) habitat-restoration projects. Pre-approved SEPs may be implemented by third parties (including nonprofit and governmental organizations) or by the violator (also called a respondent). Though less common, a violator can also implement its own custom SEP, as long as the SEP is approved by TCEQ.

To implement a SEP, the violator must voluntarily propose to undertake the project as part of its settlement with TCEQ. If TCEQ approves the SEP, it will be incorporated into the settlement order between TCEQ and the violator.

**PARTICIPATING IN A SEP.** Although communities do not play a formal role in choosing a SEP, they can create SEPs to be included in the list of pre-approved projects that companies may consider as part of their settlement agreements with TCEQ. For instance, the TCEQ website currently lists only one SEP for El Paso County. By adding their own SEPs to the database, communities can increase the chances that a violator will choose a project that can benefit them. For ideas about new SEPs, you can view a list of suggestions on the EPA website at <http://www.epa.gov/compliance/resources/policies/civil/seps/potentialproject-seps0607.pdf>.

Members of the public can also comment on proposed SEPs, which are published in the Texas Register and which must be approved

### LEARN MORE ABOUT SEPs

General information about SEPs at TCEQ may be found at <http://www.tceq.state.tx.us/legal/sep/> and also at [http://www.tceq.state.tx.us/comm\\_exec/forms\\_pubs/pubs/gi/gi-352\\_1501164.pdf](http://www.tceq.state.tx.us/comm_exec/forms_pubs/pubs/gi/gi-352_1501164.pdf).

You can find general information about SEPs at EPA at <http://www.epa.gov/compliance/civil/seps/index.html>.

by the Commissioners. Thus, there are *two opportunities to submit comments* on a company's proposal to undertake a SEP—when the SEP is first developed by TCEQ, and when it goes before the Commission for approval. If anyone objects to a particular SEP, TCEQ will consider the objection in determining whether to bring the SEP to the Commission for approval.

Examples of SEPs range from the removal of exotic invasive species from an affected habitat to the installation and maintenance of air or water quality monitors or the removal of abandoned underground storage tanks and cleanup of contaminated soil. Other projects include cleaning up an illegal dump site, educating the public on the hazards of illegal dumping, and collecting community hazardous household waste. In general, a wide variety of SEPs are available in the areas of air quality, water quality, and solid and hazardous waste management.

At the same time, it is important to understand that SEPs offer a fairly limited option for community participation in environmental enforcement. They have no bearing on the outcome of an enforcement action (such as the amount that a polluter must pay), since they only come into play once a settlement agreement between TCEQ and the polluter has been finalized. Nevertheless, communi-

ties may be able to use SEPs to help support beneficial environmental projects in their neighborhoods.

### Filing a Citizen Suit

Although the opportunities for participating in government enforcement actions are somewhat limited, there is another option that allows community residents to actually bring an enforcement action in court themselves. Such actions are called “citizen suits.” They were created so that the public could help enforce the country's environmental laws against polluters when the government could not or would not do so itself. Under the citizen suit provisions of the federal environmental laws, members of the public can bring an enforcement case in court against individuals, companies, and even the government, for failing to comply with the law. In order to bring a citizen suit, you will need the help of a lawyer, since citizen suits are court cases that involve technical rules and procedures.

The following is a brief description of the requirements of most citizen suits, to give you a better idea of whether this might be an option for addressing an environmental problem in your community. The box on the following page gives an example to show how citizen suits can be used, and Appendix

5 lists other resources for learning more about citizen suits.

### *Basic Requirements for Filing a Citizen Suit*

*Which environmental laws allow for citizen suits?* Citizen suits may be brought under most provisions of the pollution-control laws, including the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund). Because most citizen suit provisions are similar, the suits and their general requirements will be described together. Since Texas has been delegated authority by EPA to administer many of these laws and programs, it is required to provide the same opportunity for public enforcement.

*Who can file a citizen suit?* In general, any person may file a citizen suit, although the Clean Water Act specifically requires that you have an interest that is (or may be) affected by the supposed violation.<sup>41</sup> While the Clean Water Act's requirement is not mentioned in the other federal environmental laws, you must have "standing" to bring suit under all of these laws—this requirement is discussed below.

Despite the name, you are not required to be a "citizen" of the U.S. in order to file a citizen suit. You can file a citizen suit alone, or with a group of people. You may also have the opportunity to participate in a citizen suit if you are a member of an environmental organization that is bringing a lawsuit about a violation that has affected you personally. Under the federal environmental laws, the federal government (for example, EPA) may choose to intervene in most citizen suits.

*Who can you sue under the citizen suit provisions?* You can sue private parties, such as the owner of a factory, as well as government agencies that are not following the law. This includes agencies at the federal, state, and municipal level. However, state agencies are likely to raise the issue of "sovereign immunity," which limits a person's ability to sue states in federal court. This may make it difficult to maintain a lawsuit against a state environmental agency, although there are ways to get around some of the obstacles imposed by sovereign immunity.

*What are the requirements for filing a lawsuit?* Before you can file a citizen suit, there are a number of steps you must take. First, you have to give notice in writing (by sending a letter) of your intent to file the lawsuit. This notice must be given at least 60 days before you actually file your lawsuit in court. It must be given to the alleged violator, EPA, and TCEQ. The notice must describe the environmental violations in detail, including which law(s) may have been violated. The purpose of the notice requirement is to give the violator an opportunity to correct the problem without having to go to court. It also informs TCEQ and EPA about the problem and gives them the opportunity to take enforcement action (if they do take such action, you may not be allowed to file your suit, as explained below).

Second, you must be able to show that the alleged violations are ongoing. That is, you cannot file a citizen suit against an activity (such as a hazardous liquid draining into a creek) that has already stopped. If the activity has stopped but has left a lot of environmental damage, you may be able to go to court to try to have the pollution cleaned up.

### CITIZEN SUITS IN ACTION

In 1997, a coalition of public interest groups and environmental organizations filed a citizen's suit against Crown Central Petroleum Corporation for violations of the federal Clean Air Act at the company's refinery in Pasadena, Texas. This citizen suit led to the first settlement in Texas history against a corporate polluter under the Clean Air Act.

The lawsuit alleged that Crown had repeatedly released sulfur dioxide and hydrogen sulfide in amounts that violated federal standards. These pollutants had caused wide-ranging health problems in neighboring communities, including headaches, dizziness, nausea, shortness of breath, chronic sinus infections, upper respiratory irritation, and skin rashes.

The plaintiffs' lawsuit asked the federal district court in Houston to order Crown to stop its illegal releases of air pollutants, comply with all emissions limits under state and federal law, pay civil penalties, install monitoring equipment to measure sulfur dioxide levels in the plaintiffs' neighborhoods, and notify the plaintiffs of any levels that may pose a risk to public health or the environment.

After the plaintiffs filed their citizen suit, TCEQ (then the Texas Natural Resources Conservation Commission, or TNRCC) initiated an administrative enforcement action against Crown. A federal appeals court decided that the plaintiffs could still pursue their lawsuit against Crown, finding that TCEQ's enforcement actions would not prevent future violations.

In 2001, the parties negotiated a settlement in which Crown agreed to pay \$1.6 million in penalties to the government. The settlement also required Crown to supply Harris County with reports of any excess air emissions for the next two years, so the County could continue to monitor Crown's compliance with the air pollution laws.

For more information, see the press release from the attorneys for the plaintiffs, Trial Lawyers for Public Justice, at [http://www.tlpj.org/pr/crown\\_sett.htm](http://www.tlpj.org/pr/crown_sett.htm).

Third, you should check to be sure that the state or federal government is not bringing its own enforcement action. If TCEQ or EPA has initiated its own enforcement action, you may not be able to file a citizen suit. Under the law, any "diligent prosecution" by a state or federal government will block a citizen suit. This is to prevent polluters from being subject to multiple enforcement proceedings. There is some

debate over whether this rule only applies if EPA or TCEQ brings an enforcement action in court, or whether it also applies if an agency has imposed administrative penalties on a polluter.

Fourth, you must be able to show that you have "standing" to file the lawsuit. To have standing, you must be able to show that you have some sort of interest that has been



harm by a polluting activity, and that proper enforcement of the law would remedy this harm. For the purpose of standing, your interest can be recreational (hunting, fishing, hiking), health-related, economic (a decrease in your property value), or something else that is specific to you. For example, if a power plant is releasing pollutants into the air in your neighborhood in violation of its permit, it could pose a risk to your interest in breathing clean air in your neighborhood. If many people know about the pollution, it could also impact the value of your property. Or, if a wastewater treatment plant is discharging pollutants into a creek upstream from where you fish, it could affect your interest in fishing and swimming in the creek. It is very important that your interest be affected *directly* by the environmental violation you are challenging. For example, if you live in El Paso, you might not have standing to challenge an environmental violation at a power plant in Brownsville.

*What kinds of remedies can you get through a citizen suit?* Generally, if you win the citizen suit, you can get a court order that requires the polluter to stop polluting. You might also be able to get an order that restricts a company from undertaking harmful activity in the future. Sometimes, in urgent cases, you can get a temporary or preliminary order before the case is heard (but you may have to post a bond if you get this type of order).

Because citizen suits are meant to enforce public environmental rights, you will not be able to recover money for any injuries you might have suffered. However, if you win your case, you may be able to get the court to order the other side to pay your reasonable

*attorneys' fees.* Under the Clean Air Act, the court can award reasonable attorney and expert witness fees to any party whenever the court determines this is appropriate.<sup>42</sup> The Clean Water Act, RCRA, and CERCLA only allow fees to be awarded to a "prevailing" or "substantially prevailing" party, in the court's discretion.<sup>43</sup>

In certain cases, you can ask the court to order the violator to pay penalties to the government.

*What are the costs of a citizen suit?* There is generally a court fee for filing a civil lawsuit in court (\$350), though in some cases this can be waived for people who show they need assistance. As noted above, the laws may allow you to recover your attorney's fees from the other side if you win your case. In addition to your attorney's fees, though, you may have to pay the costs of other technical experts who are needed to help prepare your case. If you win your case, the court may choose to award you these fees.

*Where can you find a lawyer?* There are several organizations and legal clinics in Texas that may be able to help you file a citizen suit. These include the Environmental Law and Justice Center at Texas Southern University's Thurgood Marshall School of Law (<http://www.tsu.edu/academics/law/programs/environmental.asp>); Texas RioGrande Legal Aid, Inc. (<http://www.trla.org/teams/environmental.php>); Public Citizen (<http://www.citizen.org/texas>); Environmental Integrity Project (<http://www.environmental-integrity.org>); and Environmental Defense (<http://environmentaldefense.org/page.cfm?tagID=646&campaign=646>).

### Notes

1. 42 United States Code (U.S.C.) § 7409
2. 42 U.S.C. § 7410
3. 42 U.S.C. § 7411
4. 42 U.S.C. § 7412
5. 42 U.S.C. § 7661c(c)
6. Texas Health & Safety Code Chapter 382
7. Texas Health & Safety Code Chapter 382.111-112
8. Texas Health & Safety Code Chapter 382.113
9. This handbook does not discuss water “rights” or “use,” an important issue in the border region. The issue is governed by a complex network of state, federal, and international laws. The TCEQ plays a role in the allocation and enforcement of water rights under Chapter 11 of the Texas Water Code.
10. 42 U.S.C. §§1311, 1342
11. 42 U.S.C. §1341
12. 42 U.S.C. §1318
13. Texas Water Code §§26.027 & 26.121
14. Texas Administrative Code (TAC) §279.4(a)
15. Texas Water Code §§ 6.012, 26.403
16. Texas Health & Safety Code Chapter 361
17. Texas Health and Safety Code §361.011
18. See [www.tceq.state.tx.us/permitting/waste\\_permits/waste\\_planning/wp\\_grants.html](http://www.tceq.state.tx.us/permitting/waste_permits/waste_planning/wp_grants.html)
19. Title 9, Chapter 9.04 (“Environmental Services”) of the El Paso Municipal Code, available at <http://ordlink.com/codes/elpasso/index.htm>.
20. 30 TAC §70.201-206.
21. Texas Water Code §§ 7.052; 7.102; 7.187. Note that Chapter 7 of the Water Code (“Enforcement”) applies to violations under the Texas Water Quality Act, Texas Clean Air Act, and Texas Solid Waste Disposal Act. *See* Sec. 7.0002.
22. 30 TAC §70.206
23. Section 7.053
24. 42 U.S.C. §11042
25. Texas Water Code §5.175
26. Texas Health & Safety Code §§ 382.040
27. Texas Health & Safety Code §§ 361.035, 361.037
28. Texas Government Code, Chapter 552
29. 5 U.S.C. §552.
30. Texas Government Code §552.267(a).
31. *See* TCEQ Biennial Report to the 80th Legislature FY 2005-FY 2006, p. 50-51
32. Texas Water Code §7.0025(a).
33. TAC §70.4.
34. Texas Water Code §5.177(b).
35. 30 TAC §70.51 (Mandatory Enforcement Hearings)
36. 30 TAC Chap 35
37. Texas Water Code, § 7.110; 30 TAC §70.10(c).
38. Clean Air Act § 7413(g), CERCLA § 9622(d)(2), 28 C.F.R. 50.7; Clean Water Act §309(g)(4).
39. Texas Rules of Civil Procedure, Rule 60
40. Texas Water Code §7.067
41. Clean Water Act § 505(a), (g); Clean Air Act § 304(a); RCRA §7002(a); CERCLA §310(a)
42. Clean Air Act §304(d)
43. Clean Water Act §505(d); RCRA §7002(e); CERCLA §310(f)

---

## Chapter 3

# *Community Environmental Enforcement in Mexico*

**U**nder Mexican environmental laws, industrial and commercial facilities must comply with legal and technical standards that are intended to control air, water and soil pollution from the facility's operations. As in the U.S., when a facility does not meet these standards, the government is responsible for taking action to enforce the law.

In Mexico, enforcement of environmental laws is mainly the job of government agencies. Community residents are given limited legal authority to enforce the laws directly against companies. However, there are legal tools that citizens can use to help make sure that the *government* takes appropriate enforcement action—that is, that the government responds effectively when a facility violates legal standards and requirements.

This chapter describes how community residents can use legal tools to make sure Mexican environmental laws are enforced against polluting facilities. The chapter focuses on environmental enforcement in the state of Chihuahua, with a particular focus on the city of Juárez. The state of Chihuahua is the largest in Mexico, covering an area of more than 247,000 km<sup>2</sup> (over 95,000 mi<sup>2</sup>). Chihuahua is bordered on the west by the

state of Sonora and on the east by the state of Coahuila. To the north are the states of New Mexico and Texas. Chihuahua's largest city is Ciudad Juárez, with a population of over 1.1 million. Juárez is located in northwestern Chihuahua, on the U.S. border adjoining El Paso, Texas. Other border/sister cities in Chihuahua are Ojinaga (Presidio, Texas) and Las Palomas (Columbus, New Mexico). The state capital is the city of Chihuahua, located in the central part of the state.

In this chapter, the state of Chihuahua and the city of Juárez illustrate how state and local laws can be used to make sure companies comply with legal requirements. Much of the information presented here can also assist communities in other border states to learn how they can enforce federal, state and local environmental laws.

The chapter is divided into three sections. Section I gives an overview of Mexican environmental laws and agencies. Section II discusses how communities can get information from the government about polluting facilities. Section III discusses some of the common legal tools and processes that citizens can use to help make sure that the government enforces the law.

## SECTION I: OVERVIEW OF ENVIRONMENTAL LAW IN MEXICO

---

Mexico's current system of environmental protection has been developed mostly over the past 20 years. There are three main tiers of environmental laws and programs: federal, state and municipal. It is not possible in this handbook to discuss every aspect of these laws and programs. The following pages explain the roles of the different levels of government in environmental protection, the main laws and agencies involved, and how the agencies enforce these legal requirements in the areas of air, water and waste.

### Federal, State and Municipal Roles in Environmental Protection

The federal government has the main responsibility for addressing many serious pollution problems, such as air and water pollution and the mishandling or hazardous wastes. Nevertheless, federal environmental protection also depends to a large degree on the environmental responsibilities of the states and municipalities.

The distribution of government power in environmental issues is complex. In Mexico, the Constitution is above all other laws. The Political Constitution of Mexico is divided in two parts: the first part contains individual rights that must be guaranteed by all government authorities, such as the right to protection of health, and the right of all people to live in an environment that is adequate for their development and wellbeing.<sup>1</sup> The second part describes how the federal, state and municipal governments are organized. The

Constitution gives the federal government authority over most environmental matters.<sup>2</sup> The Constitution gives municipal governments certain specific responsibilities, such as drinking water and sewer services, sanitation, transit, zoning and land use planning.<sup>3</sup> But, the Constitution also allows for the sharing of environmental responsibilities among federal, state and municipal government—a concept known as concurrence, or *conurrencia*.

After the Constitution in the legal hierarchy are international treaties signed by Mexico in accordance with the Constitution. Some examples of treaties are the Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area (La Paz Agreement, 1983) and the North American Free Trade Agreement (NAFTA, 1994). Once signed, the treaties may then be converted into laws that must be followed by federal, state and local authorities.

According to the Constitution, laws adopted by the Congress are supreme law in Mexico. The principal law that spells out which environmental matters are controlled by the federal, state and municipal governments is the federal General Law of Ecological Equilibrium and Environmental Protection (*Ley General del Equilibrio Ecológico y Protección al Ambiente* or LGEEPA). The full listing of federal, state and municipal environmental responsibilities is contained in Articles 5-8 of the LGEEPA. Mexico's 31 states (and the Federal District) have their own environmental laws that describe how these state and municipal responsibilities will be carried out. Other general federal laws also distribute authorities over specific environmental issues (for example, management of wastes and protection of forest resources) between the three levels of government.

In general, the federal government has jurisdiction over environmental matters of national scope and of national interest—for example, matters involving national resources, properties, territories or activities. States and municipalities have authority to regulate other matters. In some cases, this principle is clear. For example, in the area of water pollution, the federal government regulates pollution of waters that fall under federal jurisdiction. The Mexican Constitution and the federal water law list these “national waters,” and they amount to most surface and ground waters in the country.<sup>4</sup> State and local governments are responsible mainly for waters that the federal government concedes to the states or municipalities, and for waters that are discharged into public sewer systems. Municipalities usually operate the sewer systems.

The law is also relatively clear on the division of responsibility over waste issues. The General Law for the Prevention and Integrated Management of Waste (*Ley General para la Prevención y Gestión Integral de los Residuos*) gives the federal government authority over hazardous waste and delegates to local governments non-hazardous solid waste.

On the subject of air pollution, the federal government is authorized to set air quality standards. The federal government is responsible for licensing certain facilities to make sure that they comply with national standards. The facilities under federal jurisdiction are those industries listed in the LGEEPA, facilities located in certain national zones and properties, and facilities whose emissions could affect the environment of another state or another country. State and local governments are authorized to regulate and license sources of air pollution that do not fall under federal jurisdiction.

The end of this section discusses in more detail how the responsibility for *enforcing* the law is divided among the different levels of government.

### **Environmental Agencies— Federal, State and Municipal**

Appendix 6 contains contact information for many federal, state and municipal environmental agencies relevant to the state of Chihuahua and the city of Juárez. The following paragraphs provide a short description of these agencies.

#### *Federal Agencies*

**SECRETARIAT OF ENVIRONMENT AND NATURAL RESOURCES** (*Secretaría de Medio Ambiente y Recursos Naturales* or SEMARNAT). SEMARNAT is the main environmental agency at the federal level. It is in charge of carrying out the LGEEPA, the LGPGIR and the Law of National Waters, and it has broad jurisdiction over environmental pollution issues. Within SEMARNAT there are decentralized entities that function somewhat independently. Three important examples are:

- National Water Commission (*Comisión Nacional del Agua* or CNA). This is the main water resources agency, carrying out the relevant provisions of the LGEEPA and the National Waters Law. Its broad responsibilities include issuing water standards; authorizing waste water discharges to federal water bodies; issuing concessions and permits for water use; and supporting the development of drinking water and sewage systems. The CNA also monitors and inspects national water bodies, and collects water fees.
- The Office of the Federal Attorney for

Environmental Protection (*Procuraduría Federal de Protección al Ambiente* or PROFEPA). PROFEPA is responsible for enforcing federal environmental law. It conducts inspections and audits and issues administrative sanctions. It also assists the Public Ministry in criminal prosecutions, and it is considered the “Environmental Ombudsmen,” responsible for representing society in protecting the environment.

- National Ecology Institute (*Instituto Nacional de Ecología* or INE). INE is the national research agency on environmental matters. It has a program on regional and urban pollution, and it collects a variety of statistics and data on topics such as air quality, soil pollution, and waste disposal.

SEMARNAT is headquartered in Mexico City, but it has local offices (*delegaciones*) in each of the states and Mexico City. These local offices are most directly involved in the day-to-day implementation of the LGEEPA and other federal environmental laws. In Chihuahua, the local offices for SEMARNAT

and CNA are located in the city of Chihuahua, while PROFEPA’s main local office is in Ciudad Juárez.

**OTHER AGENCIES.** In addition to SEMARNAT and its decentralized entities and local offices, there are other federal agencies that may be involved in environmental justice issues. For example, the **Secretariat of Health** (*Secretaría de Salud*) issues certain technical standards relating to air and water pollution, and may be involved in investigations or other actions relating to public health impacts of environmental problems. The **Secretariat of Governance** (*Secretaría de Gobernación*) is responsible for civil protection, including preventing and mitigation environmental impacts of natural and man-made disasters. Another agency, the **Public Ministry** (*Ministerio Público*), is the federal agency that is responsible for prosecuting crimes, including environmental crimes. PROFEPA is responsible for referring environmental matters to the Public Ministry if there is a possible crime involved. The Public Ministry is

### ENVIRONMENTAL LAWS ON THE INTERNET

Most of Mexico’s laws can be viewed, downloaded or printed out on the internet. Go to the following web sites for federal, state and local laws and regulations:

**FEDERAL:**

- <http://www.diputados.gob.mx/LeyesBiblio/index.htm>
- <http://www.ordenjuridico.gob.mx/>
- <http://www.semarnat.gob.mx> [environmental laws only]

**ALL STATES:**

- <http://www.juridicas.unam.mx>
- <http://www.ordenjuridico.gob.mx/>

**CHIHUAHUA:**

- <http://info4.juridicas.unam.mx/adprojus/leg/9/default.htm?s=>

**CIUDAD JUÁREZ:**

- [http://www.ordenjuridico.gob.mx/EnFe/CHIHUAHUA/m\\_juarez.php](http://www.ordenjuridico.gob.mx/EnFe/CHIHUAHUA/m_juarez.php)

part of the **Attorney General of the Republic**, which has three special prosecutors for environmental crimes.

#### *State Agencies*

**SECRETARIAT OF URBAN DEVELOPMENT AND ECOLOGY** (*Secretaría de Desarrollo Urbano y Ecología* or SEDUE). This is the main environmental agency for the state of Chihuahua, and it covers both environmental protection and urban development. Some of its main environmental responsibilities are regulating and monitoring air emissions under state jurisdiction, overseeing non-hazardous solid waste activities, and evaluating environmental impacts for activities under state jurisdiction.

**CENTRAL OFFICE OF WATER AND SANITATION** (*Junta Central de Agua y Saneamiento* or JCAS). The JCAS is a public decentralized entity that coordinates the actions of the municipal governments within the state regarding drinking water, sanitation and sewer services. Within each municipality of the state, there may be a **Junta Municipal de Agua y Saneamiento** (JMAS), which is part of the JCAS. In Ciudad Juárez and other municipalities in the state, the JMAS is responsible for administering and operating the drinking water and sewer systems. The JMAS makes sure that discharges to the sewer system comply with legal standards and enforces legal requirements relating to water and sanitation. Thus, in Chihuahua, it is the state (through the JCAS and the JMAS) that handles responsibilities that are typically carried out by the municipalities.

#### *Municipal Agencies*

**GENERAL OFFICE OF ECOLOGY AND CIVIL PROTECTION** (*Dirección General de Ecología y Protección Civil* or Municipal Ecology Office).

This is the main environmental agency for the city of Juárez, and it is also responsible for emergency planning and response. Within the agency, the Environment Department is responsible mainly for issues relating to non-hazardous municipal waste and air pollution from automobiles. It is also responsible for regulating the construction of new industrial and commercial establishments.

