



LABOUR

Review of Public Communication CAN 98-1 (Part II)

Report issued pursuant to

The North American Agreement
on Labour Cooperation



For further information, contact:
the Office for Inter-American Labour Cooperation
Labour Branch
Human Resources Development Canada
Ottawa, Ontario
K1A 0J2

Tel.: (819) 953-8860
Fax: (819) 953-8494
E-mail: May.Morpaw@hrdc-drhc.gc.ca
Internet Site: <http://labour.hrdc-drhc.gc.ca/doc/nafta/eng>

©Human Resources Development Canada 1999

EXECUTIVE SUMMARY

Background

Public Communication CAN 98-1 is the first submission received by the Canadian National Administrative Office (NAO) established under the North American Agreement on Labour Cooperation (NAALC).

The Canadian Office of the United Steelworkers of America submitted this communication in concert with 47 other labour and non-governmental organizations from Canada, the United States and Mexico on April 6, 1998. It was accepted for review on June 4, 1998. It raises concerns related to two of the eleven labour principles set out in the Agreement: freedom of association and protection of the right to organize as well as occupational safety and health, at an automotive parts plant near Mexico City.

This report constitutes the second part of the review and deals specifically with occupational safety and health issues raised in the Communication.

The NAO has conducted the review with a view to furthering the objectives of the NAALC and gathered data from a wide range of sources to better understand and respond to the issues raised. The NAO received information from the submitters and the company and engaged in Cooperative Consultations with Mexican labour authorities.

According to the submitters, several occupational safety and health (OSH) problems exist at the plant. They allege that workers do not have adequate equipment to protect themselves from hazardous substances (such as chemical products and asbestos fibres) and noise, receive little or no training in OSH and do not receive proper medical examinations. They also stated that there have been instances of sexual harassment and pregnancy-based discrimination. Furthermore, they claim that there is a lack of labeling in Spanish of dangerous materials and that the signage inside the production buildings is inadequate.

The submitters also allege that control measures (such as ventilation) are insufficient and that the personal respiratory protective equipment is inadequate. As a result, workers may be exposed to levels of asbestos fibres exceeding permissible limits without proper protection. They also argue that the Mexican maximum allowable limit of 2 fibres per cc does not constitute an adequate standard.

The submitters also state that these problems are not addressed by the plant's *Comisión Mixta de Seguridad e Higiene*¹ (CMSH) which, in their view, is not fully

¹ Joint Safety and Health Commission.

functional. Some former workers stated that they had never heard of the commission or its composition.

All the above matters (except for the asbestos fibres maximum allowable limit) would violate Mexican OSH legislation. The submitters question whether the *Dirección General de Inspección Federal del Trabajo*² has made sufficient efforts to promote compliance with Mexican OSH legislation.

The employer has improved safety and health conditions at the plant in recent years both on its own or as a result of improvements related to changes to Mexican regulations. The plant is also participating in a voluntary self-assessment program sponsored by the Mexican government.

An American safety and health consulting firm was retained to conduct a general audit which included a review of *Normas Oficiales Mexicanas*³, various inspection reports from the *Secretaría del Trabajo y Previsión Social*⁴ (STPS) and company records. The consultants concluded that, although not perfect, the plant complied with key Mexican safety and health standards.

Generally speaking, the plant complied with the Mexican standard according to several asbestos fibres exposure monitoring studies. On a few occasions, when samples showed an exposure above the limit, corrective measures were implemented.

The company also indicated that all employees receive annual safety training and undergo a general medical examination on hiring and a periodic check-up, pulmonary function test (PFT), chest X-ray, audiometric test, spirometric test and cancer detection. They are also provided with personal protective devices, including half-masks, steel-toed shoes, ear plugs, safety glasses and various kinds of gloves.

Finally, the NAO was able to speak with the Secretary of the CSMH who stated that the Commission meets and conducts a physical inspection of the plant every month.

Following the publication of the *Programa de Empleo, Capacitación y Defensa de los Derechos Laborales: 1995-2000*⁵, the STPS revamped its OSH regulations and its system of labour inspections. The 1997 *Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo*⁶ represents an effort to modernize and simplify the OSH regulations in order to strengthen the protection of workers' health by placing emphasis on prevention. The 1998 *Reglamento*

² General Directorate for Federal Labour Inspection.

³ Official Mexican Norms.

⁴ Department of Labour and Social Welfare.

⁵ Program for Employment, Training and Defence of Labour Rights: 1995-2000.

⁶ Federal Regulation on Safety, Health, and the Workplace.

*General para la Inspección y Aplicación de Sanciones por Violaciones a la Legislación Laboral*⁷ aims at establishing a more transparent and efficient framework underpinning the implementation of inspections and sanctions.

