

ECONOMIC FOCUS

Groups Use Nafta in Move To Clean Up Border Plant

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COLONIA CHILPANCINGO, Mexico—Nobody here seems to be able to say for sure where the coffee-colored water that gushes down their streets comes from. But many think they have a pretty good idea.

"There hasn't been any rain," notes Olga Rendon, the 20-year-old mother of two small boys. And yet "the water has been running for five days." She then fixes her gaze upon the Otay Mesa, a steep bluff on top of which sits a cluster of industrial facilities, including an abandoned battery smelter.

The malodorous brew doesn't just seep into this poor village of 600 homes, either. It drains into the nearby Alamar stream before passing through Padre Canyon to the Tijuana River. The river, in turn, meanders across the border, until the water runs off into estuaries and beaches in the southeastern corner of San Diego County.

"This is a binational circle of pollution," says Cesar Luna, an attorney with the San Diego-based Environmental Health Coalition, an activist group that has been trying—largely in vain—to force the Mexican government to clean up the battery smelter since it was shuttered four years ago.

"The used batteries came from the U.S.," Mr. Luna points out. "They were processed in Mexico. And now we see some of the chemicals being returned here through the waterways."

At last, though, Mr. Luna's organization thinks that it may have come up with a way to solve the problem. It hopes to embarrass the Mexican government into finally dealing with the situation by linking it to something that promises to attract a lot of attention: the North American Free Trade Agreement.

Today, the Environmental Health Coalition and its Mexican ally, Tijuana-based *Comite Ciudadano*, are set to announce that they've filed a formal complaint accusing the Mexican government of fostering border-related pollution through a "lack of effective enforcement" of its own environmental laws. The complaint, which has been submitted to the Commission for Environmental Cooperation in Montreal, is authorized by a side agreement to Nafta, the 1994 accord that eliminates tariffs among the U.S., Canada and Mexico over a 15-year period.

The groups' filing, according to commission records, is the first ever concerning allegations of pollution along the heavily industrialized border between the U.S. and the Mexican state of Baja California.

"You don't have to go too far—less than three miles across the border—to find" environmental compliance that is exceedingly lax, Mr. Luna says. "It makes us call for action."

In many ways, the environmental community couldn't ask for a better poster child to illustrate some of the troubles that have come with the economic boom along the California border.

Although Mr. Luna worries about pollution emanating from all of the maquiladora factories in this area, many of them appear to be well-kept—including those run by corporate giants such as Sony Corp., Hitachi Ltd. and Sanyo Electric Co. But the grounds of the old battery smelter are an absolute mess.

In March 1994, Mexican authorities ordered the company that had operated the facility for 12 years, *Metales y Derivados SA*, to shut it down. The next year, officials erected a protective cinder-block wall around the plant, and piles of lead slag were covered with tarps.

Since then, though, cleanup efforts

have practically been at a standstill. Today, many of the tarps are ripped, and the wind whips lead and other heavy metals into the air. Corrosive chemicals have eaten through the cinder blocks.

And yet despite these markers of environmental degradation—and reports that the people of Colonia Chilpancingo have suffered everything from skin rashes to birth defects—activists on both sides of the border complain that the Mexican government has done terribly little to respond.

"We've made accusations to three levels of government, and none of them are worried about this problem," asserts Mauricio Sanchez Pachuca, a shop owner here who leads the *Comite Ciudadano*. "So, now we're going to make a trinitational accusation."

Mr. Sanchez also says that he plans at a news conference here this morning to ask for the extradition from the U.S. of Jose Kahn, the owner of *Metales'* parent company, *New Frontier Trading Corp.* of San Diego.

Mr. Kahn, who is the subject of a Mexican federal district court arrest warrant for alleged environmental crimes related to the smelter, declined to comment. However, in 1994, he pleaded guilty in Los Angeles Superior Court to two felony counts of illegal transportation of hazardous waste. He paid a \$50,000 fine.

For their part, Mexican government officials say they've been doing all they can to handle a difficult matter.

Antonio Sandoval Sanchez, the head of the Mexican federal government agency charged with protecting the environment in Baja California, says that the fate of the old *Metales* site now rests with the judge overseeing the case against Mr. Kahn.

"When the judge dictates a sentence, we can sell the property and the money can be used for the cleanup," Mr. Sandoval says. Until then, he adds, his agency has done its job by compiling evidence of the damage at *Metales*.

Indeed, getting the Mexican government to do more at this stage is sure to be a difficult task.

Mr. Luna acknowledges that the commission in Montreal doesn't have any real teeth. The environmental side agreement was crafted to mollify Nafta critics who worried that U.S. companies might export their dirtier jobs to a less stringently regulated Mexico. The so-called citizen petition process provides individuals and nongovernmental organizations with a means to bring alleged environmental crimes to an international forum.

Cases sent to the commission go through a lengthy review and may ultimately result in the publication of a "factual record" detailing the allegations and the targeted government's responses. To date, the commission has received 18 petitions and issued one factual record, with 10 cases still pending.

At best, the system serves as "a spotlight" on a government's "significant alleged failure" to live up to its own laws, says David Markell, the head of the commission unit that reviews the petitions.

Nonetheless, Mr. Luna holds out the hope that this harsh glare may be just enough to do the trick here. "This is a test," he says, for the signers of Nafta "to do what they promised they'd do."



César Luna