**GENERAL OFFICE OF URBAN DEVELOPMENT** (*Dirección General de Desarrollo Urbano*). This agency is responsible for municipal urban development and zoning. It develops plans, issues permits and oversees compliance.

### **Principal Environmental Laws— Federal, State and Municipal**

Appendix 7 contains charts listing the main federal, state and municipal environmental laws. This section describes these laws briefly. The next section gives a short description of how the laws address the areas of air, water and waste.

#### *Federal Environmental Laws*

Unlike the U.S., in Mexico there is a single, comprehensive law that covers most environmental pollution issues. There are also two other laws that address water and waste issues in more detail.

**GENERAL LAW OF ECOLOGICAL EQUILIBRIUM AND ENVIRONMENTAL PROTECTION** (*Ley General del Equilibrio Ecológico y Protección al Ambiente* or LGEEPA). The LGEEPA is the main environmental law in Mexico, establishing an overall framework for environmental protection. It covers air, water and soil pollution, as well as protection of flora, fauna and other natural resources. The law also contains the

Registry of Pollutant Emissions and Transfers, which is a public database containing federal, state and local information submitted by regulated facilities. In addition, the LGEEPA addresses ecological land use planning, environmental impact assessment, public safety measures, community participation, and government enforcement.

One step below laws such as the LGEEPA are regulations (*reglamentos*), which are issued by the Executive Branch (the President) to specify how the federal authorities are to apply to the laws. While the LGEEPA gives general guidelines for environmental protection, the regulations under the LGEEPA provide more detail on specific topics. For example, the federal government has issued regulations for the LGEEPA in the areas of air pollution and environmental impact assessment for federal activities.

Another layer of federal environmental policy is made up of the Official Mexican Standards (*Normas Oficiales Mexicanas* or NOMs). These are mandatory technical standards that establish specific requirements, conditions and limits that must be followed by industry and other regulated activities. For example, one of the NOMs issued by the federal government establishes maximum permissible levels of solid particles in air emissions from fixed sources.

**NATIONAL WATERS LAW** (*Ley de Aguas Nacionales*). This law establishes a more detailed framework for controlling pollution in all national water resources. It sets guidelines for federal water quality standards and water discharge permitting, as well as sanctions that can be imposed on those who violate the law. It also addresses water use, and establishes requirements for obtaining water permits and concessions. The government

has issued a regulation that provides more detail about the subjects covered by the law.

**GENERAL LAW FOR THE PREVENTION AND INTEGRATED MANAGEMENT OF WASTES** (*Ley General para la Prevención y Gestión Integral de Residuos* or LGPGIR). This 2003 law establishes the legal framework for wastes in Mexico. (Previous waste laws and regulations that are contrary to the LGPGIR are no longer in effect.) It sets requirements for those who generate or manage wastes, such as basic requirements for preparing waste management plans. It also addresses liability for site cleanup. At the end of 2006, the federal government issued a regulation under the law that provides more detail on the requirements, including requirements for almost all generators of hazardous wastes. The law distributes federal, state and municipal authorities over waste management; in order to exercise these authorities, the state of Chihuahua must adjust its own laws in accordance with the new federal law.

**OTHER LAWS.** Another federal law is the **General Health Law** (*Ley General de Salud*). This law deals mainly with the provision of health services, but it also has a section on environmental health. The law gives the federal Secretariat of Health, along with local governments, the authority to investigate risks and damages caused by environmental pollution, and to monitor and certify drinking water quality. The agency may impose safety measures or penalties for violations of the law. The law also authorizes the Secretariat of Health to issue technical standards for ambient air quality, waste water discharges, and treatment of drinking water. The **General Law of Civil Protection** (*Ley General de Protección Civil*) establishes federal, state and local responsibilities for civil protection, including protection against the environ-



mental impacts of natural and man-made emergencies. Another important law, the **Federal Penal Code** (*Código Penal Federal*) is described at the end of this section.

There are several other laws that address specific natural resource issues, which are not covered in this handbook. These include laws dealing with subjects such as forestry, wildlife, fisheries and mining.

#### *State Environmental Laws*

**STATE OF CHIHUAHUA GENERAL LAW OF ECOLOGICAL EQUILIBRIUM AND ENVIRONMENTAL PROTECTION** (*Ley General del Equilibrio Ecológico y Protección al Ambiente del Estado de Chihuahua* or State Ecology Law). The state of Chihuahua, like Mexico's other 30 states and the Federal District, has adopted a broad environmental law based on the federal LGEEPA. The State Ecology Law provides the general framework for environmental protection in Chihuahua for matters that fall under state jurisdiction. The State Ecology Law covers air, water and soil pollution, as well as natural resource protection, principles for ecological planning, and evaluation of environmental impact. The law also describes the distribution of responsibilities between the state and municipal governments.

**OTHER LAWS.** The **State Health Law** (*Ley Estatal de Salud*) establishes certain responsibilities relating to the environment, similar to the provisions found in the General Health Law. For example, the state is required to promote the systematic and ongoing investigation of the risks to public health from environmental pollution. It is also required to monitor water quality for public use.

The **Law of Urban Development of the State of Chihuahua** (*Ley de Desarrollo Urbano del Estado de Chihuahua*) establishes guidelines and processes for adopting state and municipal Urban Development Plans. These plans address zoning and the siting of industrial facilities. The law provides guidelines for municipalities to issue land use permits. It requires that certain large projects, including industrial projects that treat waste or discharge pollutants, obtain an environmental impact assessment from the state, in addition to any other local authorizations.

In addition, the **State Law of Civil Protection** (*Ley de Protección Civil del Estado de Chihuahua*) addresses emergency planning and response. The law establishes the responsibilities for various state and municipal authorities. For example, the law requires state and municipal agencies to identify the main risks to the population and how those

### LAND USE DECISIONS

Since this handbook focuses on enforcement of the environmental laws against existing facilities, it does not discuss public participation in proceedings involving urban planning. Nevertheless, it is important to keep in mind that uncontrolled urban planning has led to serious consequences for the environment and public health for people living in residential neighborhoods surrounded by industrial areas. Public participation in the creation of municipal urban development plans is important for advocating that land use decisions protect the health and safety of all communities.

risks can be prevented. The law designates the municipality as the first level of response to emergencies.

### *Municipal Environmental Regulations*

**MUNICIPAL REGULATION ON ECOLOGY AND ENVIRONMENTAL PROTECTION OF CIUDAD JUÁREZ** (*Reglamento Municipal de Ecología y Protección Ambiental* or Municipal Ecology Regulation). Many municipalities have their own environmental regulations or ordinances. This regulation was enacted by the municipality of Ciudad Juárez and covers a broad range of environmental issues. These issues include air quality (especially from vehicles), water use, water quality and sewer systems, and solid waste. The law also covers natural resource protection, environmental impact, ecological urban planning, and smoking in public places.<sup>5</sup>

**MUNICIPAL CODE FOR THE STATE OF CHIHUAHUA** (*Código Municipal para el Estado de Chihuahua*) This law contains the standards for the internal organization and administrative functioning of municipalities within the state of Chihuahua, including Juárez. The law contains, among other things, the minimum legal standards for public administrative proceedings.

### **Summary of Government Regulation in the Areas of Air, Water and Waste**

Below are short descriptions of how federal, state and local laws regulate air pollution, water pollution, and waste management. These descriptions give an idea of the types of requirements that can be enforced by the government. Because federal law dominates these areas, most of the discussion is about federal laws.

In the pages that follow, you will see that federal laws require authorization in order to discharge pollutants, so that facilities do not exceed maximum permissible limits. SEMARNAT issues the environmental impact authorizations and the operating licenses that must be held by facilities that carry out activities under federal jurisdiction. The National Water Commission (CNA) issues concessions for using national waters, as well as permits for waste water discharges into national waters. To simplify these permitting requirements, there is a Single Environmental License (*Licencia Ambiental Única* or LAU) program, which combines all of the SEMARNAT permits required for industries under federal jurisdiction. The LAU is unique to the individual facility, and covers environmental impact assessment, air emissions, hazardous waste management, and water discharges. The LAU process is required for air polluting facilities under federal jurisdiction that are new or that are coming under federal regulation.<sup>6</sup> While the LAU is issued by SEMARNAT, in Ciudad Juárez the federal, state and municipal governments have entered into an agreement to coordinate in issuing the licenses.

Facilities regulated by SEMARNAT also must submit to the agency an Annual Certificate of Operation (*Cédula de Operación Annual* or COA). The COA provides information about the facility's air emissions, waste water discharges, and waste management.<sup>7</sup>

### *Air Pollution*

**STANDARDS.** In general, federal and state laws require that facilities control their emissions to the air, to ensure that air quality is satisfactory for human well being and for the environment. More specifically, these laws prohibit any facility from emitting pollutants

into the air that exceed the “maximum permissible levels” established by the federal government. The federal government has established Official Mexican Standards (NOMs) that set these maximum permissible levels. Examples of these standards include maximum permissible emission levels of particulates from fixed sources, emission limits for sources that burn fossil fuels, and emission limits for specific industries, such as petroleum refineries and glass factories. Facilities that exceed federal standards are in violation of the law.

When SEMARNAT evaluates the environmental impact of a facility to decide whether it may operate, the agency must consider if the facility complies with the maximum permissible limits contained in the NOMs. Where necessary, SEMARNAT must establish mitigation measures that minimize the environmental impacts. If these requirements are not met, SEMARNAT must deny the company a permit—or, if a permit has already been issued, SEMARNAT must revoke the permit.

**OPERATING LICENSES.** Facilities under federal jurisdiction that release air pollutants must obtain an operating license for their activities. These licenses are valid indefinitely. However, facilities must submit annual reports on their operations and the government may modify the licenses based on that information.<sup>8</sup>

Operating licenses contain specific requirements that the facility must follow for installing pollution control equipment, monitoring and measuring air pollution, and taking actions in case of an emergency.<sup>9</sup> In addition, the license may include facility-specific emission levels if the particular type of facility doesn't fit within existing standards.

All facilities that fall under federal jurisdiction must obtain this operating license from SEMARNAT.<sup>10</sup> This includes federal facilities and the following industries.<sup>11</sup>

- chemical
- asbestos
- petro-chemical
- automotive
- paints and dyes
- metals/mining
- cement
- glass
- electric utilities
- paper
- cement and lime-kiln
- hazardous waste treatment

The federal government has authority over a facility if its air emissions affect (or could affect) the environment of another country.<sup>12</sup> This might include certain air polluting activities in the border region that would not otherwise fall under federal control.

Industrial facilities that don't fall under federal jurisdiction would be under state jurisdiction. Under state law, air pollution from non-industrial facilities (shops or services) falls under municipal control.<sup>13</sup> Examples of these facilities might be auto body shops or carpentry shops. Pollution from vehicles (other than federal transit) is also a municipal function.

Thus, most fixed sources of air pollution in the state of Chihuahua, and particularly in Ciudad Juárez, would fall under federal jurisdiction and would obtain their operating licenses from SEMARNAT.

Air polluting facilities must measure their emissions, and SEMARNAT may ask them to

submit this data. Most facilities must also do air monitoring around their facilities.<sup>14</sup> Federal, state and local governments are responsible for keeping a registry of stationary sources of air pollution, including the location of the source and the type of equipment used by the facility. The governments also are responsible for monitoring air quality.

### *Water Pollution*

Waste water discharges from industry, agriculture and municipalities are regulated under the LGEEPA and the Law of National Waters. These cover a wide range of activities, including the application of pesticides and the extraction of natural resources. Discharges that affect aquifers are also covered.<sup>15</sup> The federal government plays a large role in this area, since groundwater and most surface waters fall under federal jurisdiction.

**STANDARDS.** Under the LGEEPA, waste water discharges may not pollute receiving waters, interfere with purification processes of water, or disrupt the functioning of water bodies.<sup>16</sup> More specifically, all waste water discharges to bodies of water, aquifers, or to land must meet the discharge conditions established by federal or local authorities.<sup>17</sup> The federal government has issued NOMs that set maximum levels of pollutants that can be discharged to national waters. In addition, federal, state and municipal laws restrict discharges to sewer systems. Federal NOMs set pollutant limits for these discharges.<sup>18</sup>

**PERMITS.** In order to discharge waste waters to any water body, to the soil or to the subsoil, the discharge must be pre-treated and must have a permit from the CNA.<sup>19</sup> A company submits a permit application with information about the industrial processes, the type of treatment used, and the characteris-

tics, volume and location of the discharges. The discharge permit includes water quality standards for the company's discharges, requirements for monitoring their discharges, and the duration of the permit. Facilities must monitor their discharges and keep discharge records for at least three years.<sup>20</sup> The law directs the CNA to deny a permit if the discharge will affect drinking water sources or public health.<sup>21</sup>

Discharges into sewer systems must also be pre-treated and have a permit.<sup>22</sup> In Ciudad Juárez, the permit application describes characteristics of the discharge and the type of treatment used. If the discharge meets the legal standards and the system has capacity for the discharge, the JMAS will issue a permit valid for one year. Facilities must monitor their discharges to make sure they comply with the standards.<sup>23</sup>

### *Hazardous Wastes*

In general, the federal government is responsible for regulating hazardous waste activities. The new federal waste law gives the states authority to enter into agreements with the federal government to control hazardous wastes generated or handled by "microgenerators"—facilities that generate up to 400 kg. of hazardous waste per year.<sup>24</sup>

**STANDARDS.** The LGEEPA and the LGPGIR include many general requirements that apply to activities involving hazardous wastes. A few examples of general requirements from the LGPGIR are:

- Hazardous waste disposal facilities must be at least 5 km. from any city with a population of 1,000 or more.<sup>25</sup>
- Hazardous wastes may not be stored for longer than 6 months.<sup>26</sup>

- Those who generate wastes must make sure that, once they end their operations, they notify SEMARNAT, and their facilities do not pose a risk to health or the environment.<sup>27</sup>

The new regulation under the LGPGIR and federal NOMs add more detailed technical standards that must be followed by companies that generate or handle hazardous waste. These standards cover matters such as the classification of hazardous wastes, tests for determining toxicity of wastes, and requirements for hazardous waste storage sites and incinerators. Large and small generators of hazardous waste must register with SEMARNAT and provide information annually about the type and amount of waste they generate.<sup>28</sup>

**PERMITS.** Federal authorization is required in order to generate, store, treat, manage, or transport wastes, or to use hazardous wastes as part of a business' productive process. The regulation under the LGPGIR lists many different types of information that must be included in the application.<sup>29</sup> The permit issued by SEMARNAT includes the type of wastes, the technical processes that are authorized, the duration of the permit, and the financial guarantee required for the operations.<sup>30</sup>

**CLEANUP.** Those who are responsible for contaminating a site must repair the resulting damage, including the damage to public health.<sup>31</sup> The LGPGIR requires SEMARNAT and the local governments to create a national inventory of hazardous waste sites in order to determine whether remediation is necessary, and to include these sites in local property registries.<sup>32</sup>

The regulation under the LGPGIR contains new requirements that companies must fol-

low for preparing Remediation Programs (*Programas de Remediación*).<sup>33</sup> SEMARNAT is responsible for evaluating and approving a company's remediation proposal. When the contamination affects human beings, SEMARNAT must consult with the Secretariat of Health.<sup>34</sup> SEMARNAT is also authorized to review the final cleanup and to order the site removed from the national registry if it meets the cleanup requirements.

Those who transfer contaminated property must first get permission from SEMARNAT and must notify the buyer about the contamination.<sup>35</sup>

**IMPORT/EXPORT.** Hazardous wastes may only be imported into Mexico for re-use or for recycling, and not for storage or final disposal. Wastes containing persistent organic compounds may not be imported at all.<sup>36</sup>

A permit is required from SEMARNAT for each shipment of hazardous waste to be imported or exported, though permits may be requested for multiple shipments taking place within a year. The LGPGIR regulation contains a detailed list of information about the shipment that must be included in a permit application.<sup>37</sup> The shipper must notify SEMARNAT once the wastes have been imported or exported.<sup>38</sup> The company is responsible for any damages it causes to health or the environment, and the company must provide a bond or financial guarantee for its activities.<sup>39</sup> SEMARNAT is responsible for establishing a registry of hazardous waste imports and exports.<sup>40</sup>

Wastes that result from maquiladora operations must be returned to the country of origin. Maquiladoras are required to give SEMARNAT a notice of return for every hazardous waste shipped back to the country of

### CLEANUP of CONTAMINATED SITES

Mexico's new federal waste law addresses abandoned waste sites. Under the new law, the federal government is authorized to develop and carry out remediation plans to clean up such sites.

When the federal government is directly involved in cleaning up a site, it must publish information about the remediation in the Official Gazette of the Federation (*Diario Oficial de la Federación*), which is similar to the U.S. Federal Register. This information includes a description of the site, the nature of the contamination, the type of remediation, and the time frame for remediation.

origin. (In certain cases, they must also notify the Secretariat of Health of the volume and characteristics of the material that they import).<sup>41</sup>

**TRANSPORTATION.** As mentioned above, the transportation of hazardous waste requires a permit from SEMARNAT. The new LGPGIR regulation includes requirements for those who collect and transport hazardous wastes. They must: make sure the wastes are properly labeled and packaged, have an emergency plan, use trained personnel, and carry the correct paperwork.<sup>42</sup> The Secretariat of Communications and Transport has also issued a Regulation of the Transport by Land of Hazardous Materials and Wastes. This federal regulation includes requirements such as packaging and labeling of the materials, condition of the vehicles, general safety practices while traveling through population centers, and documentation required from the Secretariat.<sup>43</sup>

**WASTE MANAGEMENT PLANS.** The LGPGIR created a new requirement for the development of waste management plans (*planes de manejo*). Generators of hazardous waste, as well as producers and distributors of certain products, will be required to develop these

plans. Examples of these products include: organic solvents, automotive lead batteries, fluorescent lamps, pesticides, PCBs, and medical wastes. The plans are supposed to include measures to reduce waste and to provide for recycling and reuse of products that become waste.<sup>44</sup>

**HIGHLY RISKY ACTIVITIES.** Companies that undertake highly risky activities (as described in two lists published by the federal government) must develop and submit to the federal government an environmental risk study, as well as an accident prevention program. They must also provide insurance for these activities. The LGEEPA also gives the federal government authority to establish land use restrictions in order to provide a buffer zone between highly risky activities and neighboring homes. In such cases, SEMARNAT is responsible for promoting changes to local urban development plans.<sup>45</sup> There has been one such buffer zone created in the municipality of Matamoros, Tamaulipas, next to a chemical plant.<sup>46</sup>

#### *Non-hazardous Wastes*

While the federal government regulates hazardous wastes, the state and municipal

governments have responsibility for regulating municipal solid waste.

**STANDARDS.** In general, companies that handle solid waste must try to prevent contamination of the land and risks to public health.<sup>47</sup> The federal government has set technical standards for the siting, construction and operation of solid waste disposal sites.

State law in Chihuahua prohibits open burning, as well as throwing wastes in public places, including sewers and water bodies.<sup>48</sup> Ciudad Juárez law requires that those who sell or distribute used tires and generate wastes must arrange for their storage and pay for their final disposal.<sup>49</sup>

**PERMITS.** The state of Chihuahua is authorized to issue permits for the siting, construction and operation of any businesses that deal with non-hazardous wastes, such as landfills or recycling facilities. Commercial or service operations that generate non-hazardous wastes must register the wastes with the SEDUE and submit reports twice each year.<sup>50</sup>

The federal waste law has created another category of wastes called special management wastes, which fall in between hazardous

wastes and municipal solid waste. The states are responsible for regulating activities that produce these wastes and for making sure they meet federal standards.<sup>51</sup>

### **Government Enforcement of Environmental Laws**

The previous section described some of the legal requirements that polluting facilities must follow under federal, state and local law. This section describes how the laws provide for enforcement—that is, what measures government agencies can take to make sure that facilities comply with the legal requirements, and what sanctions they can impose if facilities violate the law.

Mexico has a civil law system that relies more on administrative authority (agencies) than on judicial authority (courts) for applying the laws. Most of the enforcement measures in the environmental laws are administrative.

As you can see from the information that follows, the federal, state and municipal governments can impose different types of penalties and sanctions if a person or company violates environmental laws and standards. In general, each level of government is

#### **ENFORCEMENT TOOLS**

Federal, state and local laws give environmental agencies a variety of tools for enforcing legal requirements. Depending on the seriousness of the violation, the agency can

- impose a fine,
- close a facility,
- require safety measures, or
- revoke an operating license.

responsible for enforcing the law for polluting activities that fall under its jurisdiction. For example, since the federal government is responsible for hazardous waste activities, it is the federal government that should take enforcement action if a company improperly disposes of hazardous wastes. In Juárez, since the JMAS is a decentralized entity of the state, it is mainly the state government that is responsible ensuring that action is taken against a facility that is discharging waste water into the sewer system in violation of legal standards.

Inspections are one of the main tools that environmental agencies have to make sure facilities comply with the law and to learn whether there are violations of the law. The federal, state and municipal ecology laws described in this chapter contain similar requirements for conducting these inspections.<sup>52</sup> The three levels of government may also enter into cooperation agreements for conducting facility inspections.<sup>53</sup>

Once an inspection has been completed, the inspecting agency may order the facility to take specific corrective measures within a certain time period. In emergencies, the agency may require immediate action, as described below.<sup>54</sup>

When deciding which type of sanction to impose, an agency must consider the seriousness of the violation, the economic conditions of the violator, any benefit the violator obtained by disobeying the law, and whether the violation is intentional or negligent.<sup>55</sup> Following are the main types of sanctions available under the federal, state and municipal environmental laws described in this chapter. Keep in mind that other laws may also provide enforcement tools. For example, in Chihuahua, the State Urban Development

Law includes a variety of administrative sanctions that municipal governments may impose if a person or company violates urban development plans or otherwise harms ecosystems, public health or public safety.<sup>56</sup>

#### *Safety Measures*

In cases involving an immediate risk of harm to the environment or public health, SEMARNAT may order safety measures. These include: (1) the immediate securing or neutralization of hazardous materials or substances; and (2) the temporary, partial or permanent closure of the facility.<sup>57</sup> The State Ecology Law establishes similar measures for facilities under state jurisdiction.<sup>58</sup>

#### *Administrative Sanctions*

Under the LGEEPA, the LGPGIR, and the Law of National Waters, as well as the State Ecology Law and the Municipal Ecology Regulation, violations of the laws are to be punished by administrative sanctions. These administrative sanctions are described below.