The Canadian NAO received additional information on the Mexican OSH inspection system from the STPS including the various types of inspections and the monitoring of exposure levels. The STPS also explained the role of the enforcement and legal departments of the Executive Branch in the collection of fines.

Summary of Analysis and Conclusions

The promotion of occupational safety and health is embodied in the Mexican Constitution and federal law as well as in several International Labour Organization conventions ratified by Mexico. Various regulations contain specific requirements to translate this constitutional and legal obligation into practice.

In order to publish this second report in a timely manner, the NAO was not able to obtain detailed answers to all of its technical questions. Pursuant to Article 16(2)(c), the NAO consequently requests additional information on issues highlighted in the table below. Once this information is received, the NAO will report to the Minister of Labour on any outstanding issues.

Regarding hazardous substances, the information received by the NAO suggests that Mexico may not have met its obligations under Article 3(1)(b) of the NAALC to ensure that:

- chemicals safety data sheets are readily available to workers;
- hazardous substances are labeled in Spanish; and
- workers exposed to hazardous substances are provided with adequate personal protective equipment.

⁷ General Regulation for the Inspection and Application of Sanctions for Labour Legislation Violations.

Issues	Questions
Role of CSMH during STPS inspections	Is there a legal requirement for CSMH worker representatives to accompany STPS inspectors? Is it the usual practice?
Efficacy of STPS inspections	How will the new two-level inspection system improve the inspection process as well as compliance with regulations designed to protect workers from the effects of hazardous substances (including, for example, inspection of ventilation systems)?
Collection of fines	Which specific enforcement agency is responsible for collecting fines and does the STPS confirm that the collection has taken place? Is the collection of fines part of the enforcement process? What actions are taken if fines are unpaid?
Risk analysis studies	How do consulting firms become certified to perform risk analysis studies? How does the STPS verify the results of these studies? Do inspectors review specialized results or conduct any direct sampling?
<i>Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo</i>	What concrete effect will this new regulation have on Mexican government efforts to promote the prevention of occupational injuries and illnesses?

Issues Requiring Additional Information

Recommendations

The NAO makes the following recommendations in the spirit of Cooperative Consultations and in a desire to build on our comparative knowledge and understanding of labour law and its enforcement in North America.

Pursuant to Article 22 of the NAALC, which provides that Ministers may request in writing consultations with another country regarding any matter within the scope of the Agreement, the NAO recommends that the Minister of Labour seek Consultations with the Mexican Secretary of Labour and Social Welfare on the following issues related to occupational safety and health:

- a) how the requirement to label in Spanish hazardous substances such as asbestos and chemicals is effectively enforced, particularly on imported materials;

b) how labour authorities enforce the requirement that employers disseminate information to workers, such as material safety data sheets and CSMH minutes;

c) how labour authorities monitor compliance with the requirement to provide workers who handle hazardous substances, such as asbestos and chemicals, with the proper personal protective equipment;

d) the type of inspections carried out in plants using hazardous substances that rely on reports from independently certified laboratories to monitor exposure and the training provided for specialized inspections in high risk workplaces as well as the efficacy of inspections when advance notice is given; and

e) how the Mexican injury and illness compensation system works in relation to long term illnesses, such as asbestosis, that may be caused by working conditions and that may not be detected until after a worker has left a work site, and worker access to this system.

Moreover, the NAO recommends that the Minister of Labour engage her Mexican counterpart in a cooperative dialogue on responsible care and international best practices to protect workers who process, adapt or use asbestos in the production of goods.

Table of Contents

	Page
Executive Summary	i
Table of Contents	vi
List of Acronyms	vii
Preface	viii
1. Report on Public Communication CAN 98-1	1
2. The North American Agreement on Labour Cooperation (NAALC)	1
2.1 Overview of Responsibilities of the NAO	1
2.2 Objectives and Obligations	2
2.3 Review Process	3
3. Background on Occupational Safety and Health Issues	4
3.1 Information from the Submitters	5
3.1.1 Issues	5
3.1.2 Summary of Information Presented by Submitters	5
3.2 Information from the STPS and the Mexican NAO	7
3.3 Information from the Company	8
4. Mexican Labour Law Related to the Prevention of Occupational Injuries and Illnesses	12
4.1 Political Constitution of the United Mexican States	12
4.2 <i>Ley Federal del Trabajo</i> (LFT)	13
4.3 International Treaty Obligations	16
4.4 <i>Reglamento Interior de la Secretaría del Trabajo y Previsión Social</i> (RISTPS)	19
4.5 <i>Ley Federal sobre Metrología y Normalización</i> (LFMN)	20
4.6 <i>Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo</i> (RFSHMAT)	21
4.7 <i>Reglamento General para la Inspección y Aplicación de Sanciones por Violaciones a la Legislación Laboral</i> (RGIASVLL)	24
4.8 <i>Normas Oficiales Mexicanas</i> (NOMs)	26
5. Analysis and Conclusions	34
5.1 The Operation of the CSMH	34
5.2 Hazardous Substances	35
5.3 STPS Enforcement	37
6. Recommendations	39
Annex 1	41
Annex 2	44
Annex 3	45