**MONETARY FINES.** PROFEPA and the CNA can issue a monetary fine of between 20 and 50,000 times the current daily minimum salary in the Federal District.<sup>59</sup> (Currently the minimum salary is 50.58 Pesos, or about US\$4.70) The fines may be issued each day that a violation continues, but only up to the total maximum fine allowed. Where companies violate the same law twice, the fine can be double the original fine, but only up to the maximum allowed.<sup>60</sup> Under the National Waters Law, the fine for repeat offenders may be three times the original amount, up to three times the maximum fine allowed.<sup>61</sup>

Both the State Ecology Law and the Municipal Ecology Regulation set the fine



amount at 20–20,000 times the current daily minimum salary.<sup>62</sup> The Municipal Regulation maintains a table of penalty amounts for specific violations.<sup>63</sup>

**FACILITY CLOSURE.** PROFEPA may close a facility if the company does not obey PROFEPA's order to take safety measures or other corrective actions. PROFEPA may also order closure in certain cases where the facility has repeatedly violated legal requirements. Closure may be for part or all of the facility, and may be temporary or permanent.<sup>64</sup> The LGEEPA also allows PROFEPA to recommend to another federal or local agency that an activity be restricted or suspended if it harms (or could harm) the environment.<sup>65</sup>

Other federal environmental laws and regulations also contain similar enforcement measures. For example, the National Waters Law lists circumstances that are appropriate for facility closure, and the Water Regulation includes processes for ordering suspension of activities.<sup>66</sup> The Air Regulation also directs SEMARNAT to encourage state or local government agencies to relocate facilities that create immediate risks due to air pollution, or to restrict or suspend the facility's activities.<sup>67</sup>

The State Ecology Law and the Municipal Ecology Regulation also provide for facility closure.<sup>68</sup>

**CONTAMINATED SITE CLEANUP.** The LGPGIR allows SEMARNAT to order a facility to clean up a site contaminated with hazardous waste.<sup>69</sup> (As mentioned above, the LGPGIR also allows SEMARNAT to undertake the remediation itself.) Other federal laws may also require a company to pay for restoring the environmental damage it has caused. For example, the Water Regulation requires facilities to clean up unplanned discharges.<sup>70</sup>

The State Ecology Law and the Municipal Ecology Regulation contain similar provisions. For example, the State Ecology Law says that a company or individual who contaminates a site and harms public health is responsible for repairing the damage.<sup>71</sup> The Municipal Ecology Regulation requires that those who discharge highly toxic substances to the sewer system in violation of the law must pay for the damages to the treatment plant. In addition, any party that damages or alters ecosystems is responsible for the costs of restoration.<sup>72</sup>

**ADMINISTRATIVE ARREST.** Federal, state and local officials may order the administrative arrest of individuals for up to 36 hours.<sup>73</sup>

**PERMIT SUSPENSION OR REVOCATION.** For serious violations, SEMARNAT may pursue the suspension, revocation, or cancellation of a permit, license or other authorization granted to the facility.<sup>74</sup> The law directs SEMARNAT to deny or suspend a permit if a discharge is affecting a drinking water supply, and must notify the Secretariat of Health.<sup>75</sup>

Under the State Ecology Law, the state is directed to request the suspension or cancellation of permits or licenses if there is a very serious violation of the law.<sup>76</sup> The Municipal Ecology Regulation provides for the suspension of water discharge permits in certain circumstances.<sup>77</sup>

### *Criminal Sanctions*

In some cases, even if a company has received these administrative sanctions, it still might be prosecuted criminally. In general, if the environmental authorities have knowledge of actions that may be a crime, the authorities are responsible for filing a criminal complaint.<sup>78</sup> These complaints are

filed with the federal Public Ministry (*Ministerio Público*), the federal office that pursues criminal investigations. SEMARNAT and other federal agencies are also required to provide the Public Ministry with any necessary technical reports.

In addition, any person can submit a criminal complaint directly to the Public Ministry.<sup>79</sup>

Acts that are considered crimes are described in the Federal Penal Code (*Código Penal Federal*).<sup>80</sup> Those who carry out certain conduct (deliberately or with criminal negligence) may be sanctioned criminally with a fine, prison, or order to repair the damage:<sup>81</sup>

- Illegally carrying out activities involving hazardous substances without authorization or without taking the necessary safety or prevention measures;
- Releasing pollutants from fixed sources into the air, resulting in harm to the environment or natural resources;
- Illegally discharging contaminants to the soil, subsoil or to a federal water body;
- Transporting hazardous wastes to a location that is not authorized to receive the wastes;
- Entering false information in registries, logs or other documents that are required under federal environmental laws, or destroying or hiding information that is

required to be maintained; and

- Failing to carry out or comply with technical, security or corrective measures that are ordered by an administrative authority or court.

The last three crimes can be prosecuted only if PROFEPA files a complaint in the matter.

The penalties for these crimes include monetary fines and prison terms.<sup>82</sup> The government may also require other measures, such as restoring ecosystems, suspending or modifying the activities that were causing the harm, and returning hazardous materials to the country of origin.<sup>83</sup>

In Chihuahua, the State Ecology Law lists violations of the law that are considered to be crimes, and these may be prosecuted only following a complaint by the SEDUE:

- Conducting risky activities without the required permission;
- Releasing air pollutants in violation of the law;
- Discharging pollutants or wastes to the land or waters;
- Submitting false information or destroying records in violation of the law; and
- Failing to carry out or comply with the corrective or safety measures ordered by the appropriate authority.<sup>84</sup>

## SECTION II: REQUESTING INFORMATION FROM THE GOVERNMENT

---

*The San Rafael community is located on the outskirts of Ciudad Grande, on the border with the United States. San Rafael is mostly residential, but there are many shops on the main streets. There are also two small factories on the edge of the neighborhood—a glove factory and a plant that makes electronic parts. Over the past few years, residents have begun to feel that their quality of life is suffering because of the factories. Parents don't want their children to play in the streets any more, because of the trucks that rumble through the neighborhood on their way to and from the factories. Recently, some families have stopped using the small stream that runs near the factories, because they know there is a pipe from the factories to the stream and they are worried about the safety of the water. Community leaders have started to hold meetings to discuss how to improve the quality of life of the neighborhood and keep it from becoming more industrial. At the last meeting, residents talked about what they could do to improve conditions around the factories.*

A first step for a community that is organizing to address an environmental problem is to collect information about the problem. There are many types of information that a community can gather about the environmental impact of a facility and about whether the facility may be violating legal requirements. This information can help the community develop its organizing strategy.

One way for residents to get this information is to *collect information themselves*. For example, the residents of San Rafael can take samples of the water in the creek, or they can

take pictures of discharges from the factories to the creek. They can record truck traffic. The community could conduct a survey of neighbors to find out what they have observed and also whether they have experienced any unusual health problems. There may be workers at the plant who are willing to talk about the conditions in the plant and about how chemicals are being handled.

A second option is to *get information from the government*. This can be especially useful where the community has little first-hand knowledge of the company's industrial processes. There are many types of information that government agencies collect. Recent changes in Mexican laws have made more information available and have given citizens new ways to get this information. This section discusses how communities can get information from the government when they feel a company may be violating environmental laws and standards, or when they are not sure what types of risks a facility poses.

### **Environmental Information that the Government Publishes**

The government collects and publishes different types of information about general environmental conditions and about specific facilities. Most of this information can be obtained on the internet, or it can be requested from the government agency that publishes or collects it. Following are a few of the most important published sources of information.

**REGISTRY OF POLLUTANT EMISSIONS AND TRANSFERS** (*Registro de Emisiones y Transferencias de Contaminantes* or RETC). Mexican law and regulations now require certain industrial facilities to submit informa-

tion about the chemicals that they transfer to other locations or release to air, water or land. This information must be submitted annually to the federal government. In 2006, the government started to publish a registry with this information from over 1,000 facilities and over 100 different chemicals.

So far, the database only has information for the year 2004, and that information is limited. You may not yet be able to find all of the information that is supposed to be in the RETC, but you can try searching the RETC database in different ways:

- To identify specific facilities. You can search for all facilities that are located in a particular state or city. You can also search for facilities that have certain types of operations. The database includes basic information about the location and type of business.
- To identify specific pollutants released by facilities. You can search specific facilities to see what chemicals they are emitting or transferring. You can also search by state to find out what pollutants are being emitted in that state or in a city.
- To find the amount of total emissions in a state and municipality. You can search to find the total emissions in tons, or the total emissions for each type of industry.

The RETC is available for free online at: <http://app1.semarnat.gob.mx/retc/index.php>. You must register to use the database by entering an email address. As discussed later on, you may also be able to get this type of information by asking for it directly from the federal government.

**NATIONAL EMISSIONS SYSTEM** (*Sistema Nacional de Emisiones* or SINE). SINE is a compilation of national air emissions data. It aims

to provide data on the total emissions of specific pollutants by city, state and the nation as a whole. Currently there is only limited data available on the SINE web site, but the government plans to add more information. See <http://aplicaciones.semarnat.gob.mx/sine/bienvvenida.asp>.

**NATIONAL SYSTEM OF ENVIRONMENTAL AND NATURAL RESOURCE INFORMATION STATISTICAL DATABASE** (*Base de Datos Estadísticos del Sistema Nacional de Información Ambiental y de Recursos Naturales* or SNIARN). SNIARN contains environmental statistics and data, in addition to general information about environmental standards and the health effects of pollutants. Some of the information that is available includes:

- Water: Water quality standards; Annual water quality data for major water bodies; Drinking water statistics.
- Air: Emissions by sector for major cities; number of monitoring stations by city; annual average of hourly concentrations of air pollutants by city; and maximum annual levels of air pollutants in the major cities (CO, NO<sub>2</sub>, O<sub>3</sub>, PM<sub>10</sub>, and SO<sub>2</sub>).
- Waste: Amount of solid waste generated annually by type and geographic area; disposal of solid waste by metropolitan area and state; number of businesses generating hazardous waste and volume of wastes by state (1999-2000); imports and exports of hazardous waste (annually since 1995); return of hazardous waste from the *maquiladora* industry, by state (1996-2005); and number and capacity of authorized industrial hazardous waste facilities.

SNIARN is available at: <http://www.semarnat.gob.mx/> (select the “Información Ambiental” tab on the left, then click on the SNIARN button).

**LAWS, REGULATIONS AND OTHER GOVERNMENT ACTIONS.** The *Diario Oficial de la Federación* is the official daily publication of the federal government. It includes announcements of federal laws, decrees, regulations, agreements, circulars, orders, and acts. Before being published in the *Diario Oficial*, federal laws, regulations and NOMs are published in the web page of the Federal Commission on Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*) for 20 days. See [www.cofemer.gob.mx](http://www.cofemer.gob.mx). As mentioned earlier, the federal government must announce when it is directly involved in site remediation. It must publish in the *Diario Oficial* information about the remediation, including a description of the site, the nature of the contamination, the type of remediation, and the time frame for remediation.<sup>85</sup>

You can get the *Diario Oficial* on the internet. The government provides free access online to issues published in the past year: <http://diariooficial.segob.gob.mx/>. SEMARNAT's web site also includes environmental information that is published in the *Diario Oficial*: <http://www.semarnat.gob.mx/leyesynormas/Pages/lasemarnateneldiariooficialdelafederacion.aspx>. You can get the *Diario Oficial* in print by subscribing to the publication. See <http://diariooficial.segob.gob.mx/distribuidores.php>.

At the state level, the government of Chihuahua publishes the *Periódico Oficial*, which announces laws, regulations and other official acts of the state government. The publication is available on the state web site: [www.chihuahua.gob.mx/](http://www.chihuahua.gob.mx/).

### Requesting Specific Information from Federal Agencies

If you are dealing with an environmental problem in your community, you may need to request specific information from the government that is not already published. Mexican law gives you the right to request and receive a wide variety of information from federal agencies.

Mexico's Constitution guarantees the right of people to have information and requires public officials to respond to written petitions.<sup>86</sup> In addition, the LGEEPA contains a specific provision that allows any person the right to obtain environmental information from the government.

However, the main federal law dealing with access to information was enacted in 2002, the Federal Law on Transparency and Access to Public Governmental Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* or *LFTAIPG*). This law allows all persons—including foreign citizens—to obtain information from federal government authorities.

Following are the procedures established by this law for requesting information from federal agencies. Keep in mind that you do not need to hire a lawyer or other technical expert to file a request for information. The rules for filing a request are not complicated, and the law requires that the agency assist you in making your request if you feel you need help.

*What kind of information can you get?* Under the law, you are entitled to get all public information that an agency possesses.<sup>87</sup> According to the LFTAIPG, many types of information—such as licenses that are issued

by SEMARNAT and other federal agencies—may not be withheld, and must always be available to the public through the internet.<sup>88</sup>

In the hypothetical case of San Rafael, for example, the community could use the federal law to obtain:

- *Permits or licenses* that the government issued to the factories for their air emissions, water discharges and waste management practices, as well as the companies' *applications* for the permits. You can see the information that is required for various permit applications by going to SEMARNAT's web site, <http://www.semarnat.gob.mx/tramitesyservicios/informaciondetramites/Pages/inicio.aspx>.
- Government reports of *facility inspections* that were carried out in the past;
- Government *enforcement actions or sanctions* that were issued against the facilities in the past;
- Any *environmental monitoring or other reporting data* that the companies have submitted to SEMARNAT. Under federal law, companies are required to measure their air emissions and submit this data to SEMARNAT upon request, and most facilities must also do air monitoring around their facilities. There is a similar requirement for water discharges. If SEMARNAT has requested this information from the facility, it will be in the agency's files and can be reviewed by the public. In addition, as mentioned earlier, industrial facilities must submit to SEMARNAT an Annual Certificate of Operation, which describes their pollutant emissions and transfers. This information is used to develop the RETC, described earlier.

The community may also wish to get information about the types of chemicals that the

trucks are carrying through the neighborhood, and the risk they pose due to accidents or spills on the roads. If the factories are maquiladoras, then they are required to return their wastes to the U.S. and to get an export authorization from SEMARNAT for each shipment.<sup>89</sup> The application for the authorizations must include detailed information about the type and amount of waste being transported, as well as the emergency plan in case there is an accident.<sup>90</sup> Residents of the community could request to see the applications for export submitted by the companies, as well as the authorizations granted by SEMARNAT.

Even if the wastes are not being shipped out of Mexico, federal law requires that the shipping company obtain authorization from SEMARNAT and submit reports twice each year showing the wastes they transported.<sup>91</sup> The factory generating the waste, the shipper, and the final destination must all fill out waste manifests showing the wastes that were transported. They must keep copies of these for several years, although the law does not require that the manifests be submitted to SEMARNAT. In addition, all companies that ship hazardous materials by land must be authorized by the Secretariat of Communications and Transports. These federal permits address matters such as packaging and labeling, and condition of the vehicles, which are regulated by federal technical standards. If residents have concerns about the safety of the trucks that are transporting hazardous materials through their neighborhood, they might also request information about the trucking company from this agency.

Finally, it is important to get any authorization that the company has received through the environmental impact review

process. You may also request a copy of the company's environmental impact statement (*manifestación de impacto ambiental*) and any report that the company submitted to the government to show it is complying with the authorization.

Using information about the companies' practices, in combination with neighbors' own observations or other information they have gathered, the community will have a better idea if the companies may be violating the law or the conditions in their permits. For example, a company's air or water permit may include specific limits on the type and location of discharges from the facility. Monitoring information, or information collected by the community, may indicate that the facility is discharging waste water without the proper authorization, or is exceeding the limits stated in its permit. This information might support a government enforcement action against the facility. Even if the facility is not violating the law, the information can give community a better understanding about the potential risks posed by the factories and will help the community to monitor the facilities in the future.

*What kind of information may the government withhold?* An agency is not required to obtain or create information that it does not already have in its files.

The government may refuse to provide you with information that it has, if that information is considered reserved or confidential. Information may be classified as "reserved" if it compromises national security, interferes with international relations, harms the country's financial stability, puts someone's life at risk, or impedes pending enforcement activities. Reserved information includes commer-

cial or trade secrets, and judicial or administrative files in ongoing cases. "Confidential" information includes personal data about an individual, such as address, telephone number, medical history, racial/ethnic identify, or other similar private information.<sup>92</sup>

In very few cases is the government permitted to withhold an entire file. If the requested documents have information that is both public and reserved, the authorities must make the public information available, while withholding the reserved information.

*What should you include in your request for information?* Under the law, a request for information must be prepared in writing. You do not need to explain why you want the information. However, the request must contain the following information:

- Your name;
- An address (does not have to be your home address) for receiving notifications from the government, or another method of contact such as email; and
- A clear and precise description of the documents you want.

You can include any other information that might help the agency find the documents. If the agency feels that you have not provided enough information to identify the documents you want, the agency may require that you provide additional information. The agency must ask you for this additional information within 10 working days after receiving your original request.<sup>93</sup>

You may also indicate in your request how you want the government to provide the documents to you. For example, it may be most convenient to ask the government to send

### WHAT TO ASK FOR

Instead of listing every piece of information that you want the government to provide, you could ask the government agency for all documents it has received or developed regarding the particular facility you are concerned about. If you do this, it is a good idea to include a time period—for example, the past five years.

you the document by email, if possible. You can ask for photocopies, or you can review the original documents in person at the agency office.

*Are there special forms for submitting your request?* You may prepare your request without any special forms, as long as you include the necessary information. Or, you may use the form developed by the federal government. This form is included in Appendix 8, and you can also download the form from the government website: <http://www.ifai.org.mx/transparencia/solinf.pdf>. When you mail the request, it is preferable (but not required) to use certified mail and keep the receipt.

It is quickest to submit your request electronically, and it may cost less than sending the request by mail. (If you don't have access to the internet, local federal agency offices often provide computer access for submitting requests to the government.) You can submit the request electronically using a special government website, [www.informacionpublica.gob.mx/portal.html](http://www.informacionpublica.gob.mx/portal.html). This is also known as SISI (*Sistema de Solicitudes de Información*).

On the SISI website, there is a special format for preparing and submitting your request. When you get to this website, you select "solicitudes de información." The next step is to register by providing your name and

an address for receiving the information, and then to select a user name and password. After registering, you proceed to the part of the website titled "*captura de solicitudes*" and then fill out your request for information. When you have finished, you will have the option of printing the request to keep for your records. It is a good idea to read the User's Manual before submitting your request through the SIS website.<sup>94</sup>

*Where do you send the request?* You should send your request to the federal agency that you believe has the information. Many requests for environmental information are handled by SEMARNAT or CNA (for water issues). However, enforcement issues are handled by PROFEPA.

In the hypothetical example, if residents of San Rafael want to request information about hazardous waste permits that have been issued to the factories in their neighborhood, they would send the request to SEMARNAT. Requests for information about water discharges from the factories would be sent to CNA. Requests for inspections that have been conducted and any sanctions issued against the factories would go to PROFEPA. If you are unsure where to send your request, you can send it to all agencies that might have the information. Keep in mind, too, that if you make a mistake and send your request to the wrong federal agency, that agency is supposed



to help you get the request to the correct place.

Requests can be directed to the Liaison Unit (*Unidad de Enlace*) at the agency's headquarters. The list of addresses of all of the federal agencies is available at: <http://www.ifai.org.mx/> ("*Directorio de U. de Enlace*"). Another option is to send your request to the agency's office nearest you. The addresses for these SEMARNAT, CNA and PROFEPA offices are included in Appendix 6.

If you submit the request electronically through SISI, you will indicate the name of the agency you wish to send the request to, and the form will be transmitted electronically to the Liaison Unit at that agency.

*How will the government provide the information to you?* You can get the information in different ways. You may consult the agency files directly. You can also request that the agency send you a photocopy of the information, or you can get a floppy disc or CD-ROM containing the information.

*What is the cost of getting the information?* You are responsible for paying the cost of photocopies, discs or CD-ROMs. Currently, photocopies cost Mex\$0.50, a floppy disc costs Mex\$5.00, and a CD-ROM costs Mex\$10.00. In addition to these costs, you are responsible for paying the cost of mailing the information. Mailing costs will depend on the weight of the package and whether you request regular or urgent mail delivery.<sup>95</sup> When the agency responds to your request, it should notify you of the cost and tell you how to make the payment.

*How long does it take to get the information?* The agency must send you a response as quickly as possible, but *not later than 20 busi-*

*ness days* after receiving your request. The agency must tell you how it will make the information available and the cost of the information. The law allows the agency to take an extra 20 days to respond if necessary, and the agency must notify you of this extension. Once the agency has notified you about the costs and methods of delivering the information, the agency has an additional 10 days to provide you with the information, assuming you have made the required payment.<sup>96</sup>

If you do not receive a response within these time periods, your information request is *assumed to be granted* (unless the information is determined to be reserved or confidential), and the government must provide it to you at no cost.<sup>97</sup> To check the status of your request, you can use the SISI website or you can call the government at 01800 TELIFAI, using your case file number.

*What if the information is not provided to you?* If your request is denied completely or partially, or if you do not receive a response within the time required, then you may submit an administrative appeal (*recurso de revisión*). You may also submit an appeal if you don't agree with the way the government is providing the information or the cost of the information.

Under the law, you must submit your appeal in writing within 15 working days after receiving a decision on your request. The appeal can be submitted to the Federal Institute for Access to Information (*Instituto Federal de Acceso a la Información Pública*) or to the same agency that received your initial information request.<sup>98</sup> The appeal must contain the following information: your name and an address (or other means) for receiving a reply from the government; the name of the agency you requested information from;

the date on which you received the agency response that you are appealing; the reason for your appeal; a copy of the decision you are appealing; and any other relevant information that you feel should be included.<sup>99</sup> There is a form that you can use to submit your appeal over the internet. See <http://www.ifai.gob.mx/transparencia/recrev.pdf>. The law requires IFAI to help you by correcting technical deficiencies in your request for an appeal.<sup>100</sup>

The government has a total of 50 days to decide your appeal, though this period can be doubled for just cause. The decision made by the Institute is binding on the government. If you wish to contest the Institute's decision on your appeal, you have the right to file a lawsuit in federal court, but you should consult with an attorney before pursuing a court action. As discussed in the next section, you may be able to get free help from a lawyer by contacting the Federal Institute of Public Defense (*Instituto Federal de Defensoría Pública*).

### **Requesting Specific Information from State and Municipal Agencies**

You may also want to request information from state or municipal agencies. Companies typically have state or municipal permits that cover land use issues, as well as environmental issues that are not under federal jurisdiction. For example, state and municipal officials may have information about discharges to the public sewer system, and about emergency plans for responding to chemical accidents at the facility or on public roads. The city may also have the land use permits that were granted to the factories, as well as zoning plans that shows the types of land uses that are permitted in the neighborhood.

If you are unsure whether the information you want is held by federal, state or municipal agencies, you can send your request to all three.

The federal Access to Information law does not apply to state and local governments. The LGEEPA does include some requirements for state and local governments to provide access to environmental information.<sup>101</sup> However, in the case of Chihuahua, the state has enacted its own information law, and this law applies to both state government authorities and municipal authorities.

In 2005, the state enacted the Law of Transparency and Access to Public Information of the State of Chihuahua (*Ley de Transparencia y Acceso a la Información Pública del Estado de Chihuahua* or LTAIPECH). This law affirms the right of individuals to obtain public information and establishes procedures for getting information from the government.<sup>102</sup> The law also sets up the Chihuahua Institute for Transparency and Access to Public Information, which is a public autonomous agency that is responsible for issuing policies and enforcing the new law.<sup>103</sup>

*What kind of information can you get?* The state law provides access to a broad range of information held by public agencies, similar to the federal information law. This includes state and municipal permits, licenses, concessions and authorizations that are granted to companies, as well as their environmental impact statements and related materials.<sup>104</sup>

*What kind of information can the government withhold?* The law allows state and local agencies to classify information as “reserved” and to withhold that information. Under the law, the types of information that can be reserved include information that: relates to national

### STATE INFORMATION LAWS

The federal Access to Information law does not apply to state and local governments, but some states are adopting their own laws.

The state of Chihuahua has a new Access to Information law that affirms the right to get government information and sets up clearer procedures for requesting this information. Requests can be submitted over the internet: <http://www.ichitaip.org.mx/infomex-chihuahua/>

or state security; may endanger a person's life or health; or is considered intellectual property. Agencies may also withhold internal communications, as well as information that may hinder the prosecution of crimes. If the government decides to classify information as reserved, it must put its reasons in writing.<sup>105</sup>

*What should you include in your request for information?* The law allows you to make your request orally, or in writing. It is usually a good idea to put your request in writing and keep a copy for your records. The state government has created a form that you can use to submit your request, which is available on the internet at: [http://www.ichitaip.org.mx/Contenido/plantilla5.asp?cve\\_canal=8840&Portal=itchitaip](http://www.ichitaip.org.mx/Contenido/plantilla5.asp?cve_canal=8840&Portal=itchitaip). (A copy of the form is in Appendix 8.) Whether or not you use the form, your request must include the following information:

- The identity of the agency you are sending your request to;
- A description of the information that you want; and
- A place and method for you to receive notifications and information from the government.

You may keep your own identify confidential if you wish.<sup>106</sup>

The law requires the government to help you with your request. If your request is not satisfactory, the government must write to you within 5 working days and give you another 5 working days to modify your request.<sup>107</sup>

*Where do you send the request?* Send your request to the Information Unit (*Unidad de Información*) of the government agency that you believe has the information you want. You may send it by any means, including email.<sup>108</sup> (See Appendix 6 for addresses of state and municipal government agencies.) The state has created a website for submitting requests electronically, similar to the system set up by the federal government. See <http://www.ichitaip.org.mx/infomex-chihuahua/> ("*Solicitud de Información en Específico*")

If the agency does not have the information you request, the agency is required to tell you this and to send your request to the appropriate agency.<sup>109</sup>

*What is the cost of the information?* The law allows the government to recover certain costs, including the costs of the materials and the cost of mailing. The law also directs the government to try to reduce the costs involved in providing information.<sup>110</sup>

*How long will it take?* If the government rejects your request, it must notify you within 5 working days, and explain its reasons. In general, the government has 10 working days to resolve a request for information, but this period can be extended by another 5 days if necessary. If the government fails to meet this deadline, it must provide you with the information free of charge, assuming it has the information and the information is not reserved.<sup>111</sup>

*What if you are not satisfied with the government's response to your request?* If the agency does not respond to your request in the time allowed, or if it does not provide you with the information you requested, you may challenge the decision. You may also challenge the government's decision about the cost of the information. The state law establishes two ways to do this.