List of Acronyms

CMSH	<i>Comisión Mixta de Seguridad e Higiene</i>
DGIFT	<i>Dirección General de Inspección Federal del Trabajo</i>
DGSHT	<i>Dirección General de Seguridad e Higiene en el Trabajo</i>
HRDC	Human Resources Development Canada
ILO	International Labour Organization
LFMN	<i>Ley Federal Sobre Metrología y Normalización</i>
LFT	<i>Ley Federal del Trabajo</i>
NAALC	North American Agreement on Labour Cooperation
NAFTA	North American Free Trade Agreement
NAO	National Administrative Office
NIOSH	National Institute for Occupational Safety and Health (U.S.)
NOM	<i>Normas Oficiales Mexicanas</i>
OSH	Occupational Safety and Health
PFT	Pulmonary Function Test
RFSHMAT	<i>Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo</i>
RGIASVLL	<i>Reglamento General para la Inspección y Aplicación de Sanciones por Violaciones a la Legislación Laboral</i>
RISTPS	<i>Reglamento Interior de la Secretaría del Trabajo y Previsión Social</i>
STPS	<i>Secretaría del Trabajo y Previsión Social</i>

PREFACE

The North American Agreement on Labour Cooperation (NAALC) is the first agreement linking a free trade agreement to the effective enforcement of labour standards. In the preamble to the Agreement, the Governments of Canada, Mexico and the United States recall their resolve, as expressed in NAFTA, to improve working conditions and living standards in their respective territories and to protect, enhance and enforce basic workers' rights. These goals are pursued through mechanisms for cooperative activities, intergovernmental consultations, independent evaluations and dispute settlements procedures.

Several institutions have been set up to implement the Agreement. The Commission for Labour Cooperation, composed of a Ministerial Council and a Secretariat, is the only North American organization solely devoted to labour issues. Second, the Council, consisting of the Secretary (in Mexico and the United States) and Minister (in Canada) of Labour of the three countries, oversees the implementation of the Agreement and directs the activities of the Secretariat. Third, the Secretariat, located in Dallas, supports the Council. In addition, each government established a National Administrative Office within its labour department as a point of contact and source of information within each country and among the three NAALC partners. Under Article 16(3) of the Agreement, NAOs must provide for the review of public communications.

Figure 1 summarizes the institutional structure created under the Agreement.

Figure 1. NAALC Institutional Structure



1. PART II OF REVIEW OF PUBLIC COMMUNICATION CAN 98-1

CAN 98-1 is the first Public Communication Canada received after the North American Agreement on Labour Cooperation (NAALC) came into effect on January 1, 1994. This Public Communication raises issues related to the enforcement of labour legislation in Mexico, specifically freedom of association and occupational safety and health (OSH), two key labour principles which the North American Free Trade Agreement (NAFTA) countries agree to promote through cooperation and effective enforcement of domestic legislation. Each country has established a National Administrative Office (NAO) to receive Public Communications concerning labour matters arising in another country and undertake cooperative consultations with the NAO of the other country to better understand and respond to the issues raised.

In this second report, the Canadian NAO examines the occupational safety and health issues raised in Public Communication CAN 98-1. A first report on freedom of association issues was released on December 11, 1998.

This report consists of five sections. First, the NAALC, including its objectives and the obligations it imposes on Canada, Mexico and the United States, is summarized. A description of the NAO review process is included in this chapter. Second, key elements of the information received as part of the review are highlighted. Third, a review of relevant Mexican labour legislation concerning the issues related to the occupational safety and health issues raised in the Communication is presented in chapter 4. This review is followed by analysis and conclusions regarding the enforcement of Mexican labour legislation and the Mexican government's obligations under the Agreement. The final chapter contains specific recommendations to the Canadian Minister of Labour.

The NAO would like to express its appreciation to all those who contributed to this review. The NAO acknowledges the assistance of the Technical Services Unit of the Labour Branch, the Department of Justice, the Department of Foreign Affairs and International Trade, the Labour Departments of the provinces signatory to the Canadian Intergovernmental Agreement and the Manitoba Labour Relations Board in completing this part of the review.

2. THE NORTH AMERICAN AGREEMENT ON LABOUR COOPERATION

2.1 OVERVIEW OF RESPONSIBILITIES OF THE NAO

Signed by Canada, Mexico, and the United States in 1993 as a complement to the NAFTA, the NAALC is the first international agreement linking a free trade agreement to the promotion of a specific set of labour principles and the effective enforcement of domestic labour legislation. Under Article 16(3), each NAO is to "provide for the submission and receipt, and periodically publish a list, of public communications on labour law matters" arising in the territory of another NAALC country and is to review

such matters in accordance with domestic procedures.¹ Each country has established procedures or guidelines for the review of these Public Communications. In addition to the review of the Public Communication, Cooperative Consultations under Article 21 were carried out with Mexico.

2.2 OBJECTIVES AND OBLIGATIONS

Article 1 of the NAALC lists the objectives which the countries are to promote. Five of these objectives are relevant to Part II of the Review of Public Communication CAN 98-1. First, according to Article 1(a), Parties to the Agreement agree to aim at improving working conditions and living standards in their respective territory. Second, Article 1(b) requires the Parties to promote, to the maximum extent possible, a set of eleven labour principles which include prevention of occupational injuries and illnesses and compensation in cases of occupational injuries and illnesses. Third, Article 1(d) calls on Parties, among other things, to encourage the exchange of information to enhance the mutually beneficial understanding of laws and institutions governing labour in each Party's territory. Fourth, Article 1(f) requires Parties to promote compliance with, and effective enforcement of, their respective labour laws. Finally, pursuant to Article 1(g), Parties are to foster transparency in the administration of labour law.

Each country is also to respect a series of obligations. For Part II of the review of Public Communication CAN 98-1, the relevant obligations are:

Article 2: Levels of Protection

“Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations, each Party shall ensure that its labour laws and regulations provide for high labour standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.”

Article 3: Government Enforcement Action

“1. Each Party shall promote compliance with and effectively enforce its labour law through appropriate government action, subject to Article 42², such as:

- (a) appointing and training inspectors;
- (b) monitoring compliance and investigating suspected violations, including through on-site inspections;
- (c) seeking assurances of voluntary compliance;

¹ See Annex 1 for a description of Canadian NAO guidelines for the review of Public Communications.

² Article 42 (Enforcement Principle) reads as follows: “Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of another Party.”

(d) requiring record keeping and reporting;

(e) encouraging the establishment of worker-management committees to address labour regulation of the workplace;

[...]

(g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labour law.”

Article 4: Private Action

“2. Each Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under:

(a) its labour law, including in respect of occupational safety and health, employment standards, industrial relations and migrant workers, [...]

can be enforced.”

Article 5: Procedural Guarantees

“5. Each Party shall provide that the parties to administrative, quasi-judicial, judicial or labour tribunal proceedings may seek remedies to ensure the enforcement of their labour rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.”

2.3 REVIEW PROCESS

Under Article 21 of the NAALC, an NAO may request Cooperative Consultations with another NAO in relation to its labour law, its administration or labour market conditions. The Canadian review process is designed to examine labour legislation and its enforcement and the extent to which a country meets its obligations under the Agreement. It does not contemplate the adjudication of private remedies or determining the appropriateness of actions by private sector organizations.

The role of the NAO is to make recommendations to the Minister of Labour who, in turn, decides on whether to engage in Ministerial Consultations (which are part of the Cooperative Consultations and Evaluation process under Part IV of the NAALC) on the issues that were not resolved during the review.

The NAO reviewed the Communication with a view to furthering the objectives of the NAALC and gathered data from a wide range of sources to better understand and respond to the issues it raised.³

The NAO received Public Communication CAN 98-1 on April 6, 1998, and accepted it for review on June 4, 1998.⁴ This Communication describes conditions at ITAPSA S.A. de C.V., an auto parts plant located in Los Reyes La Paz near Mexico City. The plant is wholly owned by *Grupo Echlin Automotriz* which, in turn, is a wholly owned subsidiary of Echlin Inc. of Branford, Connecticut. In July of 1998, Dana Corporation of Toledo, Ohio, completed its purchase of Echlin Inc.

In addition to requesting information from all those involved, on November 5, 1998, the NAO held a public meeting to gather additional information on OSH matters. The NAO also received additional information from the company and the submitters after this public meeting.