First, you may submit a request for clarification (*solicitud de aclaración*) to the agency. This request must be filed within 10 working days of receiving the government's decision (or 10 days after the government's deadline for responding to your request has passed). The request must be in writing and it must contain: your name and a place for receiving communications from the government; the decision you are challenging; the date you received the decision; the name of the agency involved; and your reasons for challenging the decision.<sup>112</sup> The Information Unit of the agency has 10 working days to respond to your request for clarification.

Second, you may file an appeal for review (*recurso de revisión*) if the government: doesn't resolve your request for clarification, fails to respond to your information request in the time allowed, classifies information as reserved, or provides information that does

not comply with the requirements of the law. This appeal must be submitted in writing, and must include: your name, an address for receiving notifications; the date and description of the decision you are appealing; the agency that issued the decision; the reason for your appeal; and any evidence you wish to submit. You have 15 working days to submit your appeal, counted from the date of the decision you are appealing. You may submit the appeal to the Information Unit of the agency that issued the decision, or to the State Institute on Transparency. The government then has 30 working days to decide the appeal and explain why it is confirming, modifying or revoking the original decision.<sup>113</sup>

The law provides for sanctions against government officials who fail to provide access to information as required by the law. These sanctions may include a fine and suspension.<sup>114</sup>

If the government doesn't respond to your request, you may be able to file a lawsuit in federal court for violation of your constitutional right to petition the government. You may also be able to file such a lawsuit if the government denies your request without providing reasons. As noted earlier, filing this type of lawsuit will require consulting an attorney.

### **Strategic Considerations for Filing Information Requests**

Although the federal and state laws give you the right to get public information, you may need to make considerable efforts to make sure you get the information you need. Here are a few things to consider before you file your request for information.

- Identify as clearly as possible what information you are seeking. If your request is too

general—for example, if you simply ask for information about all polluting facilities in your community—the government may respond that it does not know what you are looking for. On the other hand, if your request is too specific—for example, asking only which chemicals a particular facility uses—you may not get all of the information you need to understand the environmental conditions at the facility.

- If you are unsure which agency has the information you want, send your request to each agency you think may have it. If you do not know whether the problem is under federal, state or municipal authority, you can send your request to all three levels of government. The law requires the government to help you find the correct agency for providing the information.
- You may need to pay for the information. In the United States, the law often allows public interest groups to obtain public information without charge. There is not a similar provision in Mexican law. You can try asking the agency to provide the information free of charge because that matter is one of public interest, but you still need to be prepared to pay for the information unless you review the files in person at the government office.
- Much of the information you request from the government will be technical. Once you receive the information, you may need the assistance of a technical expert to help you understand what the information means. One possibility for getting technical help at little or no cost is nearby universities, where there may be researchers working on environmental issues similar to the problems you are confronting.

---

### SECTION III: LEGAL TOOLS FOR COMMUNITY ENFORCEMENT

---

*About 5 years ago, a new auto parts factory opened in the La Paz neighborhood of Ciudad Grande. Over the past several months, conditions around the factory have been deteriorating. Trash and containers are stored around the company's property, and parents are worried that their kids will try to play with garbage that escapes to the street. Some neighbors complain that they have had more headaches than usual, and that on some days they have experienced a burning sensation in their eyes. A few weeks ago, community residents became even more concerned, after some people noticed liquids staining a large area outside the plant. At the monthly civic association meeting, residents shared their concerns and talked about whether government authorities should be called in to investigate.*

Based on what they have observed, the community has reason to be concerned that the factory is not managing its waste properly. Under Mexican law, plants that generate hazardous waste must have government authorization. Factories may not store their hazardous wastes for more than 6 months, and must dispose of them according to federal technical standards. Maquiladoras are required to return their hazardous wastes to the country of origin; in many cases, this means shipping the wastes back to the U.S. for disposal. If a company contaminates the soil with hazardous wastes, it is required to repair the damage to the environment and public health.

This section describes some of the main legal tools available to the public to make sure that the government enforces environ-

mental laws and requirements. These tools include public complaints, appeals for administrative review, and lawsuits against the government for violating constitutional rights. There are limited circumstances in which a person can sue a company directly for compensation if the citizen has been harmed by the company's actions, but these lawsuits are not discussed in this handbook.

### **Filing a Public Complaint (*Denuncia Popular*)**

The most common legal tool in Mexico for communities facing a threat to their environment and health is the *denuncia popular* or public complaint. In 2005, PROFEPA received 8,865 *denuncias*, the largest amount ever in a single year. The great majority of these concerned forest resources. The state of Chihuahua ranked 7<sup>th</sup> highest in the nation, with 311 *denuncias* received.<sup>115</sup>

Under the LGEEPA, the government is required to carry out inspections and oversee compliance with the law.<sup>116</sup> The *denuncia popular* asks the government to investigate and take action to address a specific environmental problem and to make sure that legal requirements are followed. The *denuncia* can be filed in many types of situations, including cases involving permitting and environmental impact assessments for new facilities. They can also be filed if there is a suspected violation of the law by an existing facility.

In the hypothetical example of the La Paz neighborhood, residents could file a *denuncia popular* with PROFEPA stating that they believe the auto parts factory is causing serious environmental damage and harm to public health by improperly storing hazardous materials on its property. The resi-

dents' complaint could request that PROFEPA investigate fully the company's waste handling practices, as well as any possible effects on the soil, groundwater or public health. The complaint could ask PROFEPA to require the company to stop any unlawful practices and to clean up any contamination it has caused.

The procedures for filing a *denuncia popular* with federal, state or local agencies are described in the LGEEPA, Chihuahua's State Ecology Law, and the Municipal Ecology Regulation of Ciudad Juárez. Other laws may also have procedures for filing complaints with other agencies. For example, under the federal General Health Law, anyone can file a complaint (called an *acción popular*) with the Secretariat of Health about a situation that harms or endangers the public health.<sup>117</sup>

You do not need a lawyer or other technical expert or representative to file a *denuncia popular*. Following is a description of the legal rules for filing a complaint to the federal, state and local environmental agencies in Chihuahua. At the end are some considerations for using this legal tool effectively.

#### *Filing a Denuncia Popular with the Federal Government*

*What types of problems can be the subject of a denuncia popular? A denuncia popular can be filed concerning any act or omission that produces (or may produce) ecological imbalance or environmental harm, or that violates environmental law. The definition is broad and allows you to file complaints for a very wide range of activities that harm or threaten the environment or public health in your community. This includes air, water or soil pollution, as well as harm to natural resources.*

*Who can file a denuncia popular?* Any individual, social group or organization may file a *denuncia popular*. You do not have to be a citizen or resident of Mexico to file a complaint. If the complaint is filed by a corporation, you must attach the documents that validate the corporation and the representative who signs for the corporation.

*What should you include in your denuncia popular?* The *denuncia popular* should be in writing, and must include the following pieces of information:

- Your name (though you may ask PROFPEA to keep your identity secret<sup>118</sup>);
- An address for receiving communications from the government;
- A description of the environmental problem that you are complaining about;
- The facts of the case, including the party you believe is causing the environmental damage and the location where the damage is occurring; and
- Any proof or information that you have to support your complaint.

The more information you include in your complaint, the better. However, the lack of information should not be an obstacle to filing a *denuncia popular*. In the hypothetical case of the La Paz community, for example, the residents may not want to wait to gather more information before filing a complaint. Instead, they could file the *denuncia popular* with the information they already have. At the same time, residents could submit to the government formal requests for information about the factories. Later, when residents receive additional information about the factories, they could add to their complaint or they could file a new complaint.

*Where do you file the denuncia popular?* For most cases, you file the *denuncia popular* with the PROFEPA office in your city or with the nearest PROFEPA office. For residents of Ciudad Juárez, the complaint would be filed with the PROFEPA office in that city.

Some types of environmental issues will be enforced by an agency other than PROFEPA. For example, cases involving water pollution may be the responsibility of the CNA. If you file a *denuncia popular* with PROFEPA but the matter falls under the jurisdiction of a different federal agency or a local agency, PROFEPA is supposed to send the complaint to that agency. If you are unsure which agency has enforcement authority for your case, you can file your complaint with more than one agency.

The *denuncia popular* can be delivered in person or sent by mail, fax or email. (See agency addresses in Appendix 6.) It can also be sent through PROFEPA's web site: <http://www.profepa.gob.mx/Denuncias//default.aspx>. The web site contains a form that you fill out and submit electronically. (See Appendix 9 for a copy of the form.) Under the LGEEPA, you also have the option of submitting your complaint by telephone. PROFEPA will then put the complaint in writing and you must sign it before it can be registered with the agency.

*What is PROFEPA required to do once it receives your denuncia popular?* After PROFEPA receives your *denuncia popular*, the agency will notify you, assign a case number, and register the complaint within the agency. Within 10 days of receiving the complaint, PROFEPA is required to tell you whether the complaint meets the legal requirements and explain how the complaint will be processed.

In practice, this often takes longer than 10 days. PROFEPA will then notify the party who is the subject of the complaint and provide that party with 15 days to present information concerning the allegations.<sup>119</sup>

The LGEEPA directs PROFEPA to take the steps necessary to investigate the facts of a *denuncia popular*. This may include conducting inspections of the facility. The law gives you the right to assist PROFEPA by providing any information that you feel is relevant to the case.<sup>120</sup>

*How will PROFEPA resolve your denuncia popular?* Once PROFEPA has accepted your case, it may determine that there are no violations of environmental laws or standards. Or, it may find that violations do exist and sanction the company with fines, corrective action, or closure of the facility.<sup>121</sup> In its final decision, PROFEPA must indicate how it has evaluated any information that you provided.<sup>122</sup> If PROFEPA notifies you that it has sanctioned the company, you may need to ask PROFEPA to explain in more detail what the sanctions are and whether the company has complied with the sanctions.

*How long will it take PROFEPA to resolve your denuncia popular?* The LGEEPA does not set a deadline for resolving complaints. Under Article 17 of the Mexican Constitution, PROFEPA must attend to and resolve complaints in a prompt manner. In practice, it may take PROFEPA between six months and a year to resolve a *denuncia popular*.

*What if you don't agree with PROFEPA's resolution?* PROFEPA may decide not to issue sanctions against the company. Even if PROFEPA orders the facility to take certain actions, you may still feel that this order is not adequate to address the problem. In such cases, you may appeal the decision by filing

an administrative appeal for review (*recurso de revisión*). This process and the process for filing an *amparo* lawsuit in court are discussed later in this chapter.

#### *Filing a Denuncia Popular with the State Government*

The State Ecology Law for Chihuahua contains virtually the same provisions on public complaints as those contained in the LGEEPA. Therefore, the federal procedures described above also provide guidance for filing a complaint with the state of Chihuahua. Complaints about environmental problems that fall under state jurisdiction should be filed with SEDUE.<sup>123</sup> If a factory is discharging wastes to the public sewer system, the municipal water authority (JMAS) is responsible for investigating any related problems. (See Appendix 6 for contact information). If you are uncertain whether to file your complaint with the state or the federal government, you can send the complaint to both. You should submit original signed complaints to each, rather than photocopies.

#### *Filing a Denuncia Popular with the Municipal Government*

The following procedures for filing a *denuncia popular* in Ciudad Juárez are described in the city's Municipal Ecology Regulation.

Any person may file a complaint about any act or omission that causes or could cause environmental harm or ecological imbalance.<sup>124</sup> The city's web site gives the telephone number for filing a complaint with the Municipal Ecology Office: 207- 8844. (See Appendix 6 for agency addresses.)

The only requirement for the complaint itself is that it must contain enough informa-



tion to allow officials to locate the polluting source or identify the problem. After receiving your complaint, the Ecology Office must notify you within 15 working days how it will follow up on the complaint. The agency then has an additional 30 days to notify you of the results of its investigation and the measures taken. The law directs the Ecology Office to recommend or carry out appropriate measures for resolving the complaint.<sup>125</sup> If the city determines that the complaint falls under the state's jurisdiction, it must forward the complaint to the state, after taking any action needed to address immediate threats to the population.<sup>126</sup> The Ecology Office is required to maintain a registry of public complaints.

In addition, residents can file a *denuncia popular* about facilities that may be operating in violation of their land use permits or the municipal urban development plan. These complaints must be in writing and include your name and address; the name and address of the property that is affected; the name and location of the offending facility; and the reason for the complaint. Within 15 working days of receiving your complaint, the agency must inform you of how it will handle your complaint. The agency has another 30 working days to notify you of the results of its investigation.<sup>127</sup>

#### *Strategic Considerations for Filing a Denuncia Popular*

The *denuncia popular* can be very useful to communities that are struggling to deal with serious environmental problems. The law gives individuals the right to submit a complaint and requires the government to respond to the complaint. The government has to take steps to make it relatively easy for anyone to submit a complaint, and the agency must formally register and respond to the complaint.

Although public complaints are an important tool for communities, there are some important limitations that you should keep in mind before you file a complaint.

First, even though there are some deadlines provided in the federal and local laws, it may take months, or even years, to resolve your case. Strong community support can help keep the pressure on government agencies to investigate your case. It is also helpful if many individuals who are affected by the problem file complaints, rather than a single individual. If many complaints are filed about the same problem, the government may join the complaints in a single file.

Second, it may be difficult to get information about your case while it is being investigated by the government agency. It is important to stay in touch with the agency to check the progress of your case and to provide the agency with any additional information you find out about the violations.

Third, although the agency must take steps to verify your complaint, the law does not require the agency to take any particular action on your case. Therefore, your complaint may or may not lead the government to take a formal enforcement action against the facility. Even if the government sanctions the facility, the facility may not comply. Or, other problems may arise at the facility even after your complaint is resolved.

#### **Filing an Appeal for Administrative Review (*Recurso de Revisión*)**

When an individual feels that a government decision or order does not comply with environmental laws and standards, there are legal procedures for challenging that govern-

ment decision. In the hypothetical example of the La Paz neighborhood, if PROFEPA issued an enforcement order against the factory but the community feels that the environmental and public health problems are not being resolved, residents may want to challenge PROFEPA's enforcement order. One legal tool for appealing this type of administrative decision is the *recurso de revisión*, or appeal for review. This involves a review by the same agency that issued the original decision. Federal, state and municipal environmental laws all contain rules for appealing a government decision.

#### *Filing a Recurso de Revisión with Federal Authorities*

*What types of actions can be appealed?* The purpose of a *recurso de revisión* is to appeal a government decision in a case, and to have that government decision nullified or changed. The government's environmental decision may be appealed if it violates federal environmental laws and standards, and if the decision causes (or could cause) damage to natural resources, public health or quality of life.<sup>128</sup> This appeal is different from filing a public complaint, because the public complaint concerns the activities of a private party, such as a factory. The *recurso de revisión* concerns a decision or order that the government has issued.

Common situations for filing a *recurso de revisión* might be after SEMARNAT has issued an environmental impact statement or an operating license for a new facility. In those cases, the appeal would claim that the written decision or license do not comply with environmental law and standards.

In cases involving government enforcement actions, it may be possible for commu-

nity residents to file a *recurso de revisión* to appeal an enforcement order that PROFEPA has issued against a facility. The *recurso* might claim that the order does not comply with environmental laws and standards, and that it will allow the facility to continue harming the environment and the health of the community. (You can also challenge the government's denial of your request for public information; the procedure for filing a *recurso* in that type of case was discussed in Section II of this chapter.)

*Who may file a recurso de revisión?* A person who is affected by the unlawful or improper government act may file a *recurso de revisión*. This could include people who live in a community affected by the government's action. In a case involving a permit or environmental impact statement, this would mean the community surrounding the facility. In an enforcement case, the people living near a plant that is violating its discharge permit or disposing of waste on its property illegally might file a *recurso de revisión*. If PROFEPA issues a written enforcement order in response to a *denuncia popular* filed by the community, it is possible for the community to submit a *recurso de revisión* to challenge the government's order.

*Where do you file a recurso de revisión?* A *recurso de revisión* must be filed with the same agency that issued the decision you are appealing. In the case of enforcement decisions, the appeal would be filed with PROFEPA, and PROFEPA would decide the appeal. The decision on the appeal is made by an official who is at a higher level within the agency than the official who made the initial decision.

*What is the process for filing a recurso de revisión?* The procedures for the *recurso de revisión* are found in the Federal Law of

### FREE LEGAL ASSISTANCE

For federal matters involving acts or omissions of federal agencies, people can request free legal assistance from the Federal Institute of Public Defense (*Instituto Federal de Defensoría Pública* or IFDP). This agency is part of the federal judicial system, and is governed by the *Ley Federal de Defensoría Pública*. The agency provides free legal services to those who have scarce resources, and also to those who are retired or those who are unemployed, under-employed or temporarily employed. To obtain this assistance, you must submit a request to IFDP, which has delegations in all of the states.

See Appendix 6 for contact information, or go to the IFDP web site: <http://www.ifdp.cjf.gob.mx/Quees/mision.asp> (“*delegaciones*”).

Administrative Procedure (*Ley Federal de Procedimiento Administrativo* or LFPA). This law contains the requirements for all types of formal administrative proceedings involving the federal agencies, including administrative appeals. The law covers many aspects of the process, including how to initiate a case, how the government provides notifications during a case, how the government investigates a case, and how cases are decided.

*What is the time deadline for filing a recurso de revisión?* A *recurso de revisión* must be filed within 15 working days of the time that you received notice of the government act that you are appealing.<sup>129</sup>

*Do you need a lawyer to file a recurso de revisión?* It is important to have a lawyer help you with this legal process. There are various detailed technical requirements for filing a *recurso de revisión*. For example, you must show the offenses (*agravios*) committed by the agency. To do this you need to include legally valid reasons why the government incorrectly applied specific provisions of the law.

If you are not able to find a lawyer or if you choose to file an appeal on your own, you

must make sure that you satisfy all of the legal requirements for filing the appeal. You do not have to use a specific form or format for preparing your appeal, but your appeal must include the following elements.

- the name of the agency you are filing the appeal against;
- your name, and your address for receiving notifications and communications from the agency regarding the appeal;
- the decision or order that you are appealing;
- the date on which you had notification of the decision or order;
- the offenses (*agravios*) committed by the agency;
- where appropriate, a copy of the decision or order and the notification you received of that decision; and
- any proof or information you have to offer to support your claim that the decision or order does not comply with the law and should be changed.<sup>130</sup>

*How will the government respond to your recurso de revisión?* The government is required to examine all of the allegations contained in a *recurso de revisión*. The government may resolve your appeal by (1) confirm-

ing the original agency order or decision; (2) revoking the original order or decision (totally or partially); or (3) modifying the original order. If the resolution of your appeal orders the government to take a certain action, the government must comply within four months.<sup>131</sup> If you are not satisfied with the decision on your appeal, you may consider filing an amparo lawsuit against the federal authority, described later in the chapter.

#### *Filing an Appeal for Administrative Review with the State Government*

The State Ecology Law for Chihuahua includes procedures for appealing a government decision. The appeal is called a *recurso de inconformidad*. You have 15 days after being notified of the government decision to file the *recurso*. Your written appeal must be submitted to the agency that issued the original decision. (See Appendix 6 for addresses.) It may be submitted in person or by certified mail (with receipt of delivery).<sup>132</sup> The law requires that the written appeal include the same type of information included in the federal *recurso de revisión*, as well as a description of the harm that is resulting from the government's decision.<sup>133</sup> After admitting the appeal, the agency has 15 working days to evaluate the evidence submitted, and the person filing the appeal then has 3 days to respond. After this period, the agency will resolve the *recurso* by confirming, modifying or revoking the original decision.<sup>134</sup>

#### *Filing an Appeal for Administrative Review with the Municipal Government*

At the municipal level, the Municipal Ecology Regulation for Ciudad Juárez also includes procedures for filing a *recurso de inconformidad*. If the case involves water, the

appeal is submitted to the JMAS. Other environmental matters are appealed to the Municipal Judicial Office (*Dirección Jurídica Municipal*). The information to include in the written appeal is essentially the same as the information included in state appeals. The appeal must be submitted within 10 working days after you are notified of the government decision.<sup>135</sup> The law does not give any other time deadlines or procedures for the government to decide your appeal

#### *Strategic Considerations for Filing an Appeal for Administrative Review*

One the main considerations for filing an appeal for review is the technical nature of the proceeding. It is best to consult with a lawyer who can advise you whether to go forward with this type of appeal and who can help make the necessary legal arguments. Nevertheless, if you are not able to arrange for legal help, you can file the appeal on your own if you believe the original decision was decided wrongly. This will help to keep your case open with the government and you may be able to consult with a lawyer later on.

Another factor in filing an administrative appeal for review is the length of time it will take for the agency to decide the appeal. As with other legal strategies, it is vital that communities continue their organizing and education activities to pressure the public and the government to take appropriate action to stop polluting activities.

#### **Filing an Amparo Lawsuit**

The *recurso de revisión* involves administrative review of an agency decision. There is

also a legal tool that allows individuals to go to court to challenge an agency decision — the *amparo* action. This legal process is established by Articles 103 and 107 of the Mexican Constitution, and it is used to challenge any governmental action that violates individual rights guaranteed under the Constitution.

The *amparo* is a complex legal proceeding, and an individual should hire a lawyer to assist in this process. (As discussed above, you may be able to get free legal help through the Federal Institute of Public Defense.) Below are some of the general aspects of an *amparo* lawsuit to keep in mind if you are considering this legal action. The requirements for an *amparo* lawsuit are found in two main federal laws—the Amparo Law (*Ley de Amparo*) and the Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*).

*When can the amparo process be used?* An *amparo* suit can be used to challenge a decision or process by a governmental authority that violates the Mexican Constitution.<sup>136</sup> In the hypothetical example of La Paz, if residents filed a *denuncia popular* concerning pollution from the auto parts factory but the government failed to resolve the complaint in a timely manner, the residents might consider filing *amparo* lawsuits. Or, if PROFEPA did issue an enforcement order against the factory, but the order did not address serious environmental problems, residents might consider filing an *amparo* suit. An *amparo* suit might also be filed if the government fails to respond to your request for information or denies you the information. In general, before filing an *amparo* suit you are required to try all ordinary administrative processes for resolving your case, such as the *recurso de revisión*. There are some exceptions to this principle, which you could discuss with your lawyer.

In order to file an *amparo*, you must claim that the government's actions violate your constitutional rights. Certain articles of the Mexican Constitution are related to the types of harm caused by serious environmental problems. For example, Article 4 states that every person has the right to an environment that is suitable for his development and well being. Article 14 says that no person may be deprived of life, liberty, property, possessions, or rights without due process of law.

An *amparo* can be filed against any level of governmental authority—federal, state or local—provided that the government action violates the federal constitution.

*Who can file an amparo action?* An *amparo* lawsuit can only be brought by a party that has a valid legal interest in the matter—that is, someone who has suffered harm as a result of the unconstitutional action by the government.<sup>137</sup> If a community resident files an *amparo* in a case involving pollution from a neighboring plant, the resident might allege that his property or health has been harmed as a result of the government's action. It is not clear whether a person can file an *amparo* suit in a case if the person is claiming general harm to the environment, rather than harm to his own property or health. For this reason, it is more difficult for an organization to bring an *amparo* suit protesting the government's failure to enforce the environmental laws. Nevertheless, an *amparo* lawsuit can be brought by more than one person if all of the individuals have suffered harm. In such a case, the people bringing the suit must designate one of themselves as the common representative.<sup>138</sup>

A party may bring an *amparo* suit whether or not he or she is a resident or citizen of Mexico.

*What can a court order in an amparo action?*

In an *amparo* action, the court may order the immediate suspension of the government decision that is being challenged, while the *amparo* is decided.<sup>139</sup> In its final decision, the court may deny the *amparo*, or it may grant the *amparo* and modify the government decision that is being challenged.

*How long does the legal process generally take?*

The law does not establish a specific time period for the court to decide an *amparo* action. The length of time depends partly on the complexity of the case.