In November, Dana Corporation formally invited NAO officials to visit the ITAPSA plant. This visit took place on January 18, 1999. The newly appointed Mexican NAO Secretary and five officials from the *Secretaría del Trabajo y Previsión Social*⁵ (STPS), including from the *Dirección General de Inspección Federal del Trabajo*⁶ (DGIFT), were also present. The company was represented by the plant manager, the plant OSH director, the manager of *Grupo Echlin Automotriz* Friction Division, a representative of *Grupo Echlin Automotriz* and the director of Safety and Environmental Compliance for Dana Automotive Aftermarket Group. An industrial hygiene engineer from the Labour Branch of Human Resources Development Canada (HRDC), accompanied the Canadian NAO officials. The NAO also discussed OSH issues with the Secretary of the plant's *Comisión Mixta de Seguridad e Higiene*⁷ (CMSH) in a telephone conversation on February 3, 1999.

3. BACKGROUND ON OCCUPATIONAL SAFETY AND HEALTH ISSUES

This chapter presents information provided by the submitters, the company and the STPS, including the Mexican NAO, concerning OSH issues at ITAPSA.

The Canadian NAO did not attempt to reconcile the facts presented, nor does it believe that it is necessary to do so to address the key issues raised in the Communication.

3.1 INFORMATION FROM THE SUBMITTERS

³ The NAO maintains a public file on Public Communication CAN 98-1 which includes briefs and supporting documents presented by the submitters and the company, answers to NAO questions, transcripts and other pertinent documents.

⁴ For a detailed chronology of the review process to December 1998, see Table 1 in Part 1 of the review.

⁵ Department of Labour and Social Welfare.

⁶ General Directorate for Federal Labour Inspection.

⁷ Joint Safety and Health Commission. The Secretary is a worker representative.

The submitters, consisting of 48 labour and non-governmental organizations from Mexico, Canada and the United States⁸, provided information related to OSH and government enforcement of OSH legislation at a plant near Mexico City. The Communication makes a series of allegations regarding the extent to which Mexico meets its obligations under the NAALC. This section presents the issues raised and summarizes the facts as described by the submitters.

3.1.1 ISSUES

The submitters raise allegations concerning OSH, arguing in particular, that Mexico has violated the following NAALC obligations:

- Article 2 of the NAALC which commits countries to provide for high labour standards;
- Article 3 of the NAALC which commits countries to promote compliance with and effectively enforce their labour laws.

3.1.2 SUMMARY OF INFORMATION PRESENTED BY SUBMITTERS⁹

In the April 1998 Communication, the submitters raised some of the problems related to OSH. However, they provided most of their information on these issues during and after the November 5 public meeting.

According to the submitters, the plant suffers from a number of problems related to OSH. They allege that numerous accidents have occurred and a number of workers have died or become ill because of obsolete and ill-maintained machinery, poor working conditions, difficult work assignments and heavy workloads.

The submitters contend that, in violation of Mexican laws and regulations, workers received little or no training in safety and health, there is a lack of labeling in Spanish of dangerous substances and there is inadequate signage inside the production buildings. They also allege that there have been instances of sexual harassment and pregnancy-based discrimination at the plant and that workers handled chemical products, such as xylenes and toluene, without proper training or protective equipment. Some former workers stated that they never received adequate medical examinations and that the machinery is very noisy and has poorly designed guards.

Moreover, they affirm that the CMSH is, for all intents and purposes, non-functioning. More specifically, they note that CMSH members were absent during STPS inspections and that the CMSH comments only on minor problems in its minutes. Some former workers also stated that they had never heard of this commission or its composition.

⁸ See Annex 2 for a complete list.

⁹ See Annex 3 for a complete list of action requested concerning occupational safety and health.

The submitters raise particular concerns about the handling of asbestos during the production process. Oral presentations and affidavits of former and present workers mention that a lot of dust is created during the production process. Their work clothes become dirty quickly and they are not provided with proper respiratory protective equipment or replacement gloves. Some parts of the production process involve grinding, piercing and mixing and are dust-producing. At these work stations, significant amounts of dust accumulate on the tools, tables and floor. Workers are required to sweep the dust with brooms.

The submitters allege that the problem of asbestos fibres is compounded by an inefficient ventilation system which they argue is poorly designed. They state that the ventilation system does not sufficiently remove asbestos fibres from work stations. In particular, they note that conveyor belts are not ventilated and that the air flow of some sections of the system is directed into the breathing zone of the operator. A former worker stated that he had to clean the cyclones of the ventilation system from the inside without proper protective equipment.

The submitters also argue that asbestos fibres travel beyond designated areas in the production process. For instance, they mention the use of contaminated uniforms in the cafeteria during breaks. Some former workers stated that they or their spouses washed their work clothes at home mixed with the family laundry and that they were not informed of the possible effects of asbestos fibres on their health.

Finally, the submitters believe that the Mexican maximum allowable limit of asbestos in the air (2 fibres per cc) does not constitute an adequate standard.¹⁰ Consequently, they argue that the limit should be lowered to the levels required in Canada or the United States.

The submitters also question whether the DGIFT has made sufficient efforts to promote compliance or effectively enforce Mexican safety and health laws and regulations. While they note that STPS inspection reports confirmed many of the workers' claims regarding safety and health in their workplace, they note the fact that these matters were not always cited as requiring corrective measures on the part of the company, that follow-up verifications were sometimes lacking or that fines for multiple violations were low. Moreover, they argue that inspectors have not taken their own samplings of air quality and noise levels, have not met with workers or their representatives on the CSMH and have failed to note major violations in their reports.

Given that inspection notices are generally issued some time before the inspectors' visits, the submitters also claim that this allows plant management to temporarily lower production and order a cleanup. After the inspectors leave, the production level increases to its original level and the safety and health problems continue unabated.

3.2 INFORMATION FROM THE STPS AND THE MEXICAN NAO

¹⁰ Comparable limits in Canada vary between 1.0 and 0.1 fibre per cc depending on the jurisdictions.

After accepting the Communication for review, the NAO engaged in consultations with the Mexican NAO pursuant to Article 21 of the NAALC to better understand and respond to the issues raised. On July 2, 1998, the NAO forwarded a series of questions related to OSH. The Mexican NAO provided information on inspections conducted by the DGIFT at the plant as well as additional information and clarification on Mexican labour law that were essential for the review.

The Canadian NAO received information on the Mexican OSH inspection system, including the various types of inspections and the monitoring of exposure levels. The STPS also explained the role of the enforcement and legal departments of the Executive Branch in the collection of fines.

During a meeting on January 18, 1999, STPS officials discussed recent changes to Mexican OSH regulations and enforcement mechanisms, including inspection follow-up procedures and the new system for the assessment and collection of fines. In particular, STPS officials mentioned that inspections of the “extraordinary” type are unannounced. They also explained that employers have five business days to contest the elements of an inspection report and can request an extension of the deadline for the implementation of a corrective measure. This request must be sent in writing to the STPS and include the reasons justifying the extension. STPS officials also said that the number of qualified industrial hygienists in Mexico is increasing which should result in more focused and specialized inspections on, for instance, exposure to hazardous substances.

To avoid repetition, the specific information related to Mexican OSH regulations and laws received from the Mexican NAO and the STPS is presented in chapter 4.

According to information provided by the Mexican NAO, the DGIFT carried out inspections under its annual program on August 26, 1997, and June 25, 1998. Neither inspection followed a worker’s complaint. These inspections revealed some breaches of Mexican OSH regulations for which corrective measures were ordered. While none of the inspections were specifically related to the use of asbestos, the *Departamento de Asesoría y Orientación de la Dirección de Normas de Trabajo*¹¹ (DAODNT) advised the company that, based on the analysis of studies of the total dust level submitted by the company on August 12, 1997, the concentration levels of total respirable dust exceeded the maximum allowable limits established in *Normas Oficiales Mexicanas*¹² (NOMs). The DAODNT ordered that a program of corrective measures be implemented to decrease the dust level.

The Canadian NAO reviewed inspection reports of the DGIFT for the period 1996-1999 (see Figure 1 for a chronology).¹³ During this period, advance notice was given

¹¹ Advisory Services and Guidance Department of the Labour Standards Directorate.

¹² Official Mexican Standards.

¹³ These reports are discussed here although they were received from the submitters and the company .

between 2 to 18 business days¹⁴ before an inspection (whether of the periodic or verification type).¹⁵ Three periodic inspections were conducted. Each report is comprehensive indicating that inspectors looked at compliance with OSH standards such as fire fighting and prevention, use of boilers, electrical systems, risk analyses, operation and maintenance of machinery, use of tools, handling of dangerous chemical substances, ventilation, personal protective equipment, training, operation of the CMSH and safety and health programs. When a violation was found, the inspectors identified the problem and ordered specific corrective measures. They interviewed workers (although CMSH worker representatives were never present for these inspections). Each periodic inspection report described the nature of the company's business, the production process and the raw materials used.

After each periodic inspection, the DGIFT issued directions which listed all the violations, references to OSH laws and regulations and a deadline for their correction. This document also explained that the deadline is calculated in business days starting the day after the release of the document. The document also warned that failure to implement corrective measures could lead to sanctions, including a partial or complete closure of the workplace.

While the directions were usually issued a few weeks after the date of the inspection, in the first case examined, it was issued 10 months later. In all cases, the STPS conducted a follow-up verification inspection during which uncorrected items were noted. The authorities responsible for the assessment and collection of fines were advised of the failure to undertake corrective action.