*Considerations for Using the Amparo Process*

Like the administrative *recurso de revisión*, the *amparo* process is a technical one that requires legal assistance. If you are considering filing a lawsuit, it is best to consult immediately with a lawyer, since there are time deadlines. Another important factor in considering whether to file an *amparo* suit is the limitation on who can file the lawsuit. Since the *amparo* is limited to individuals who have been directly harmed by the wrongful government action, the court may not accept your lawsuit if you are trying to remedy an environmental problem that doesn't affect your own health or property.

There may be other types of lawsuits that you can file—for example, the “*demanda de nulidad*”—if you feel that the government has not responded properly to your public complaint. These also involve complex legal requirements, and it is best to consult with a lawyer about whether this legal tool is appropriate in your case.

## Other Avenues for Environmental Enforcement

### *Criminal Complaints*

Federal and state laws establish *criminal* penalties for certain environmental violations. It is important to keep in mind that the government has discretion in pursuing criminal matters. The government may decide that the actions do not constitute crimes, or that there is not enough evidence to bring a criminal prosecution against the company. Nevertheless, there are steps that you can take to help ensure that the government pursues a criminal prosecution in appropriate cases.

The federal government agency in charge of enforcement in criminal cases is the Public Ministry, which is part of the Attorney General's office (*Procuraduría General de la República* or PGR). The PGR has three special prosecutors for environmental crimes.

Any person can submit a complaint about possible federal criminal violations directly to the local office of the PGR.<sup>140</sup> [See Appendix 6 for contact information.] Although some environmental crimes can only be pursued if PROFEPA files a complaint, you can always assist by providing the Public Ministry with evidence or information.

In addition to sending your complaint by mail or filing it in person, you can submit a complaint over the internet. The PGR's website includes a form that can be sent electronically. See <http://www.pgr.gob.mx/servicios/mail/plantilla.asp?mail=2>. The form includes space for you to provide your contact information, information about the party who allegedly committed the crime, the facts of the crime, and any evidence you have

regarding the case. (A copy of the form is included in Appendix 10.) It is not necessary to use the form provided on the agency web site, and you can also submit your complaint through the mail.

The state of Chihuahua, like other states, has its own Attorney General for prosecuting crimes that fall within state jurisdiction. According to the State Ecology Law for Chihuahua, however, environmental criminal matters are pursued only upon a legal complaint issued by the Secretariat of Ecology.<sup>141</sup> You can, though, provide the agency with information about possible environmental crimes.

### *Human Rights Complaints*

Communities that are affected by serious environmental problems may consider filing a human rights complaint. A human rights complaint states that a government agency or official is responsible for violating a person's basic human rights. Human rights complaints usually involve a serious harm (or threat of serious harm) to an individual or their property.

Human rights are universal rights held by all people, regardless of their national origin, race, religion, gender or political affiliation. Although there is no precise listing of human rights, these rights are found in the Mexican Political Constitution and in international treaties ratified by Mexico. They include the basic rights to life and liberty—for example, freedom of speech and association, and freedom from unjust imprisonment and physical mistreatment. Some treaties that Mexico has ratified include environmental rights. For example, the American Human Rights Convention on Social, Economic and Political Rights (San Salvador Protocol) states

that all people have the right to live in a healthy environment and that the governments participating in the Convention should protect, preserve and improve the environment.<sup>142</sup> For a listing of international human rights agreements ratified by Mexico, see <http://www.cndh.org.mx/juridica/tratinter/traint.htm>.

In Mexico, there are federal and state Human Rights Commissions that have been created to review human rights complaints and issue recommendations about whether further action is appropriate. Federal and state laws establish how these complaints are handled. The following brief summary of the complaint process may help you determine if you wish to pursue this type of complaint.

The **National Human Rights Commission** (*Comisión Nacional de los Derechos Humanos* or *CNDH*) is an autonomous federal entity. One of its functions is to receive and investigate complaints that the actions or omissions of a federal agency or federal official (other than the courts) have violated a person's basic human rights. If the Commission finds that a violation has occurred, it will issue a written recommendation to the appropriate authority. This recommendation is not mandatory, but the authority is required to state whether it accepts the recommendation and (if so) to show how it will comply.<sup>143</sup>

Any person may file a complaint with the Commission, usually within one year of the violation of human rights that they are complaining about. The complaint must be presented in writing (unless the case is urgent). There is no specific format for the complaint, but it must include basic information about the person filing the complaint and the facts of the case.<sup>144</sup> It is not necessary to state

specifically which human right is being violated. The web site of the Commission contains more information about the process for filing and resolving complaints. It also contains copies of recommendations that the Commission has made in other cases. See <http://www.cndh.org.mx/index.htm>. (Appendix 6 contains agency contact information.)

It is important to know that the federal government has adopted a regulation that may limit whether CHDH will accept human rights complaints relating to environmental problems. The Internal Regulation of the CNDH states that the Commission will not admit complaints if the alleged violation falls under the jurisdiction of PROFEPA. Instead, the Commission will turn the complaint over to PROFEPA.<sup>145</sup> However, another regulation of the CNDH permits the Commission to accept cases that involve allegations of human rights violations against government officials who are charged with handling complaint.<sup>146</sup> For example, if PROFEPA fails to respond to a *denuncia popular* or to properly investigate the complaint, the failure of the officials and the resulting violation of human rights might be the basis of a complaint to CNDH.

In practice, however, if you submit a complaint to CNDH that involves an environmental issue, it is possible that the Commission will turn it over to PROFEPA. If this happens, you may wish to talk with a lawyer about whether to file an *amparo* lawsuit challenging the decision. You might also want to consult a lawyer *before* filing a human

rights complaint, to discuss the best way to formulate your complaint.

The CNDH also handles another type of matter—appeals claiming that a *local* agency has not responded to a complaint or has not actively investigated a complaint that involves human rights violations. Such appeals must be filed within 30 days of the agency's failure to respond, or within 6 months in the case of inactivity of the agency.<sup>147</sup>

State commissions hear human rights complaints against state or local public agencies and officials. For example, in Chihuahua the **State Human Rights Commission** (*Comisión Estatal de Derechos Humanos*) follows procedures similar to the federal complaint procedures. Its recommendations are not binding, but it does have jurisdiction to follow up to see whether a government agency is complying with the Commission's recommendations. The Law of the State Human Rights Commission (*Ley de la Comisión Estatal de Derechos Humanos*) establishes the Commission and the processes for handling complaints. On the web site for the Commission you can review the law as well as other information about the procedures for filing a complaint. See <http://www.cedhchihuahua.org/> ("*como presentar una queja*"). The web site also lists complaints received and recommendations issued by the Commission for the past few years. See <http://www.cedhchihuahua.org/> ("*estadísticas*"). Appeals of decisions of the state commissions are handled by the National Human Rights Commission.



Notes

1. Political Constitution of the United Mexican States Art. 4
2. Political Constitution Arts. 27, 73
3. Political Constitution Arts. 115III, V
4. National Waters Law Art. 113
5. The Municipality is currently modifying this regulation.
6. See [http://www.cofemertramites.gob.mx/intranet/co\\_dialog\\_PublishedTramite.asp?coNodes=1329937&num\\_modalidad=0](http://www.cofemertramites.gob.mx/intranet/co_dialog_PublishedTramite.asp?coNodes=1329937&num_modalidad=0)
7. See [http://www.cofemertramites.gob.mx/intranet/co\\_dialog\\_PublishedTramite.asp?coNodes=1329936&num\\_modalidad=0](http://www.cofemertramites.gob.mx/intranet/co_dialog_PublishedTramite.asp?coNodes=1329936&num_modalidad=0)
8. Air Regulation Arts. 18, 21, 22
9. Air Regulation Art. 20
10. Air Regulation Art. 11
11. LGEEPA Art. 111bis
12. Air Regulation Art. 11
13. State Ecology Law Art. 9
14. Air Regulation Art. 17
15. LGEEPA Art. 20
16. LGEEPA Art. 122
17. LGEEPA Art. 123; State Ecology Law Art. 102; Municipal Ecology Regulation Art. 51
18. LGEEPA Art. 122; State Ecology Law Arts. 102-107; Municipal Ecol. Reg. Arts. 45-98
19. LGEEPA Art. 121; Water Law Art. 88
20. Water Regulation Arts. 138, 139, 135
21. National Waters Law Art. 89
22. LGEEPA Art. 121; State Ecology Law Arts. 103, 105; Municipal Ecol. Reg. Arts. 80, 90
23. Municipal Ecology Regulation Arts. 90, 93, 99-109
24. Waste Law Arts. 5XIX, 9V
25. Waste Law Art. 65
26. Waste Law Art. 56
27. Waste Law Art. 45
28. Waste Regulation, Arts. 46, 75
29. Waste Regulation Art. 48-51
30. Waste Regulation Art. 56
31. Waste Law Art. 68; Waste Reg. Arts. 129-130
32. Waste Law Arts. 75, 76
33. Waste Regulation Arts. 132-147
34. Waste Regulation Arts. 144-145
35. Waste Law Art. 70
36. LGEEPA Art. 142; Waste Law Arts. 85-6
37. Waste Reg. Arts. 108, 111
38. Waste Regulation Art. 114
39. Waste Law Arts. 89, 91
40. Waste Law Art. 88, 94; Waste Reg. Arts. 121-125
41. LGEEPA Art. 153(VI); Waste Law Art. 93
42. Waste Law Arts. 50, 80; Waste Regulation Arts. 85
43. Transport Regulation Arts. 58-101
44. Waste Law Arts. 27-34; State Ecology Law Arts. 152-3
45. LGEEPA Arts.147-149
46. For more information, see “Decreto por el que se declara por causa de utilidad pública el establecimiento de la Zona Intermedia de Salvaguardia en torno de la Planta de la Empresa Química Fluór, S.A. de C.V. Municipio de Matamoros, Tamps.”, published in the *Diario Oficial de la Federación* (Jan. 11 1991).
47. State Ecology Law Art. 144; Municipal Ecology Regulation Art. 145
48. State Ecology Law Art. 161
49. Municipal Ecology Regulation Arts 139
50. State Ecology Law Arts. 139-141
51. Waste Law Arts. 95-100
52. LGEEPA Arts. 162-166; State Ecology Law Arts.199-207; Municipal Ecology Regulation Arts. 218-225
53. LGEEPA Art. 11(IX); State Ecology Law Art. 199
54. LGEEPA Art. 167; State Ecology Law Art. 205; Municipal Ecology Regulation Art. 225
55. LGEEPA Art. 173; Water Law Art. 121; State Ecology Law Art. 215
56. State Urban Development Law Arts. 203-218
57. LGEEPA Arts. 170-171; Waste Law Art. 104
58. State Ecology Law Art. 211
59. LGEEPA Art. 171(I)
60. LGEEPA Art. 171
61. National Waters Law Art. 121
62. State Ecology Law Art. 212; Municipal Ecology Regulation Art. 231
63. Municipal Ecology Regulation Art. 231(I)
64. LGEEPA Art. 171(II)
65. LGEEPA Art. 175
66. National Waters Law, Art. 122; Water Reg. Art. 153
67. Air Reg. Arts. 14, 15
68. State Ecology Law Art. 212; Municipal Ecology Regulation Art. 231
69. Waste Law Art. 112(IV)
70. Water Reg. Arts. 149, 150
71. State Ecology Law Art. 183
72. Municipal Ecology Regulation Arts. 231(IV), 120

---

## Environmental Enforcement in the U.S.–Mexico Border Region

73. LGEEPA Art. 171(III); State Ecology Law Art. 212(III); Municipal Ecology Regulation Art. 231(III)
74. LGEEPA Art. 172
75. LGEEPA Art. 124
76. State Ecology Law Arts. 214,106
77. Municipal Ecology Regulation Arts. 50, 75, 89
78. LGEEPA Arts. 182, 169, 202
79. LGEEPA Art. 182
80. Fed. Penal Code Arts. 414-416
81. Fed. Penal Code Art. 60
82. Fed. Penal Code Arts. 414-416, 420
83. Fed. Penal Code Art. 421
84. State Ecology Law Arts. 225-231
85. LGEEPA Art. 73
86. Political Constitution Arts. 6, 8
87. LFTAIPG Art 7
88. LFTAIPG Art 7
89. Waste Law Arts 89, 93
90. Waste Regulation Art 45
91. Waste Law Art. 50(VI); Waste Reg. Art. 26
92. LFTAIPG Arts. 13-19
93. LFTAIPG Art. 40
94. See [http://www.sisi.org.mx/Manual\\_solicitantes.pdf](http://www.sisi.org.mx/Manual_solicitantes.pdf).
95. See [www.ifai.org.mx/test/new\\_portal/costos.htm](http://www.ifai.org.mx/test/new_portal/costos.htm)
96. LFTAIPG Art. 44
97. LFTAIPG Art. 53
98. LFTAIPG Art. 49
99. LFTAIPG Art. 54
100. LFTAIPG Art. 52
101. LGEEPA Arts 159(Bis3)—159(Bis6)
102. LTAIPECH Art. 8
103. LTAIPECH Art 50
104. LTAIPECH Art. 20
105. LTAIPECH Arts. 29-32
106. LTAIPECH Art. 10
107. LTAIPECH Art. 11
108. LTAIPECH Art. 9
109. LTAIPECH Art. 11
110. LTAIPECH Art. 12
111. LTAIPECH Arts. 13-15
112. LTAIPECH Arts. 62-64
113. LTAIPECH Arts 70, 72, 77-79
114. LTAIPECH Arts. 56-61
115. PROFEPA, "*Justicia Ambiental y Atención de Denuncias, Quejas Ambientales y Participación Social*" (2006) at 91–92, available at: <http://www.profepa.gob.mx/Profepa/Conozcanos/Informes/InformesAnuales.htm>
116. LGEEPA Art. 161
117. General Health Law, Art. 60
118. LGEEPA Art. 190
119. LGEEPA Arts. 191,192
120. LGEEPA Arts. 192,193
121. LGEEPA Art. 199
122. LGEEPA Art. 193
123. State Ecology Law Art. 184
124. Municipal Ecology Regulation Art. 226
125. Municipal Ecology Regulation Arts. 227-229
126. State Ecology Law Art. 186; Municipal Ecology Regulation Art. 228
127. State Urban Development Law Arts. 194-197
128. LGEEPA Art. 176
129. LGEEPA Art. 176; LFPA Art. 85
130. LFPA Art. 86
131. LFPA Arts. 91, 92
132. State Ecology Law Arts. 219, 220
133. State Ecology Law Art. 221
134. State Ecology Law Arts. 222, 224
135. Municipal Ecology Regulation Arts. 238-239
136. Amparo Law Art. 1
137. Amparo Law Art. 4
138. Amparo Law Art. 20
139. Amparo Law Art. 173
140. LGEEPA Art. 182
141. State Ecology Law Art. 231
142. San Salvador Protocol Art. 11
143. Law of the CNDH Arts. 44-46
144. Law of the CNDH Arts 25-29
145. CNDH Reg. Art. 12
146. CNDH Reg. Arts. 11
147. CNDH Reg. Arts. 149, 151

---

## Chapter 4

# *Bi-National Mechanisms for Community Environmental Enforcement*

The last two chapters presented legal tools in Mexican and U.S. laws that people can use when they believe that a facility may be violating the law and endangering the community. In some cases involving serious border environmental pollution, these legal tools may not address the problem adequately. If you have tried to enforce the environmental laws of your country, or to get your government to enforce the laws, you may want to raise the issue in a bi-national forum. There are a number of ways to do this. This chapter describes two formal processes that may provide a possible avenue for you to address environmental problems: the U.S.-Mexico Border 2012 Program and the Submission on Enforcement Matters Process of the North American Commission for Environmental Cooperation. These processes have limitations, but they have each been used with some success to address certain border environmental justice problems. This chapter also describes briefly the option of presenting a complaint to the Inter-American Commission on Human Rights.

### SECTION I: SUBMISSIONS TO THE COMMISSION FOR ENVIRONMENTAL COOPERATION

---

#### Background

When Mexico, the U.S. and Canada signed NAFTA (the North American Free Trade Agreement) in 1993, the countries also signed a side agreement for environmental protection. This side agreement (the North American Agreement on Environmental Cooperation or NAAEC) states that each country is responsible for protecting the environment and effectively enforcing its laws.<sup>1</sup>

The environmental side agreement also set up a three-nation organization—the North American Commission for Environmental Cooperation (CEC). The purpose of the CEC is to “address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law.”<sup>2</sup> The CEC carries out research and other projects to help advance the environmental protection programs of each of the countries. Another main function of the CEC is to consider complaints that the governments are not effectively enforcing their environmental

laws. This process is known as the Submission on Enforcement Matters (SEM or Citizen Submission) process.

The SEM process is an avenue that is open to residents of Mexico, the U.S., or Canada who feel that their government is not effectively enforcing its own environmental laws. Since 1995 the CEC has received 60 submissions. The greatest number of submissions has been from residents in Mexico, while the fewest are from the U.S.<sup>3</sup>

If you have used the legal tools described in Chapters Two or Three of this handbook, but the government still has not effectively enforced its laws to resolve the environmental problem, you might consider using the CEC's SEM process. For example, the Mexican non-governmental organization COSYD-DHAC (*Comisión de Solidaridad y Defensa de los Derechos Humanos*) filed a submission on behalf of indigenous peoples in the Tarahumara region of Chihuahua. The submission concerned illegal logging and other resource extraction activities. The submission stated that the Mexican government denied the communities environmental justice because it failed to: consult with indigenous peoples prior to issuing logging permits, process citizen complaints, prosecute environmental crimes, or provide access to environmental information. This case and all of the other submissions filed with the CEC can be found on the CEC website: <http://www.cec.org/citizen/index.cfm?varlan=english>.

The main limitation of the submission process is that the CEC cannot *require* a country to take enforcement action. The process is designed mainly to facilitate more effective enforcement by “bringing to light” specific problems. If the CEC finds that a submission

does raise a valid question about effective environmental enforcement, the CEC will prepare a “Factual Record.” The Factual Record describes in detail the environmental problem and the steps that the government has taken (or not taken) to enforce its environmental laws.

The rest of this section describes how you file a submission, how the CEC handles submissions, and some of the strategic considerations for using this process. Most of the information presented here comes from the CEC's Guidelines for Submissions on Enforcement Matters, which can be found on the CEC website: [http://www.cec.org/citizen/guide\\_submit/index.cfm?varlan=english](http://www.cec.org/citizen/guide_submit/index.cfm?varlan=english).

### How to File a Submission

*Who can file a submission?* Any nongovernmental organization or person residing in Mexico, the U.S. or Canada may file a submission to the CEC. It is not necessary to hire a lawyer to file a submission, but it is important to remember that this is a quasi-legal process that can become fairly technical. It may be useful to have the assistance of a lawyer to file the submission and to help with any follow-up information that you need to provide to the CEC.

*How do you file a submission?* You may not file your submission only by fax or email. You must send a copy by mail to the following CEC address:

Commission for Environmental  
Cooperation  
393, rue St-Jacques Ouest, Bureau 200  
Montréal (Québec)  
Canada H2Y 1N9

The CEC prefers that you include a computer disk containing the submission along with the paper copy, if possible, or to send a copy of the written submission by email.

*What must be included in the submission?* The submission must be in writing, and it may be submitted in English, Spanish or French. There is no specific format that must be used, but the CEC does have a page limit. Your entire submission may not exceed 15 typed (regular-sized) pages, not counting any supporting documents.

The focus of the CEC process is on the *failure of governments to enforce their environmental laws*. Therefore, this must be the central claim of a submission. The submission must include the following information:

- The name and mailing address of the person or organization filing the submission;
- The specific **environmental** law—and the sections of that law—that are not being effectively enforced by the government. Keep in mind that Article 45 of the NAAEC contains a definition of “environmental law,” and the CEC does not address enforcement of laws that do not meet this definition, even if there are environmental impacts;
- A description of the facts of your case; and
- Any documents that support your claim, including correspondence with government agencies.

Your summary of the facts should include: (1) how you or others communicated the problem to relevant governmental authorities (including any private remedies you pursued); (2) what actions the government took to address the problem; (3) what harm has resulted from the failure of the government to respond effectively; and (4) how CEC’s

study of the case would help resolve the problem.

For each case that goes through the SEM process, the CEC publishes the submission, the government response, and all of the decisions that the CEC issues. You can review these documents at: <http://www.cec.org/citizen/index.cfm?varlan=english>.

### How the CEC Responds to Submissions

The CEC will notify you in writing once it has received your submission. If the CEC decides that the subject of your submission does not meet the basic requirements for review under the SEM process, the CEC will tell you its reasons. You will then have 30 days to file a revised submission. If the revised submission still does not satisfy the CEC requirements, the CEC will end your case.

Following are the steps that the CEC takes to address submissions that meet the basic requirements for review.

*Requesting a response from the government.* The CEC will first decide whether to request a response to the submission from your government. One thing the CEC will consider in making this decision is whether you have made reasonable efforts to pursue enforcement and to resolve the matter before filing the submission. If the CEC decides *not* to request a response from the government, it will give you 30 days to submit additional information. If the CEC still does not change its decision, it will close your case.

If the CEC decides to request a response from the government, the government will have 30 days (in most cases 60 days) to

respond. If your government informs the CEC that there is an ongoing legal proceeding to address the problem raised in your submission, the CEC may close the case. Otherwise, once the CEC receives the government response, it will consider whether to prepare a Factual Record.

*Deciding whether to prepare a Factual Record.* Two different bodies within the CEC are involved in the decision whether to prepare a Factual Record. The CEC's Secretariat (the CEC staff) makes the first decision. If the Secretariat decides that a Factual Record should *not* be prepared, it will notify you of the reasons in writing and close the case. If the Secretariat decides that a Factual Record *should* be prepared, it will send this recommendation to the full Council (the three member nations of the CEC).

The Council will then make the final decision, by a two-thirds vote. If the Council decides against a Factual Record, the case will be closed. If the Council decides that a Factual Record should be prepared, it will instruct the Secretariat to do so. Some of the factors that are considered in deciding to prepare a Factual Record are: the type of harm that is alleged; whether private remedies have been pursued; whether the CEC can advance the goals of the environmental side agreement by addressing the matter; and whether the government response leaves open important questions about enforcement that were raised in the submission.

Recently, for example, the CEC decided to prepare a Factual Record for a submission alleging that Mexico is failing to enforce its environmental laws regarding air pollution in Hermosillo, Sonora. The submission claims that the state and municipal governments are failing to implement environmental pro-

grams required by law, including air quality monitoring and vehicle inspections.<sup>4</sup>

*Preparing a Factual Record.* The Factual Record is the final product in the review process. It consists of a summary of the submission and the government response; a description of any other information obtained by the CEC; and a detailed discussion of the facts of the case. When the CEC is preparing the Factual Record, it may consider additional information beyond what was presented in the submission. This information may come from the parties, from other experts, or from the CEC's own research.

The CEC's Secretariat submits a draft Factual Record to the Council, and the parties have 45 days to provide comments on the accuracy of the draft. The Secretariat will then prepare the final Factual Record for the Council to approve. Once the Council receives the final Factual Record, it decides by a two-thirds vote whether to make the Factual Record public, normally within 60 days. However, there are no strict deadlines for the CEC to issue a final Factual Record. The CEC has committed to "making best efforts . . . to ensure that submissions are processed in as timely a manner as is practicable, such that ordinarily the submission process will be completed in no more than two years following . . . receipt of a submission."<sup>5</sup>

### **Strategic Considerations for Filing a Submission**

The CEC submission process can help focus public attention more sharply on an environmental problem that has not been adequately addressed by government enforcement agencies. One example of a case that has used the submission process effec-

tively is *Metales y Derivados*, an abandoned lead smelter in Tijuana. After many years of advocating for the government to clean up the abandoned hazardous waste site, the residents of Colonia Chilpancingo joined with the Environmental Health Coalition of San Diego to file a submission.

After considering the matter, the CEC prepared a detailed Factual Record in 2002 that discussed the environmental contamination at the site. The Factual Record concluded that “the site. . . is a case of soil contamination by hazardous waste in relation to which measures taken to date have not prevented the dispersal of pollutants or prevented access to the site. . . .” and that “no actions have been taken to restore the soil to a condition in which it can be used. . . .”<sup>6</sup>

Having a quasi-independent, tri-national institution acknowledge the seriousness of the problem in your community can be a powerful tool to bring about governmental action. As described in the next section of this Chapter, U.S. and Mexican government agencies have been working with the community over the past two years to clean up the *Metales* site.