3.3 INFORMATION FROM THE COMPANY

The company provided most of its information on safety and health at the plant during and after the November 5 public meeting¹⁶ as well as during the January 18, 1999, plant visit.

During this visit, Canadian officials had an outside and inside tour of the production facilities, including the chemicals storage area, ventilation system and warehouse. They had a chance to observe each step of the production process and look at recent improvements such as the addition of suction cabins. They also visited the cafeteria, showers, double lockers, changing and training rooms as well as the administration offices.

An American safety and health consulting firm was retained by the company to inspect the plant and review records relating to safety and health shortly after it learned that public communications had been received by the U.S. and Canadian NAOs. These

¹⁴ The longer notice overlapped with the Christmas holidays. Excluding this case, the average is about 5 business days.

¹⁵ More information of the various types of inspections is provided in section 4.7.

¹⁶ During the September 14, 1998, public meeting, the company submitted a video of the ITAPSA plant showing the facilities and the production process.

consultants performed an employee safety and health audit of the plant late in the summer of 1998. The audit included a review of NOMs, various inspection reports from the STPS and insurance carriers as well as industrial hygiene sampling data, medical data, safety training records, protective equipment purchase records and a self-audit report¹⁷. The consultants also conducted an on-site, two-day inspection of the plant. The consultants concluded that, although not perfect, the plant complied with key Mexican safety and health standards. The consultants sustain that asbestos fibres are a minor health issue at the plant and that compliance with Mexican regulations is good.

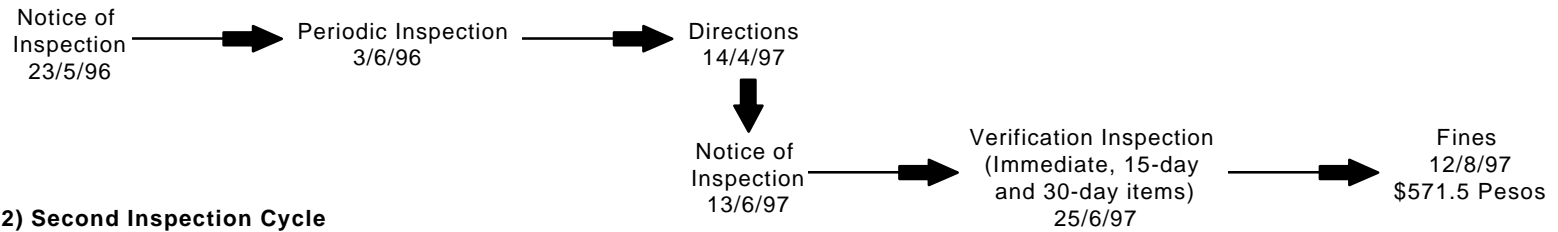
The company provided several asbestos exposure monitoring studies. The first one, dated April 26, 1990, showed that the level of asbestos fibres in the air was about 25% of the maximum allowable limit. A second study, conducted in February 1994, contained results of general work exposure monitoring. One work station out of 10 had an exposure level above the limit. Measures were implemented to correct the problem. In January 1997, the company suspected that the exhaust system was not functioning properly in the mixing area and commissioned a study of this area of the production process. Of the eight samples taken, three slightly exceeded the limit. Corrective measures, subsequently put in place, reduced exposure levels to well below the limit as confirmed by a fourth study conducted in January 1998.

The company has improved safety and health conditions at the plant in recent years both on its own or as a result of changes to Mexican regulations. For instance, a shower and double locker facility have been added to the plant and a laundry service is now offered. Workers also receive four uniforms to ensure they have at least two complete sets of clothing in their lockers at anytime. The use of xylenes and toluene

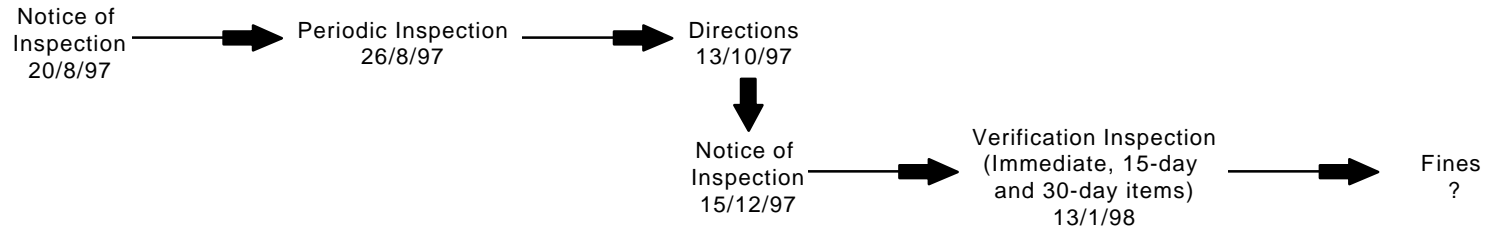
¹⁷ According to the *Reglamento para la Clasificación de Empresas y Determinación del Grado Riesgo del Seguro de Riesgo de Trabajo* (Regulation for the Classification of Enterprises and Determination of Risk Level of Occupational Risk Insurance), ITAPSA is a class-V plant (highest risk) because asbestos is used as a raw material (Article 13).