The *Metales* case and others highlight some important things to consider before filing a CEC submission.

First, as with other legal processes, it is important that you use the SEM process as a

tool to assist with other community organizing strategies. Whether or not to file a submission will depend on your overall organizing strategy.

Second, one way to emphasize the serious nature of the environmental problem you are facing and to raise the profile of the case is to have many individuals and organizations join in filing a submission. The CEC may group together two or more submissions that relate to the same facts and allegations.

Third, be prepared for a long process. It takes years from the time a submission is filed to the time a Factual Record is published. This will require you to devote some time and resources to the process to file your submission and to provide other information as needed during the CEC’s investigation and decision making process. If you hire a lawyer, that will add costs unless you are able to find a lawyer who will donate his or her services.

Finally, it is important not to rely completely on the CEC submission process. The CEC does not require governments to take enforcement actions, so the submission process will not solve a specific environmental problem by itself. The next section discusses another possible bi-national mechanism for advancing your organizing and other activities to enforce environmental laws and standards.

## SECTION II: COMMUNITY PARTICIPATION IN THE U.S./MEXICO BORDER 2012 PROGRAM

---

Border 2012 is a program of environmental protection that involves U.S. and Mexican government officials at the federal, state and local levels. The program's formal structure provides community residents with a possible bi-national forum for addressing local environmental justice issues. EPA's Border 2012 web site is available in both English and Spanish: [www.epa.gov/border2012](http://www.epa.gov/border2012).

### Background

The Border 2012 Program is a 10-year joint effort of the United States and Mexico to address environmental and public health problems in border communities. It is the follow-up to the Border XXI program. The official mission of Border 2012 is: "To protect the environment and public health in the U.S.-Mexico border region, consistent with the principles of sustainable development."<sup>7</sup> The Program has six general goals relating to: (1) Water Contamination; (2) Air Contamination; (3) Land Contamination; (4) Environmental Health; (5) Chemical Accidents and Releases; and (6) Enforcement. These are the main areas of program activity, and each goal has several specific objectives for measuring progress.

The legal basis of the Border 2012 Program is the "*La Paz*" Agreement, which was signed by the two countries in 1983. Through this Agreement, the U.S. and Mexico committed to work together to address environmental problems in the border region—defined as the area within 62.5 miles (100 km) of the

U.S.-Mexico boundary. The Agreement authorizes cooperative projects and establishes a framework for bi-national consultation on environmental problems. Article Two of the Agreement states that the U.S. and Mexico will "undertake, to the fullest extent practical, to adopt the appropriate measures to prevent, reduce and eliminate sources of pollution in their respective territory which affect the border area of the other."<sup>8</sup> There are also Annexes to the La Paz Agreement that cover specific issues, such as air pollution, sewage treatment, cross-border movement of hazardous wastes and substances, and emergency response.

### Structure

The U.S. EPA and Mexico's SEMARNAT are the National Coordinators who oversee the Border 2012 program. A National Coordinators Meeting is supposed to be held annually to review progress under the program and identify priority activities.

The program has several "Workgroups." These are coordinating bodies that include representatives from federal, state, local, and tribal governments. The Workgroups also may include bi-national organizations, non-governmental and community-based organizations, academic institutions, and the private sector. Workgroups fall into two major categories—border-wide or regional.

**BORDER-WIDE WORKGROUPS.** These are three Workgroups that cover broad, border-wide issues. One is the Cooperative Enforcement and Compliance Workgroup. The other two address environmental health, and emergency response/preparedness. (There are also border-wide "policy forums" that address air, water and waste policy issues.)



### **BORDER 2012 TASK FORCES AND WORKGROUPS**

Community residents living in the Texas/Chihuahua border region who want to participate in Border 2012 enforcement activities will be interested mostly in two groups: the Border-Wide Enforcement Workgroup, and the enforcement Task Force for their region (for example, the Texas-New Mexico-Chihuahua Enforcement Task Force). In addition, other Task Forces (such as those dealing with Waste), may also be involved in issues such as abandoned waste sites or transportation of hazardous wastes.

**REGIONAL WORKGROUPS.** These are four Workgroups that look at multiple environmental issues in a particular region of the border:

- Texas, New Mexico and Chihuahua
- Texas, Coahuila, Nuevo León and Tamaulipas
- California, Baja California
- Arizona, Sonora

Each of these Regional Workgroups has “Task Forces” that address specific regional priority issues and projects. For example, some of the Task Forces for the Texas-New Mexico-Chihuahua region are the Cooperative Enforcement and Compliance Task Force, the Environmental Health Task Force, and the Waste Task Force.

#### **Enforcement Activities under the Border 2012 Program**

The Border 2012 Program is not primarily an enforcement program, but it has three general enforcement-related goals: (1) to increase the number of border industries using voluntary compliance or self-audits; (2) to determine the highest-risk pollution sources in the border and set priority actions to lower those risks; and (3) to increase com-

pliance in these high-risk priority areas.<sup>9</sup> The Program also tries to strengthen cooperation between the U.S. and Mexico on enforcement matters. In the past, this has involved training activities, technical (or, in some cases, financial) assistance, and coordination on specific enforcement cases.

Joint enforcement actions involving both countries are not common, but there have been some cases involving joint inspections or information-sharing about specific facilities. The countries have also been involved in the high-profile case of *Metales y Derivados*, the abandoned lead-smelter in Tijuana. The joint activities in the *Metales* case have involved cleanup of the site, rather than enforcement against the company. The case is particularly important as a model for formal community participation. (See Box below.)

Another enforcement-related issue under Border 2012 is the cross-border shipment of hazardous wastes. Currently, there is no comprehensive system for tracking the movement of these wastes—from the time they cross the border to their ultimate destination—to make sure that the final handling of the waste complies with legal standards. Enforcement of cross-border waste shipments is the responsibility of each country’s environmental and customs agencies. Mexico and

the U.S. have separate systems for tracking shipments, and the systems rely on companies submitting paper forms. This paper-based system makes it difficult for each country to coordinate among its own agencies, and to share information with the other country.<sup>10</sup>

EPA recently improved its paper-based system by adopting a new, standardized hazardous waste manifest form to replace the various forms used by the federal and state governments. However, the agency has not yet created an electronic system for submitting the forms. You can find the new form, as well as other information about U.S. and Mexican requirements for cross-border shipments, on EPA's Border Compliance Assistance Center website, [www.border-center.org](http://www.border-center.org). As part of Border 2012, EPA is also working to develop new radiofrequency identification (RFID) technology for tracking movement of hazardous wastes. According to the agency, RFID could provide "near-real-time" notice to EPA when wastes cross the border and arrive at a waste treatment or disposal facility in the U.S.<sup>11</sup> According to a U.S. official, an RFID pilot is expected in 2007 for the Paso del Norte area.

Another 2006 priority of the Border 2012 program is to strengthen inspection capacity at ports of entry and at industrial facilities.<sup>12</sup> Currently, inspections are done for only a fraction of the hazardous waste shipments that cross the border. Federal agencies from the U.S. and Mexico and from Arizona have held joint training exercises to improve inspections at the border, and the U.S. EPA is developing new guidelines for coordinating these inspections throughout the border region.<sup>13</sup>

### **Community Participation in Border 2012 Enforcement Activities**

Border 2012 emphasizes a "bottom-up approach." It is one possible mechanism for community residents to address their concerns about environmental enforcement generally, or about a specific polluting facility. As with any of the strategies discussed in this handbook, however, it is important to consider the *limitations of the process*. Border 2012 will not be an effective vehicle for addressing every individual environmental justice problem. Results may be hard to achieve because of: (1) the limited resources of the Border 2012 Program to address an enormous array of border environmental problems; (2) the confidential and politically-sensitive nature of cross-border enforcement actions; and (3) the large amount of time and resources that community residents may need to invest to pursue action under Border 2012.

Nevertheless, the formal Guiding Principles of the Border 2012 Program, founded in the La Paz Agreement, emphasize community participation:

- Improve stakeholder participation and ensure broad-based representation from the environmental, public health, and other relevant sectors;
- Foster transparency, public participation, and open dialogue through provision of accessible, accurate, and timely information;
- Strengthen capacity of local community residents and other stakeholders to manage environmental and environmentally-related public health issues.<sup>14</sup>

As with all processes described in this handbook, if the community is well organized, the chances of being effective are much

### **Border 2012 and the Cleanup of *Metales y Derivados*\***

*Metales y Derivados* was a secondary lead smelter and battery recycling facility located in Tijuana. In 1994, the Mexican government ordered the facility closed for environmental violations. The U.S. owner abandoned the site and fled back to the United States, leaving behind thousands of tons of soil contaminated with lead and other heavy metals. It has been widely recognized that these abandoned hazardous wastes pose an ongoing threat to the health of neighbors in the Colonia Chilpancingo. The CEC recognized these problems in its 2002 Factual Record, described in the preceding section. Since the time the facility was abandoned, residents of the Colonia and other activists have organized and advocated for the governments to take action to clean up the site.

Finally, after many years of pressure from the environmental justice community on both sides of the border, and years of bi-national discussions, there has been significant progress. In 2004, several Mexican government agencies—federal, state and local—signed an Agreement of Coordination for the cleanup of the *Metales* site. The Agreement, consistent with Border 2012's goal of "Reducing Land Contamination," established a four-phase remediation program: (1) risk reduction; (2) site characterization and risk assessment; (3) alternative analysis and selection of remedy; and (4) carrying out the selected remedy.

This Agreement was not the only one signed by the government in 2004. At the same time, the federal and state environmental agencies signed a landmark Agreement of Collaboration *with community residents*. The Agreement established the participation of the community in the *Metales* cleanup project by creating a Workgroup. In addition to federal and state officials, the Workgroup includes the Environmental Health Coalition of San Diego and its Tijuana affiliate, the *Colectivo Chilpancingo Pro Justicia Ambiental*, whose members are residents of Colonia. This is the first time that a Mexican border community has been formally included in a technical workgroup responsible for overseeing the planning and cleanup of a site. An important aspect of the Workgroup is that it operates by consensus. The Workgroup has held some of its formal sessions in the Colonia itself.

The cleanup project is to be completed by 2009. So far, Phases One and Two are complete, and approximately 2,000 tons of waste have been removed from the site. The Mexican government has contributed about \$750,000 toward the cleanup. The U.S. government provided \$85,000 for initial, short-term actions to address the highest risks, as well as additional funds for technical consultants. The workgroup is currently working on Phase Three—selecting the remedy—before moving on to the Phase Four remediation.

Sources: Environmental Health Coalition: [www.environmentalhealth.org](http://www.environmentalhealth.org)

Border 2012 Program Regional Workgroup Newsletter: [http://www.epa.gov/border2012/pdf/ca\\_baja\\_news2\\_eng.pdf](http://www.epa.gov/border2012/pdf/ca_baja_news2_eng.pdf)

greater. As part of their broader organizing activities, community residents may want to learn more about current Border 2012 activities, provide input about those activities, and raise new issues for the program to address. For example, if a community is concerned about a particular facility that may be violating the law and endangering public health, residents may want to raise the matter with the Regional Task Force that deals with enforcement in that particular part of the border. Following are some of the ways that community residents can try to become involved in the Border 2012 Program.

**CONTACTING BORDER 2012 PROGRAM OFFICIALS.** One of the most direct ways to learn more about Border 2012 activities or to communicate with Border 2012 officials about local problems is to contact program officials directly. Community residents can contact the government officials who participate in Regional Workgroups or Enforcement Task Forces to speak informally or to request information about Border 2012 activities. The program has prepared a directory of contacts, which is available at: [http://www.epa.gov/border2012/pdf/yellow\\_pages.pdf](http://www.epa.gov/border2012/pdf/yellow_pages.pdf).

**PARTICIPATING IN PUBLIC MEETINGS.** Border 2012 Workgroups and Task Forces hold public meetings. These meetings are a formal opportunity for residents to voice their concerns or make suggestions about future program activities. The meetings that would relate most directly to local enforcement issues are meetings of the Regional Workgroup (for example, the Texas-New Mexico-Chihuahua Regional Workgroup) or one of the regional Task Forces (for example, the Texas-New Mexico-Chihuahua Enforcement Task Force).

*How often do these groups meet?* According to the Border 2012's "Operational Guidance,"

Workgroups must meet at least once each year. There are no specific requirements for how often the Taskforces should meet.<sup>15</sup> Some Taskforces have met several times each year in recent years. The Texas-New Mexico-Chihuahua Enforcement Task Force has not met since August 2005, but it may resume holding meetings in the future.<sup>16</sup>

*How do you get notice of a meeting?* According to the Program's Operational Guidance, notice of Border 2012 Workgroup meetings (including agendas) are given at least 30 days in advance of a meeting, in English and Spanish. These notices are posted on the EPA web site and are also available on the BECCNet internet listserve, which you can join. See <http://udallcenter.arizona.edu/programs/usmex/beccnet/index.html>. You can also ask the head of the particular Workgroup or Task Force to put you on a mailing list for future notices.

*Where and when are the meetings held?* The meetings are held within the border region, and they alternate between Mexico and the U.S. For example, meetings of the Texas-New Mexico-Chihuahua Regional Workgroup or Enforcement Task Force are usually held in El Paso or Ciudad Juárez. The meetings typically are held during working hours, although the Regional Workgroup meeting held in 2006 took place from 3:00-8:00 p.m. Residents can communicate with Workgroup or Task Force contacts to request that meetings are held after business hours or on weekends, and to suggest other ways to make it easier for community residents to attend.

*Can community residents participate in all meetings?* In general, meetings are open to the public. However, enforcement groups may conduct additional sessions that are not open to the public, if the group needs to discuss

confidential information about an enforcement matter. Public meetings typically include a session that is devoted to public comment.

**GETTING PUBLISHED INFORMATION ABOUT BORDER 2012 ACTIVITIES.** The Border 2012 Operational Guidance states that the Minutes of Workgroup meetings will be made available in English and Spanish on the program website. After a 21-day review, the minutes are to be finalized.<sup>17</sup> If the Minutes are not posted on the web site as required, you can contact one of the government officials on the Workgroup to request a copy.

The Border 2012 Program produces various reports. At the broadest level, there is an annual “Joint Communiqué” which describes the overall goals and activities of the program. In addition, the Workgroups are supposed to produce “Implementation Reports” every two years, describing their current and planned activities. There are also other reports that describe annual accomplishments.<sup>18</sup> On a more specific level, some Regional Workgroups (for example, California-Baja California and Arizona-Sonora) have published newsletters periodically about their activities.<sup>19</sup>

---

### **SECTION III: COMPLAINTS TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

---

The link between environmental protection and human rights has been increasingly recognized in recent years. Advocates around the world have been asserting the right to a healthy environment, including access to environmental information and participation in environmental decisions, as a fundamental human right. This linkage can be traced in part to the 1972 United Nations Conference on the Human Environment, which declared that the environment is essential to human well-being and human rights. As a result of the growing environmental-human rights movement, communities seeking redress for their environmental claims have turned to the legal avenues for submitting human rights complaints. In the U.S. and Mexico, several such complaints have been filed with the Inter-American Commission on Human Rights (IAHCR).

The Inter-American Commission is an independent body of the Organization of American States (OAS), a group that serves as a forum for the countries of the Western Hemisphere to work on strengthening democracy, promoting human rights, and confronting shared problems such as poverty, illegal drugs, and corruption. The IACHR was formed to promote and protect human rights in all of the OAS’s member states, including the U.S. and Mexico. Its activities include handling individual human rights petitions; observing and investigating human rights situations in individual countries; making recommendations to member states about how to better protect human rights; publishing

reports; and holding conferences, seminars, and meetings to share information about human rights issues in the Inter-American region.

Members of the public and non-governmental organizations can submit petitions that allege human rights violations under the American Convention on Human Rights (adopted 1969) or the American Declaration of the Rights and Duties of Man (adopted 1948). The Petition must show either (1) that the victim has first exhausted (tried to use) all other remedies available in their country, or (2) that those domestic remedies do not provide due process or were denied to the victim. Petitions must generally be presented within 6 months after the final decision in the domestic proceedings. The IACHR has rules about what information must be included in a Petition. There is a form for filing a Petition over the internet. The rules for filing a Petition and the internet Petition form can be found at: [https://www.cidh.oas.org/cidh\\_apps/instructions.asp?gc\\_language=E](https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=E).

The IACHR will investigate the petition and may choose to process it as a case, in which each side can present arguments and

evidence. The IAHCR will then prepare a report that includes findings and any recommendations it has for the country that is the subject of the petition. The IACHR may also choose to take a case to the Inter-American Court of Human Rights in Costa Rica, which issues advisory opinions, decisions, and judgments on cases arising under the American Convention on Human Rights.

People have submitted petitions to the IAHCR arguing that the failure to enforce environmental laws is a human rights violation. For example, in 2005, members of the community of Mossville, Louisiana filed a petition complaining that health problems caused by toxic waste from nearby industrial facilities violated their human rights. Other petitions have been filed to challenge the impact of global warming on Inuit communities in Alaska and the impact of development projects on indigenous groups in Latin America. The process can be quite lengthy, and depending on the claim, it can be difficult to show exactly how an environmental harm constitutes a human rights violation. Nevertheless, some of these petitions have spurred governments to act to protect communities from environmental harms.

### Notes

1. See [http://www.cec.org/pubs\\_info\\_resources/law\\_treat\\_agree/naaec/index.cfm?varlan=English](http://www.cec.org/pubs_info_resources/law_treat_agree/naaec/index.cfm?varlan=English)
2. See [http://www.cec.org/who\\_we\\_are/index.cfm?varlan=english](http://www.cec.org/who_we_are/index.cfm?varlan=english)
3. See <http://www.cec.org/citizen/status/index.cfm?varlan=english>
4. See <http://www.cec.org/citizen/index.cfm?varlan=english>
5. See Council Res. 01-06, *available at*: [http://www.cec.org/files/PDF/COUNCIL/Res-06r4\\_EN.pdf](http://www.cec.org/files/PDF/COUNCIL/Res-06r4_EN.pdf)
6. Metales y Derivados Final Factual Record (p. 60), *available at*: <http://www.cec.org/files/pdf/sem/98-7-FFR-e.pdf>
7. Border 2012: U.S.-Mexico Environmental Program (p.6), *available at*: [http://epa.gov/border2012/pdf/2012\\_english.pdf](http://epa.gov/border2012/pdf/2012_english.pdf)
8. See <http://yosemite.epa.gov/oia/MexUSA.nsf/La+Paz+Agreement+-+Web?OpenView&ExpandView>
9. Border 2012: U.S.-Mexico Environmental Program (pp.20-21), *available at*: [http://epa.gov/border2012/pdf/2012\\_english.pdf](http://epa.gov/border2012/pdf/2012_english.pdf)
10. See Commission for Environmental Cooperation, Crossing the Border (Draft 2003), *available at*: [http://www.cec.org/files/PDF/LAWPOLICY/Crossing-the-Border-Nov03\\_EN.pdf](http://www.cec.org/files/PDF/LAWPOLICY/Crossing-the-Border-Nov03_EN.pdf)
11. See <http://epa.gov/nerl/news/forum2006/varner.pdf>
12. Joint Communiqué, U.S.-Mexico Border 2012 Program, *available at*: [http://www.epa.gov/usmexicoborder/ncm/ncm2006\\_com.pdf](http://www.epa.gov/usmexicoborder/ncm/ncm2006_com.pdf)
13. See <http://www.epa.gov/region9/features/hazwaste/index.html>
14. U.S.-Mexico Border 2012 Framework, *available at*: <http://www.epa.gov/border2012/intro.htm>
15. Operational Guidance for Border 2012 Coordination Bodies and Task Forces (04/04/2003), *available at*: [http://epa.gov/border2012/pdf/og\\_english.pdf](http://epa.gov/border2012/pdf/og_english.pdf)
16. See <http://epa.gov/border2012/org.htm#taskforce>
17. See [http://www.epa.gov/border2012/pdf/og\\_english.pdf](http://www.epa.gov/border2012/pdf/og_english.pdf)
18. See <http://www.epa.gov/border2012/index.htm>
19. See [http://www.epa.gov/border2012/pdf/ca\\_baja\\_news2\\_eng.pdf](http://www.epa.gov/border2012/pdf/ca_baja_news2_eng.pdf)

---

# Appendix 1

## *Selected Federal, State and Municipal Environmental Agencies in the U.S.*

### **FEDERAL ENVIRONMENTAL AGENCIES**

---

#### **ENVIRONMENTAL PROTECTION AGENCY (EPA)**

##### *EPA Headquarters*

U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
<http://www.epa.gov>  
List of phone numbers:  
<http://www.epa.gov/epahome/hotline.htm>

##### *EPA Region 6 Main Office*

1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202  
Phone: 1-800-887-6063  
<http://www.epa.gov/region6/index.htm>

### **STATE ENVIRONMENTAL AGENCIES**

---

#### **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)**

##### *TCEQ Headquarters*

P.O. Box 13087  
Austin, TX 78711-3087  
Phone: (512) 239-1000  
Email: [ac@tceq.state.tx.us](mailto:ac@tceq.state.tx.us)  
<http://www.tceq.state.tx.us>

##### *TCEQ Region 6 (El Paso)*

401 E. Franklin Ave., Ste. 560  
El Paso, TX 79901-1212  
Phone: (915) 834-4949

Environmental complaints: call 1-888-777-3186, email [cmplnt@tceq.state.tx.us](mailto:cmplnt@tceq.state.tx.us), or visit <http://www5.tceq.state.tx.us/oce/complaints>.

Open Records Requests: fax (512) 239-6736; email [openrecs@tceq.state.tx.us](mailto:openrecs@tceq.state.tx.us); or mail request to Texas Commission on Environmental Quality, Attn: Public Information Officer, MC 197, P.O. Box 13087, Austin, Texas 78711-3087.

#### **TEXAS DEPARTMENT OF STATE HEALTH SERVICES**

##### *Headquarters*

1100 West 49th Street  
Austin, Texas 78756-3199  
Phone: (512) 458-7111 or 1-888-963-7111  
Email: [web.master@dshs.state.tx.us](mailto:web.master@dshs.state.tx.us)  
<http://www.dshs.state.tx.us/>

##### Environmental & Consumer Safety Section:

<http://www.dshs.state.tx.us/orgchart/ecs.shtm>

##### *Health Service Region 9/10- El Paso*

401 East Franklin, Suite 210  
El Paso, Texas 79901  
Mail Code 1903  
Phone: (915) 834-7675



---

Selected Federal, State, and Municipal Environmental Agencies

**RAILROAD COMMISSION OF TEXAS**

P.O. Box 12967  
Austin, Texas 78711-2967  
Phone: (512) 463-7288  
<http://www.rrc.state.tx.us>

**TEXAS ATTORNEY GENERAL**

Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548  
Phone: 1-800-252-8011  
Email: [public.information@oag.state.tx.us](mailto:public.information@oag.state.tx.us)  
<http://www.oag.state.tx.us/index.shtml>

**EL PASO COUNTY ATTORNEY**

500 E. San Antonio  
5th Floor Ste. 503  
El Paso, Texas 79901

Environmental Crime Unit

Email: [comments@ca.epcounty.com](mailto:comments@ca.epcounty.com)  
[http://www.epcounty.com/CA/ca\\_environ.htm](http://www.epcounty.com/CA/ca_environ.htm)

To file a complaint: file online at <http://www.epcounty.com/CA/form.htm>, call the Environmental Hotline at 1-888-6-ELPASO, or send a written complaint to the address listed above.

---

**LOCAL ENVIRONMENTAL AGENCIES**

---

**EL PASO CITY-COUNTY HEALTH AND ENVIRONMENTAL DISTRICT AIR QUALITY PROGRAM**

222 S. Campbell  
El Paso, Tx 79901  
Phone: (915) 543-3599  
Air quality complaints: (915) 771-5812  
<http://www.elpasocitycountyhealth.com/environment/AirQuaility/AirQuality.asp>

---

## Appendix 2

# *Selected Federal, State And Municipal Environmental Laws In The U.S.*

### FEDERAL ENVIRONMENTAL LAWS

*Federal laws can be found at the following web site: [www.law.cornell.edu/uscode](http://www.law.cornell.edu/uscode)*

*Federal regulations can be found at the following web site: [www.gpo.gov](http://www.gpo.gov)*

<i>Law</i>	<i>Subject</i>	<i>Regulations</i>
<b>Clean Air Act (CAA)</b> 42 United States Code (U.S.C.) §§ 7401-7671q	Air	40 Code of Fed. Regs (CFR) Parts 50-99
<b>Clean Water Act (CWA)</b> 33 U.S.C. §§ 1251-1387	Water	40 CFR Parts 100-149
<b>Resource Conservation and Recovery Act (RCRA)</b> 42 U.S.C. §§ 6901-6922k	Solid and hazardous waste	40 CFR Parts 239-299
<b>Comprehensive Environmental Response, Compensation, and Liability Act (CERLA)</b> 42 U.S.C. §§ 9601-9675	Hazardous waste clean-up	40 CFR Parts 300-312
<b>Emergency Planning and Community Right-to-Know Act (EPCRA)</b> 42 U.S.C. §§ 11001-11050	Reporting requirements for hazardous chemicals	40 C.F.R. Part 302, 350, 355, 370, 372, and 374
<b>Freedom of Information Act (FOIA)</b> 5 U.S.C. §552	Access to government information	

---

Selected Federal, State, and Municipal Environmental Laws in the U.S.

**TEXAS ENVIRONMENTAL LAWS**

*State laws can be found at the following web site:* [tlo2.tlc.state.tx.us/statutes](http://tlo2.tlc.state.tx.us/statutes)

*State regulations can be found at the following web site:* [info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=3&ti=30&pt=1](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=3&ti=30&pt=1)

<i>Law</i>	<i>Subject</i>	<i>Regulations</i>
<b>Texas Clean Air Act</b> Texas Health and Safety Code, Title 5, Chapter 382	Air	Texas Administrative Code, Title 30, Chapters 101-122
<b>Texas Water Quality Act</b> Texas Water Code, Title 2	Water	Texas Administrative Code, Title 30, Chapters 307-309, 314-315
<b>Solid Waste Disposal Act</b> Texas Health and Safety Code, Title 5, Chapters 361-364	Solid waste	Texas Administrative Code, Title 30, Part 1, Chapters 330, 335
<b>Public Information Act</b> Texas Government Code, ch. 552	Access to Government Information	

**EL PASO ENVIRONMENTAL LAWS**

*Municipal laws can be found at the following web site:* <http://ordlink.com/codes/elpaso/index.htm>

<i>Law</i>	<i>Subject</i>	<i>Regulations</i>
El Paso Municipal Code, Title 9, Chapter 9.04 ("Environmental Services")	Solid waste	

## Appendix 3

# TCEQ Web Site—Home Page and Complaint Form

Home Page - Texas Commission on Environmental Quality - www.tceq.state.tx.us  
http://www.tceq.state.tx.us/ Google

**TCEQ TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**SITE SEARCH:**  
please enter search

**SUBJECT INDEX**  
› Air › Water › Waste  
› Search TCEQ Data  
› Agency Organization Map

**Site Navigation**

- [Rules, Policy & Legislation](#)
- [Permits, Licenses & Registrations](#)
- [Compliance, Enforcement & Cleanups](#)
- [Drinking Water & Water Availability](#)
- [Reporting](#)
- [Environmental Quality](#)
- [Assistance, Education & Participation](#)
- [Pollution Prevention & Recycling](#)
- [Contracts, Funding & Fees](#)
- [About TCEQ](#)
- [Contact Us](#)
- [Calendar](#)
- [Forms & Publications](#)
- [Employment](#)
- [Open Records Requests](#)
- [Dispute Resolution](#)
- [En Español](#)

Have you had contact with the TCEQ lately?

**Hot Topics**

- › **Register Now: 2007 Public Drinking Water Conference, Aug. 14-15**
- › **Executive Director's Report on Renewal of Asarco Air Permit**
- › **Take Care of Texas: Environmental Tips for Texans**
- › [Past Topics](#)

**Featured Programs & Projects**

- › [Environmental Successes](#)
- › [Drought and Public Water Systems](#)
- › [Implementing Enforcement Process Recommendations - updated March 23](#)
- › [Quarterly TCEQ Expenditure Reports](#)
- › [Small Business Assistance](#)
- › [Past Features](#)

**Newsletter: Natural Outlook**

- › **Do Your Part for Conservation**

The TCEQ has launched a public education campaign to remind individual Texans that everyone has a role in environmental protection. As part of the "Take Care of Texas" initiative, the agency offers 25 tips



**Express Links**

- › [Make an Environmental Complaint](#)
- › [Track Complaints and Enforcement](#)
- › [Texas' Air Quality Today e-Services: Apply, Pay, Report Online](#)
- › [Permits and Licenses You Might Need](#)
- › [Status of Permit Applications](#)
- › [Find Public Notices](#)
- › [Webcasts, e-Agenda, Schedules for Agendas and Work Sessions](#)



**News Releases**

- › **CITGO Guilty of Violations of Clean Air Act**

**June 27, 2007** - A federal jury in Corpus Christi has found CITGO Petroleum Corp., and its subsidiary, CITGO Refining and Chemicals Co., (CITGO) guilty of two felony criminal violations of the Clean Air Act.  
[Complete Release](#)

- › **TCEQ Approves Fines Totaling \$522,073**

**June 27, 2007** - The TCEQ today approved penalties totaling \$522,073 against 69 regulated entities for violations of state environmental regulations.

**TCEQ TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**SITE SEARCH:**  
 please enter search

**SUBJECT INDEX**  
 > [Air](#) > [Water](#) > [Waste](#)  
 > [Search TCEQ Data](#)  
 > [Agency Organization](#)  
 > [Map](#)

▪ [TCEQ Home](#) >> Questions or Comments: [complaint@tceq.state.tx.us](mailto:complaint@tceq.state.tx.us)

[BACK TO: Reporting Environmental Problems](#)

## Report an Environmental Problem to TCEQ

**Instructions:** Before filling out the form, please read the accompanying information that explains:

- Who you should contact for different types of pollution problems, and
- What happens when you contact the TCEQ.

Fill in the items below, and then click the "Review Comments" button at the bottom of the form.

<b>Date observed</b>	July ▾ 2 ▾ 2007 ▾
<b>Approximate time observed</b>	hour ▾ : minutes ▾
<b>Address or location where the problem is occurring</b>	<input type="text"/>
<b>Nearest city or town</b>	<input type="text"/>
<b>County where the problem is occurring</b>	--- ▾
<b>Who or what you believe is the source of the problem</b>	<input type="text"/>
<b>A brief description of the problem</b>	<input type="text"/>

The information requested below is optional. You do not have to tell us who you are or where you live. However, in some cases, not being able to contact you may limit our ability to investigate the problem.

---

## Appendix 4

# Sample Federal and State Information Requests in the U.S.

The following generic example of a federal FOIA request letter is adapted from the U.S. House of Representatives Committee on Government Reform, *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records*, App. A (2005).

In addition, The Reporters Committee for Freedom of the Press has a website that can help you generate your own FOIA letter, by inserting information specific to your situation. See [http://www.rcfp.org/foi\\_letter/generate.php](http://www.rcfp.org/foi_letter/generate.php)

Agency Head [or Freedom of Information Act Officer]  
Name of Agency  
Address of Agency  
City, State, Zip Code  
Re: Freedom of Information Act Request

Dear \_\_\_\_\_:

This is a request under the Freedom of Information Act, 5 U.S.C. §552.

I request that a copy of the following documents [or documents containing the following information] be provided to me: *[Identify the documents or information as specifically as possible]*.

*[Optional]* I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. *[Include specific details, including how the requested information will be disseminated by the requester for public benefit.]*

*[Optional]* I am willing to pay fees for this request up to a maximum of \$*[fill in]*. If you estimate that the fees will exceed this limit, please inform me first.

*[Optional]* I request that the information I seek be provided in electronic format, and I would like to receive it on a personal computer disk [or a CD-ROM].

*[Optional]* I also include a telephone number at which I can be contacted during the hours of *[fill in]*, if necessary, to discuss any aspect of my request.

Thank you for your consideration of this request.

Sincerely,  
Name  
Address  
City, State, Zip Code  
Telephone number *[Optional]*

---

Sample Federal and State Information Requests in the U.S.

The following is a generic sample information request letter under the Texas PIA, which appears on the web site of the Freedom of Information Foundation of Texas, [www.foift.org/pialetter.html](http://www.foift.org/pialetter.html)

Your Name  
Return Address  
Date

Name of government agency  
Address of government agency  
Dear Officer for Public Records:

This request is made under the Texas Public Information Act, Chapter 552, Texas Government Code, which guarantees the public's access to information in the custody of governmental agencies. I respectfully request [*copies of, access to*] the following information:

*[List here as specifically as possible the information you are seeking: documents, letters, memoranda, reports etc. If you know the dates, report numbers, titles or even the specific governmental subdivision that produced the information, list it.]*

*[Optional, when time is a factor.]* In the interest of expediency, and to minimize the research and/or duplication burden on your staff, I would be pleased to personally examine the relevant records if you would grant me immediate access to the requested material. Additionally, and since time is a factor, please communicate with me by telephone rather than by mail. My telephone number is: *[insert]*

Disclosure of this information is in the public interest because providing a copy of the information primarily benefits the general public. I therefore request a waiver of all fees and charges pursuant to Section 552.267 of the act.

I shall look forward to hearing from you promptly, as specified in the law. Thank you for your cooperation.

Sincerely,

*[signature]*

---

## Appendix 5

### *Citizen Suits—Resources For Further Information*

“Citizen Participation in U.S. Environmental Enforcement,” available at <http://www.inece.org/2ndvol1/vheuvele.htm>

Environmental Law Institute, “The Role of the Citizen in Environmental Enforcement,” available at <http://www.inece.org/2ndvol1/roberts.htm>.

“A Step-by-Step Guide to Filing a Civil Lawsuit in the United States District Court for the Western District of Texas,” available at <http://www.txwd.uscourts.gov/forms/files/prosemanual.pdf>.



---

## Appendix 6

### *Selected Federal, State, and Local Environmental Agencies in Mexico*

---

#### FEDERAL

---

##### SECRETARIAT OF ENVIRONMENT AND NATURAL RESOURCES

(*Secretaría de Medio Ambiente y Recursos Naturales* or SEMARNAT)

##### *Headquarters*

Blvd. Adolfo Ruiz Cortines  
4209 Col. Jardines en la Montaña  
C.P. 14210 Delegación Tlalpan  
México D.F.  
Phone: (0155) 56280600  
E-mail:  
atencion.ciudadana@semarnat.gob.mx  
www.semarnat.gob.mx

##### *Delegation:*

Calle Medicina No. 1118  
Colonia Magisterial  
C.P. 31203, Chihuahua, Chih.  
Phone: 01 (614) 442-1501/Red: 31501  
Fax: (614) 442-1536/RED 31550  
31552/31553  
E-mail:  
delegado@chihuahua.semarnat.gob.mx

##### OFFICE OF THE FEDERAL ATTORNEY FOR ENVIRONMENTAL PROTECTION

(Procuraduría Federal de Protección al Ambiente or PROFEPA)

##### *Headquarters*

Edificio AJUSCO Carretera Picacho-Ajusco 200  
Col. Jardines en la Montaña Del. Tlalpan  
C.P. 14210 México D.F.  
Phone: 54-49-63-00 or toll-free: 01-800-77-033-72  
www.profepa.gob.mx

##### *Delegation:*

C. Francisco Marquez #905  
Colonia El Papalote  
C.P. 32599 Juarez, Chih.  
Phone: (656) 682-3990  
Fax: (656) 640-2815  
www.profepa.gob.mx/Profepa/DelegacionesPROFEPA/Chihuahua

##### NATIONAL WATER COMMISSION

(*Comisión Nacional del Agua* or CNA)

##### *Headquarters*

Insurgentes Sur 2416  
Col. Copilco el Bajo  
C.P. 04340 Delegación Coyoacán  
México D.F.  
www.cna.gob.mx

##### NATIONAL ECOLOGY INSTITUTE

(*Instituto Nacional de Ecología*)

##### *Headquarters*

Periférico 5000  
Col. Insurgentes Cuicuilco

---

Environmental Enforcement in the U.S.–Mexico Border Region

C.P. 04530, Delegación Coyoacan  
México D.F.  
[www.ine.gob.mx](http://www.ine.gob.mx)

**FEDERAL ATTORNEY GENERAL/PUBLIC MINISTRY**  
(*Procuraduría General de la República* or  
PGR/*Ministerio Público*)

*Headquarters*

Ave. Paseo de la Reforma #211-213  
Col. Cuauhtémoc  
Delegación Cuauhtemoc  
C.P. 06500, México D.F.  
Phone: 53460000  
E-mail: [wmaster@pgr.gob.mx](mailto:wmaster@pgr.gob.mx)  
[www.pgr.gob.mx](http://www.pgr.gob.mx)

*Delegation*

Abraham Lincon No. 890  
Col. Fraccionamiento La Playa  
C.P. 32310  
Ciudad Juarez, Chih.  
Tel: 01 656-639-86-73 Ext. 8813-8613

**FEDERAL INSTITUTE OF PUBLIC DEFENSE**  
(*Instituto Federal de Defensoría Pública* or IFDP)

*Headquarters*

Bucareli 22 y 24  
Col. Centro Delegación Cuauhtémoc  
C.P. 06040, México D.F.  
E-mail: [ifdpweb@cjf.gob.mx](mailto:ifdpweb@cjf.gob.mx)  
[www.ifdp.cjf.gob.mx](http://www.ifdp.cjf.gob.mx)

*Delegation*

Palacio de Justicia Federal  
Avenida Mirador No. 6599, Ala Sur P.B.  
Col. Residencial Campestre Washington  
C.P. 31236 Chihuahua, Chih.  
Phone: (01614) 180-20-69 or toll-free: 01-  
800-20-18655  
[www.ifdp.cjf.gob.mx/Delegaciones/default.asp](http://www.ifdp.cjf.gob.mx/Delegaciones/default.asp)

**NATIONAL HUMAN RIGHTS COMMISSION**  
(*Comisión Nacional de los Derechos Humanos*  
or CNDH)

*Headquarters*

Periférico Sur 3469  
Col. San Jerónimo Lidice  
Delegación Magdalena Contreras  
C.P. 10200, México D.F.  
Phone: (55) 56-81-81-25 or 54-90-74-00 or  
toll-free: 01-800-715-2000  
[www.cndh.org.mx](http://www.cndh.org.mx)

---

**STATE: CHIHUAHUA**

---

**SECRETARIAT OF URBAN DEVELOPMENT AND  
ECOLOGY**  
(*Secretaría de Desarrollo Urbano y Ecología* or  
SEDUE)

Edificio Russek  
Avenida Juárez 1108  
Cd. Chihuahua, Chih.  
Phone: 614-429-935  
<http://www.chihuahua.gob.mx/sdue/>

**CENTRAL OFFICE OF WATER AND SANITATION**  
(*Junta Central de Agua and Saneamiento* or  
JCAS)

Phone: (614) 439-3500. Ext. 2209  
<http://www.chihuahua.gob.mx/jcas>

*Municipal Office of Water and Sanitation—Cd.  
Juárez*

(*Junta Municipal de Agua y Saneamiento* or  
JMAS)  
<http://www.jmasjuarez.gob.mx>

---

Selected Federal, State, and Local Environmental Agencies in Mexico

**CHIHUAHUA INSTITUTE FOR TRANSPARENCY AND  
ACCESS TO PUBLIC INFORMATION**

*(Instituto Chihuahuense para la Transparencia  
y Acceso a la Información Pública)*

Calle Ahuehuete No. 717

Colonia Universidad

C.P. 31106, Chihuahua, Chih.

Phone: 201-3300

Fax: 201-3301 or toll-free: 01-800-300-2525

E-mail:

[ichitaip@transparenciachihuahua.org.mx](mailto:ichitaip@transparenciachihuahua.org.mx)

**STATE COMMISSION OF HUMAN RIGHTS**

*(Comisión Estatal de Derechos Humanos)*

Calle Décima y Mina No. 1000

Colonia Centro

Apartado Postal 1354

C.P. 31000, Chihuahua, Chih.

Phone and Fax: (614) 410-08-28 or

toll-free: 01-800-201-1758

E-mail: [cedhch@prodigy.net.mx](mailto:cedhch@prodigy.net.mx)

[www.cedhchihuahua.org](http://www.cedhchihuahua.org)

**GENERAL OFFICE OF URBAN DEVELOPMENT**

*(Dirección General de Desarrollo Urbano)*

Francisco Villa 950 Nte.

Col. Centro – Planta Baja, Ala Sur

Cd. Juárez, Chih.

Phone: (656) 207-8800, Ext. 2410, 2409

**SECRETARIAT OF PUBLIC SAFETY**

*(Secretaría de Seguridad Pública)*

Calle Valle del Cedro #578

Col. Morelos III

C.P. 32573

Cd. Juárez, Chih.

Phone: (656) 649-88-52 (emergency  
response)

<http://www.juarez.gob.mx/dependencias/>

---

**MUNICIPAL: CIUDAD JUÁREZ**

---

**GENERAL OFFICE OF ECOLOGY AND CIVIL  
PROTECTION**

*(Dirección General de Ecología y Protección  
Civil)*

Francisco Villa 950 Nte.

Cd. Juárez, Chih.

Phone: (656) 207-8700, 207-8800,

Ext. 2401, 2403

E-mail: [ecologiamunicipal@juarez.gob.mx](mailto:ecologiamunicipal@juarez.gob.mx)

[http://www.juarez.gob.mx/dependencias/  
ecologia.php](http://www.juarez.gob.mx/dependencias/ecologia.php)

---

## Appendix 7

# *Selected Federal, State and Municipal Environmental Laws in Mexico*

### FEDERAL

Mexican federal laws can be found on the following websites:

[www.diputados.gob.mx/LeyesBiblio/index.htm](http://www.diputados.gob.mx/LeyesBiblio/index.htm)

[www.rdenjuridico.gob.mx](http://www.rdenjuridico.gob.mx)

Federal environmental laws and regulations can be found on the SEMARNAT website:

[www.semarnat.gob.mx/leyesy normas/Pages/leyesdelsectorfederal.aspx](http://www.semarnat.gob.mx/leyesy normas/Pages/leyesdelsectorfederal.aspx)

<i>Law</i>	<i>Subject</i>	<i>Regulations</i>
General Law of Ecological Equilibrium and Environmental Protection ( <i>Ley General del Equilibrio Ecológico y Protección al Ambiente</i> )	Pollution (air, water, land) Natural resources Environmental Impact Assessment	Regulation on Air Pollution
National Waters Law ( <i>Ley de Aguas Nacionales</i> )	Water pollution	Regulation on National Waters
General Law for the Prevention and Integrated Management of Wastes ( <i>Ley General para la Prevención y Gestión Integral de Residuos</i> )	Waste	Regulation on Prevention and Integrated Management of Wastes
Federal Penal Code ( <i>Código Penal Federal</i> )	Environmental crimes	
Federal Law on Transparency and Access to Public Government Information ( <i>Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental</i> )	Access to information	

---

Selected Federal, State, and Municipal Environmental Laws in Mexico

Amparo Law ( <i>Ley de Amparo</i> )	Access to courts for violations of individual constitutional rights	
Federal Law of the National Human Rights Commission ( <i>Ley de la Comisión Nacional de los Derechos Humanos</i> )	Human rights	Internal Regulation of the Law of the NHRC

**STATE: CHIHUAHUA**

State laws can be found on the following website:  
[www.ordenjuridico.gob.mx](http://www.ordenjuridico.gob.mx)

State laws for the state of Chihuahua can be found on the following websites:  
[www.ordenjuridico.gob.mx/EnFe/CHIHUAHUA/leyes.php](http://www.ordenjuridico.gob.mx/EnFe/CHIHUAHUA/leyes.php)  
[www.congresochihuahua.gob.mx](http://www.congresochihuahua.gob.mx)

<i>Law</i>	<i>Subject</i>
State of Chihuahua General Law of Ecological Equilibrium and Environmental Protection ( <i>Ley General del Equilibrio Ecológico y Protección al Ambiente del Estado de Chihuahua</i> )	Pollution (air, water, land) Natural resources Environmental Impact
Law of Urban Development of the State of Chihuahua ( <i>Ley de Desarrollo Urbano del Estado del Chihuahua</i> )	Zoning Economic dev't
Law of the State Human Rights Commission ( <i>Ley de la Comisión Estatal de Derechos Humanos</i> )	Human Rights
Law of Transparency and Access to Public Information for the State of Chihuahua ( <i>Ley de Transparencia y Acceso a la Información Pública del Estado de Chihuahua</i> )	Access to Government Information
State Health Law ( <i>Ley Estatal de Salud</i> )	Environmental Health

---

## Environmental Enforcement in the U.S.–Mexico Border Region

### **MUNICIPAL: CIUDAD JUÁREZ**

Laws for the municipality of Juárez can be found on the following website:  
[www.ordenjuridico.gob.mx/EnFe/CHIHUAHUA/m\\_juarez.php](http://www.ordenjuridico.gob.mx/EnFe/CHIHUAHUA/m_juarez.php)

<i>Law</i>	<i>Subject</i>
Municipal Regulation on Ecology and Environmental Protection of Ciudad Juárez ( <i>Reglamento Municipal del Ecología y Protección Ambiental</i> )	Pollution (air, water, land) Natural resources Urban planning
Municipal Code for the State of Chihuahua ( <i>Código Municipal para el Estado de Chihuahua</i> )	Municipal governance and operation

---

## Appendix 8

# Federal and State Online Information Request Forms in Mexico/Chihuahua

WWW.IFAI.ORG.MX/TRANSPARENCIA/SOLINF.PDF

### SOLICITUD DE ACCESO A INFORMACION GUBERNAMENTAL

Homoclave RFTS: IFAI-00-001

<b>1. DATOS DEL SOLICITANTE O DE SU REPRESENTANTE</b>
Solicitante _____
Apellido Paterno _____ Apellido Materno (opcional) _____ Nombre(s) _____
En caso de Persona Moral _____
Denominación o Razón Social _____
Representante (en su caso) _____
Apellido Paterno _____ Apellido Materno (opcional) _____ Nombre(s) _____

<b>2. FORMA EN LA QUE DESEA RECIBIR NOTIFICACIONES Y DAR SEGUIMIENTO A SU SOLICITUD</b>
Elija con una "X" la opción deseada:
Personalmente o a través de representante <input type="checkbox"/> En el domicilio de la Unidad de Enlace de la dependencia o entidad-Sin costo.
Por correo certificado <input type="checkbox"/> Sin Costo
Por mensajería <input type="checkbox"/> Siempre y cuando el particular, al presentar su solicitud, haya cubierto o cubra, el pago del servicio de mensajería respectivo. Si usted no cubre este pago, la notificación se realizará por correo certificado.
Por medios electrónicos <input type="checkbox"/> A través del Sistema de Solicitudes de Información-SISI ( <a href="http://informacionpublica.gob.mx">http://informacionpublica.gob.mx</a> o <a href="http://www.ifai.org.mx">http://www.ifai.org.mx</a> ) - Sin costo.
• En caso de seleccionar la opción de correo certificado o mensajería, favor de proporcionar los siguientes datos:
Calle _____ No. Exterior / No. Interior _____ Colonia o Fraccionamiento _____ Delegación o Municipio _____ Entidad federativa _____
País _____ Código Postal _____

<b>3. DEPENDENCIA O ENTIDAD A LA QUE SOLICITA LA INFORMACION</b>

<b>4. DESCRIPCION DE LOS DOCUMENTOS SOLICITADOS</b>
Con el fin de brindar un mejor servicio, además de describir la información que solicita, se sugiere proporcionar todos los datos que considere facilitan la búsqueda de dicha información. Si el espacio no es suficiente, puede anexar hojas a esta solicitud.

<b>5. FORMA EN QUE DESEA LE SEA ENTREGADA LA INFORMACION</b>
Elija con una "X" la opción deseada:
Verbalmente <input type="checkbox"/> Siempre y cuando sea para fines de orientación - Sin costo
Consulta Directa <input type="checkbox"/> Consulta física en la Unidad de Enlace de la dependencia o entidad - Sin costo
Consulta por medio electrónico <input type="checkbox"/> Consulta en un sitio de internet o envío de la información en vía electrónica - Sin costo
Copias Simples <input type="checkbox"/> - Con costo      Disquete 3.5" o CD-ROM <input type="checkbox"/> - Con costo
Copias Certificadas <input type="checkbox"/> - Con costo      Otro tipo de medio (especificar) _____
• Señale con una "X" el medio de envío de la información: Correo certificado (con costo) <input type="checkbox"/> Mensajería (con porte pagado) <input type="checkbox"/>

<b>6. DOCUMENTOS ANEXOS</b>
Carta poder: <input type="checkbox"/> Sólo en caso de presentar la solicitud mediante representante.
Comprobante de porte pagado <input type="checkbox"/> Sólo en caso de solicitar la entrega de la información por mensajería.
Documentos anexos a la solicitud <input type="checkbox"/> Sólo en caso de no ser suficiente el espacio del numeral 4.

Anverso

## Environmental Enforcement in the U.S.–Mexico Border Region

### SOLICITUD DE ACCESO A INFORMACION GUBERNAMENTAL

7. **DATOS QUE EL SOLICITANTE PUEDE LLENAR DE MANERA OPCIONAL**

CURP \_\_\_\_\_ Teléfono (Clave): \_\_\_\_\_ Número: \_\_\_\_\_  
Correo electrónico: \_\_\_\_\_

• La presente información será utilizada únicamente para efectos estadísticos:

Sexo:  M  F Fecha de Nacimiento \_\_\_/\_\_\_/\_\_\_ (dd/mm/aa) Ocupación: \_\_\_\_\_

¿Cómo se enteró usted de la existencia del procedimiento de acceso a la información?

Radio  Prensa  Televisión  Cartel o Póster  Internet  Otro Medio (especifique) \_\_\_\_\_

8. **INSTRUCTIVO**

- Llenar a máquina o letra de molde legible.
- La Unidad de Enlace le auxiliará en la elaboración de la presente solicitud.
- En caso de requerir información diferente, deberá solicitarse cada una en un formato independiente.
- En caso de presentar esta solicitud mediante un representante, se acreditará dicha representación mediante una carta firmada ante dos testigos. En el caso de personas morales podrá hacerse por el representante legal, un apoderado o un tercero autorizado en los términos citados.
- Cuando la información solicitada no sea competencia de la entidad o dependencia ante la cual se presente la solicitud, la Unidad de Enlace le indicará la dependencia o entidad competente dentro de los 5 días hábiles siguientes a la presentación de la solicitud.
- Usted podrá darle seguimiento al procedimiento de acceso a información de su solicitud con el número de folio de su acuse de recibo, en la Unidad de Enlace donde realizó la solicitud o a través del SISI en el sitio de internet <http://informacionpublica.gob.mx>.
- Mientras más clara y precisa sea su solicitud, y en la medida de lo posible identifique los documentos que puedan contener la información, será más fácil y rápido localizarlos.

9. **INFORMACION GENERAL**

- Usted puede obtener los formatos y acceder al SISI en: las Unidades de Enlace, las oficinas, representaciones y delegaciones de las dependencias y entidades que cuenten con servidores públicos habilitados para tales efectos; y a través de los sitios de internet de dependencias, entidades y del Instituto Federal de Acceso a la Información Pública ([www.ifai.org.mx](http://www.ifai.org.mx))
- Usted puede reproducir este formato en papel bond blanco.
- La solicitud podrá enviarse por correo, mensajería o a través del Sistema de Solicitudes de Información (SISI). En caso de que el solicitante acuda personalmente o a través de representante a las Unidades de Enlace de las dependencias o entidades, a sus oficinas, representaciones o delegaciones que cuenten con servidores públicos habilitados, podrá presentar su solicitud mediante escrito libre, formato o a través del SISI. La Unidad de Enlace le entregará o enviará por correo, según corresponda, un acuse de recibo con fecha de presentación y un número de folio correspondiente.
- No podrán solicitarse más documentos que los señalados en este formato.
- El acceso a datos personales es gratuito. Su envío por mensajería o reproducción en copias certificadas genera un costo.
- No se requiere presentar identificación para solicitar o recibir la información solicitada.
- La resolución a su solicitud debe emitirse dentro de los 20 días hábiles siguientes a la presentación de su solicitud. Este plazo podrá ampliarse hasta por un periodo igual, cuando existan razones que lo motiven y siempre y cuando éstas le sean notificadas al solicitante.
- En caso de que la descripción proporcionada en la presente solicitud no sea suficiente para localizar la información requerida o si los datos contenidos son erróneos, la Unidad de Enlace podrá requerir al solicitante, por una vez y dentro de los 10 días hábiles siguientes a la presentación de la solicitud, que indique otros elementos o corrija los datos. Este requerimiento interrumpirá el plazo máximo de respuesta (20 días hábiles), el cual continuará en cuanto el particular de respuesta al requerimiento.
- La información deberá entregarse dentro de los 10 días hábiles siguientes a la notificación que se haga al particular sobre su disponibilidad, pero si el particular solicitó que se le entregara la información en copias simples o certificadas o por mensajería, el plazo de 10 días hábiles comenzará a correr a partir del día hábil siguiente a aquel en que el particular cubra los costos correspondientes.
- El solicitante tendrá un plazo de 3 meses después de que se le notifique la resolución de acceso a la información para disponer de ella. Para ello deberá iniciar la consulta en el lugar donde se le indique o cubrir los costos vigentes para su reproducción y, en su caso, el costo de envío. Transcurrido el plazo referido, el particular deberá realizar una nueva solicitud de acceso a la información, sin responsabilidad alguna para la dependencia o entidad.
- La falta de respuesta a la solicitud de acceso a la información en el plazo de 20 días hábiles contados a partir de su presentación, se entenderá resuelta en sentido afirmativo y la dependencia o entidad quedará obligada a darle el acceso a la información requerida, en un plazo no mayor a los 10 días hábiles. Lo anterior no aplica cuando el Instituto Federal de Acceso a la Información Pública determine que los documentos en cuestión son reservados o confidenciales.
- En caso de negarse el acceso a la información por ser ésta de carácter reservado o confidencial, el Comité de Información de la dependencia o entidad deberá fundar y motivar las razones de dicha clasificación, dentro de los 20 días hábiles siguientes a la presentación de la solicitud.
- La Unidad de Enlace no estará obligada a dar trámite a solicitudes ofensivas, cuando la misma persona ya haya recibido exactamente la misma información como respuesta a una solicitud anterior, o cuando la información se encuentre disponible públicamente. En este último caso la Unidad de Enlace le indicará dónde la puede localizar.
- En caso de que le sea notificada la negativa a su solicitud de acceso a la información o la inexistencia de los documentos solicitados, podrá interponer por sí mismo o a través de su representante, el recurso de revisión ante el Instituto Federal de Acceso a la Información Pública o ante la Unidad de Enlace que haya conocido el asunto, dentro de los 15 días hábiles siguientes a la fecha de la notificación.
- También procede el recurso de revisión cuando el solicitante no esté conforme con el tiempo, el costo o la modalidad de entrega y cuando el solicitante considere que la información entregada es incompleta o no corresponda a la requerida en la solicitud.
- Para sugerencias, dudas o quejas, puede comunicarse al 01-800-835-4324 (TELIFAI) o bien remitirse a la página de internet [www.ifai.org.mx](http://www.ifai.org.mx)

Reverso



## Federal and State Online Information Request Forms in Mexico/Chihuahua

**HTTP://PORTALADM.CHIHUAHUA.GOB.MX/ATACH2/ICHITAIP/UPLOADS/FORMATO%20DE%20SOLICITUD%20DE%20ACCESO%20A%20INF%20PUBLICA.PDF**



**INSTITUTO CHIHUAHUENSE PARA LA TRANSPARENCIA  
Y ACCESO A LA INFORMACIÓN PÚBLICA  
FORMATO DE SOLICITUD DE ACCESO A INFORMACIÓN PÚBLICA**

1. Fecha de elaboración  /  /  (dd/mm/aa) Fecha de registro  /  /  /  (dd/mm/aa/hh:mm:ss)

**DEPENDENCIA O ENTIDAD A LA QUE SOLICITA LA INFORMACIÓN**

2. **DESCRIPCIÓN DE LA INFORMACIÓN QUE SOLICITA**

Con el fin de brindar un mejor servicio, además de describir la información que solicita, se sugiere proporcionar todos los datos que considere facilitan la búsqueda de dicha información. Si el espacio no es suficiente, puede anexar hojas a esta solicitud.

3. **FORMA EN LA QUE DESEA RECIBIR NOTIFICACIONES Y DAR SEGUIMIENTO A SU SOLICITUD**

Elija con una "X" la opción deseada:

Personalmente o a través de representante ( En el domicilio de la Unidad de Información de la dependencia o entidad - Sin costo )

Por correo registrado con acuse de recibo  Sin Costo

Por mensajería  Siempre y cuando el particular, al presentar su solicitud, haya cubierto o cubra, el pago del servicio de mensajería respectivo. Si usted no cubre este pago, la notificación se realizará por correo registrado con acuse de recibo.

- En caso de seleccionar la opción por correo registrado con acuse de recibo o mensajería, favor de proporcionar los siguientes datos:

Calle	No. Exterior / No. Interior	Colonia o Fraccionamiento	Delegación o Municipio	Entidad Federativa
País	Código Postal			

Por medios electrónicos  A través del Módulo Electrónico de Solicitudes de Información - (<http://transparenciachihuahua.org.mx>) - Sin costo.

- Correo electrónico: @

4. **FORMA EN QUE DESEA ACCEDER A LA INFORMACIÓN.**

Elija con una "X" la opción deseada:

Consulta directa.  Consulta física en la Unidad de Información de la dependencia o entidad - sin costo

Consulta por medio Electrónico.  Consulta en el Módulo Electrónico de Solicitudes de Información o envío de la información vía electrónica - sin costo

Copias simples.  - Con costo Disquete 3.5" o CD-ROM  - Con costo

Copias certificadas.  - Con costo Otro tipo de medio (especificar)

- Señale con una "X" el medio de envío de la información: Correo registrado con acuse de recibo (con costo)  Mensajería (con porte pagado)

## Environmental Enforcement in the U.S.–Mexico Border Region



### INSTITUTO CHIHUAHUENSE PARA LA TRANSPARENCIA Y ACCESO A LA INFORMACIÓN PÚBLICA FORMATO DE SOLICITUD DE ACCESO A INFORMACIÓN PÚBLICA

5. **DATOS DEL SOLICITANTE O DE SU REPRESENTANTE (OPCIONALES)**

Solicitante \_\_\_\_\_  
Apellido Paterno \_\_\_\_\_ Apellido Materno \_\_\_\_\_ Nombre(s) \_\_\_\_\_

En caso de persona moral \_\_\_\_\_  
Denominación o Razón Social \_\_\_\_\_

Representante (en su caso) \_\_\_\_\_  
Apellido Paterno \_\_\_\_\_ Apellido Materno \_\_\_\_\_ Nombre(s) \_\_\_\_\_

Presenta carta poder

• La presente información será utilizada únicamente para efectos estadísticos:

Sexo:  M  F Fecha de nacimiento \_\_\_\_/\_\_\_\_/\_\_\_\_ (dd/mm/aa) Ocupación: \_\_\_\_\_

¿Cómo se enteró usted de su derecho de acceso a la información?  
Radio  Prensa  Televisión  Cartel o Póster  Internet  Otro medio (especifique) \_\_\_\_\_

6. **INSTRUCTIVO**

- En caso de requerir información que por sus características sea diferente entre sí, deberá solicitarla en formatos independientes.
- Llenar a máquina o letra de molde legible. En medio electrónico en <http://transparenciachihuahua.org.mx>.
- Mientras más clara y precisa sea su solicitud, más nos ayudará a que sea fácil y rápida la respuesta.
- Si usted lo desea, el personal de la Unidad de Información le auxiliará en la elaboración de la presente solicitud.
- En caso de que la solicitud se formule a través de un representante legal, deberá acreditarse dicha representación en los términos de la legislación vigente. Tratándose de personas morales, las mismas podrán hacer su solicitud por medio de quien legalmente las represente.
- Para dar seguimiento a su solicitud, deberá contar con el número de folio del acuse de recibo de la misma, y podrá hacerlo en el sitio de internet <http://transparenciachihuahua.org.mx>, o en cualquier Unidad de Información.

7. **INFORMACIÓN GENERAL**

- Recomendamos que verifique si la información que va a solicitar ya se encuentra disponible en medios electrónicos o en la Unidad de Información correspondiente.
- Usted puede obtener gratuitamente este formato, en la cantidad que requiera, en las Unidades de Información y a través del sitio de internet del Instituto Chihuahuense para la Transparencia y Acceso a la Información Pública <http://transparenciachihuahua.org.mx>. En todo caso, deberá reproducirse este formato en papel blanco.
- La solicitud podrá enviarse por correo registrado con acuse de recibo, mensajería o a través del Sistema de Solicitudes de Información (INFOMEX). En caso de que el solicitante acuda personalmente o a través de representante a las Unidades de Información de los Sujetos Obligados, podrá presentar su solicitud mediante escrito libre, este formato, o a través del Módulo Electrónico de Solicitudes de Información. La Unidad de Información le entregará o enviará por el medio señalado para recibir notificaciones, un acuse de recibo con fecha de presentación y el número de folio correspondiente.
- No se requiere identificación para pedir o recibir la información, ni manifestar el uso que se le dará a la misma.
- En caso de que la descripción proporcionada en la presente solicitud no sea suficiente para localizar la información requerida o si los datos contenidos son erróneos, la Unidad de Información podrá requerir al solicitante dentro de los 5 días hábiles siguientes a la presentación de la solicitud, que indique otros elementos o corrija los datos. Este requerimiento interrumpirá el plazo de respuesta. En caso de no enviar respuesta la solicitud se tomará como no presentada.
- La resolución a su solicitud debe emitirse dentro de los 10 días hábiles siguientes a la presentación de esta solicitud. Este plazo podrá ampliarse hasta por un periodo de 5 días hábiles, cuando existan razones que lo motiven y siempre y cuando éstas le sean notificadas al solicitante dentro de los primeros 10 días hábiles.
- Cuando la reproducción de la información tenga algún costo o implique gastos de envío, el plazo para entregar la información será de hasta 10 días hábiles a partir de que el particular compruebe el pago de los costos correspondientes, salvo que por razones justificadas, debidamente fundadas y motivadas, la reproducción de la información solicitada requiera mayor plazo.
- En caso de negarse el acceso a la información por ser ésta de carácter reservado o confidencial, el Comité de Información de los sujetos obligados deberá fundar y motivar las razones de dicha clasificación.
- Las solicitudes de información deberán formularse de manera pacífica y respetuosa.
- Podrá formular una solicitud de aclaración ante la Unidad de Información que conoció de su solicitud, cuando: vena el término para la entrega de la información o esta sea negada; se estime que la información entregada no es clara u oportuna, veraz, con perspectiva de género y suficiente; o se esté inconforme con el costo, formato o modalidad de entrega.
- También podrá interponer el recurso de revisión ante el Instituto Chihuahuense para la Transparencia y Acceso a la Información Pública o ante la misma Unidad de Información, dentro de los 15 días hábiles siguientes a la fecha en que se le debería haber dado respuesta, o de la fecha de notificación de la resolución que en su caso se emita, cuando: se le manifieste al particular no contar con la información solicitada; se clasifique la información como reservada o confidencial y el particular no esté de acuerdo con dicha clasificación; se entregue información que no reúna los requisitos previstos en esta Ley; no se dé respuesta a la solicitud de acceso a la información en los plazos establecidos en el presente ordenamiento; no se atienda la solicitud de aclaración; los demás casos que disponga la Ley.

Para cualquier comentario, escriba a [ichitaip@transparenciachihuahua.org.mx](mailto:ichitaip@transparenciachihuahua.org.mx), o marque a los siguientes números: en la ciudad de Chihuahua, Lada (614) 410-24-65, 416-61-46 y 415-63-94; del resto del país, Lada sin costo 01-800-300-25-25.

## Appendix 9

# Federal Form for Filing a Public Complaint Online in Mexico

HTTP://WWW.PROFEPA.GOB.MX/DENUNCIAS/DEFAULT.ASPX

PROFEPA.La Ley al Servicio de la Naturaleza

http://www.profeпа.gov.mx/Denuncias/default.aspx

6/28/2007 7:34:11 AM

### CEDULA DE REGISTRO DE LA DENUNCIA POPULAR EN MATERIA AMBIENTAL

\*Conforme a lo provisto por el Art. 190 de la Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA).  
Estos datos son necesarios para iniciar el procedimiento de Denuncia Popular.

#### Datos Generales del Denunciante

\*Nombre o Razón Social:

\*Calle:

\*Número:

\*Colonia:

C.P.:

Población:

\*Entidad:

\*Municipio/Delegación:

Teléfono:

Correo Electrónico:

#### Datos Generales del Denunciado

\*Nombre o Razón Social:

\*Calle:

\*Número:

\*Colonia:

C.P.:

Población:

\*Entidad:

\*Municipio/Delegación:

Teléfono:

Con fundamento en los Artículos 189 y 190 de la Ley General del Equilibrio Ecológico y la Protección al Ambiente, solicito a usted atentamente disponer lo conducente para que se atienda la Denuncia que a continuación se indica:

\* Descripción de los hechos denunciados (Max 4,000 caracteres)

\*Descripción de los hechos denunciados:  Longitud de la Descripción :

#### Ubicación de los Hechos

\*Calle/Lugar:

Número:

Colonia:

C.P.:

Población:

\*Entidad:

\*Municipio/Delegación:

Teléfono:

Si no tiene una dirección exacta, Favor de dar las mayores referencias posibles (MAX 1,000 caracteres)

Caracteres de las Referencias :

\*Conforme a lo provisto por el Art. 190 de la Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA).  
Estos datos son necesarios para iniciar el procedimiento de Denuncia Popular.

# Appendix 10

## Mexican Attorney General Form for Filing a Criminal Complaint Online

HTTP://WWW.PGR.GOB.MX/SERVICIOS/MAIL/PLANTILLA.ASP?MAIL=2

The screenshot shows a web browser window displaying the website of the Procuraduría General de la República (PGR). The browser's address bar shows the URL: `http://www.pgr.gob.mx/servicios/mail/plantilla.asp?mail=2`. The website header includes the PGR logo, the text "PROCURADURÍA GENERAL DE LA REPÚBLICA", the website address "www.pgr.gob.mx", and navigation links: "INICIO | MAPA DEL SITIO | CONTACTO | ENGLISH". The date "28 de Junio de 2007" is displayed. A search bar is located in the top right corner.

The main content area is titled "Directorio de Correos" and "Procuraduría General de la República". It contains the following text:

La **Procuraduría General de la República**, pone a su disposición el *buzón de correo electrónico* para recibir sus quejas y denuncias respecto a posibles delitos federales e irregularidades cometidas por servidores públicos.

Para la Institución, es muy importante recibir sus quejas y denuncias. Recuerde que nosotros estamos para servirle y para su mayor tranquilidad, la información que usted proporcione será de carácter confidencial y puede ser anónima.

Below the text, there is a section for "DATOS PERSONALES DEL DENUNCIANTE" with the following fields:

- NOMBRE
- DOMICILIO
- CALLE
- No. EXTERIOR
- No. INTERIOR
- LOCALIDAD O COLONIA
- CÓDIGO POSTAL
- MUNICIPIO O DELEGACIÓN
- ENTIDAD FEDERATIVA
- PAÍS

Below these fields, there is a note: "POR FAVOR INGRESE SU DIRECCIÓN DE CORREO ELETRÓNICO CORRECTAMENTE, ESTO NOS PERMITIRÁ INFORMARLE DEL AVANCE Y SOLUCIÓN DE SU QUEJA O DENUNCIA PRESENTADA." followed by "E-MAIL" and "CONFIRMAR E-MAIL" fields.

Below that, there is a section for "SELECCIONE EL ESTADO DE LA REPÚBLICA QUE CORRESPONDE PARA ENVIAR SU QUEJA O DENUNCIA" with a dropdown menu for "ESTADO\*" set to "Estado".

Below that, there is a section for "DATOS DEL PRINCIPAL RESPONSABLE" with the following fields:

- INDIQUE SI ES SERVIDOR PÚBLICO\*
- NOMBRE
- DOMICILIO

Below the "DOMICILIO" field, there is a note: "POSIBLE DOMICILIO DONDE VIVA O SE LE HAYA VISTO, O DE LA DEPENDENCIA PARA LA QUE PRESTA SUS SERVICIOS EL RESPONSABLE".

The left sidebar contains a menu with the following items:

- PROCURADOR
- ¿QUÉ ES PGR?
- COMBATE A LA DELINCUENCIA
- TEMAS RELEVANTES
- SERVICIOS
- PRENSA
- LICITACIONES
- TRANSPARENCIA
- DIRECTORIO
- COMUNICATE
- EVENTOS
- COLABORA CON NOSOTROS
- AFI
- SERVICIOS PERICIALES
- DENUNCIA CIUDADANA
- ATENCIÓN CIUDADANA
- PGR PARA NIÑOS

The right sidebar contains the following items:

- ENLACES RELACIONADOS
- Centro de Atención Ciudadana
- Quejas contra Servidores Públicos y
- Contra la Administración de Justicia
- Denuncia Ciudadana

## Mexican Attorney General Form for Filing a Criminal Complaint Online

Procuraduría General de la República

http://www.pgr.gob.mx/servicios/mail/plantilla.asp?mail=2

MUNICIPIO O DELEGACIÓN

ENTIDAD FEDERATIVA

PAÍS

POR FAVOR INGRESE SU DIRECCIÓN DE CORREO ELETRÓNICO CORRECTAMENTE, ESTO NOS PERMITIRÁ INFORMARLE DEL AVANCE Y SOLUCIÓN DE SU QUEJA O DENUNCIA PRESENTADA.

E-MAIL

CONFIRMAR E-MAIL

SELECCIONE EL ESTADO DE LA REPÚBLICA QUE CORRESPONDE PARA ENVIAR SU QUEJA O DENUNCIA

ESTADO\*

**DATOS DEL PRINCIPAL RESPONSABLE**

INDIQUE SI ES SERVIDOR PÚBLICO\*

NOMBRE

DOMICILIO

POSIBLE DOMICILIO DONDE VIVA O SE LE HAYA VISTO, O DE LA DEPENDENCIA PARA LA QUE PRESTA SUS SERVICIOS EL RESPONSABLE

DELEGACIÓN O MUNICIPIO

SEÑAS PARTICULARES

EDAD(APROXIMADA)

SEXO

NARRACIÓN DE LOS HECHOS O IRREGULARIDADES

¿CUENTA CON PRUEBAS DE LOS HECHOS DESCRITOS, O IRREGULARIDADES COMETIDAS?

Última modificación:  
Viernes 27 Abril 2007 a las 12:52  
Política de privacidad

Av. Paseo de la Reforma #211-213 Col. Cuauhtémoc, Delegación Cuauhtémoc, C.P. 06500, México D.F. Tel: 53460000 wmaster@pgr.gob.mx, DDI





The Southwest Network for Environmental and Economic Justice brings together activists

and youth, student, labor and community-based grassroots organizations of people of color from across the southwestern and western U.S. and northern Mexico. The Southwest Network promotes regional strategies and perspectives on environmental degradation and other social, racial and economic injustices.



The Environmental Law Institute (ELI) makes law work for people, places, and the planet. For nearly four decades, ELI has played a pivotal role in shaping

the fields of environmental law, policy, and management, domestically and abroad. Today, ELI is an internationally recognized independent research and education center known for solving problems and designing fair, creative, and sustainable approaches to implementation. ELI serves as a clearinghouse and a town hall, providing common ground for debate on important environmental issues.

**Southwest Network for Environmental and Economic Justice**

P.O. Box 7399  
Albuquerque, NM 87194  
(505) 242-0416  
(505) 242-5609 (fax)  
[www.sneej.org](http://www.sneej.org)

**Environmental Law Institute**

2000 L Street, NW  
Suite 620  
Washington, DC 20036  
(202) 939-3800  
(202) 939-3868 (fax)  
[www.eli.org](http://www.eli.org)