Figure 2. Chronology of inspections at ITAPSA from June 1996 to January 1999

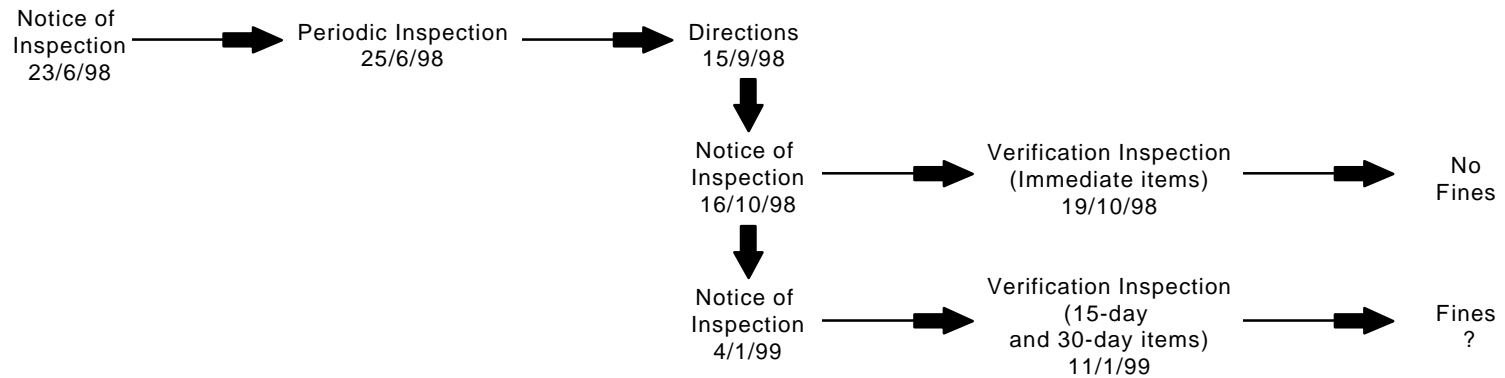
1) First Inspection Cycle



2) Second Inspection Cycle



3) Third Inspection Cycle



has been discontinued and a safer packaging method for pre-form presses has been introduced. Suction cabins have recently been built inside the plant for workers to remove dust from their work clothes after a shift. The plant is also participating in a voluntary self- assessment program sponsored by the Mexican government. Under this program, the company conducts an extensive self-audit of its safety and health procedures using criteria established by the STPS. The company then produces a report and an action plan of measures to rectify any problems. The company stated that improvement efforts have resulted in a 50 per cent reduction in accidents from 1993 to 1997.

The company also indicated that personal protective devices, including half-masks (3M model 8710), steel-toed shoes, ear plugs, safety glasses and various kinds of gloves are provided to all employees. Annual safety training includes the following courses:

1. Introduction to safety
2. Fire prevention
3. Forklift safety
4. Boiler operator
5. Use of safety equipment
6. Toxic substance handling
7. Respirator and ear protection
8. First aid
9. Accident prevention

A full-time physician is on the premises to provide both occupational and non-occupational health services. Each employee undergoes a general medical examination on hiring and a periodic check-up, pulmonary function test (PFT), chest X-ray, audiometric test, spirometric test and cancer detection. The company voluntarily permitted the Canadian NAO to review reports of all of these tests for a sample of workers.

The Secretary of the CMSH also mentioned these medical examinations in a telephone conversation with the Canadian NAO. She explained that workers are also informed about the impact of dust on their health and receive yearly training in how to use their half-masks and how to handle asbestos.

She also stated that the CMSH is composed of five labour representatives and five management representatives. The Commission meets and conducts a physical inspection of the plant every month. The company provided signed minutes of CMSH meetings from July 1997 to January 1998. Any problems identified by the Commission are reported to the plant manager. If problems persist, the CMSH can complain directly to the STPS (although she said this has not occurred during her three-year tenure as Secretary).

The workers representatives are elected by the union membership and serve for an indefinite period on the CMSH. They are trained in how to fulfill their administrative responsibilities, how to conduct inspections of the plant and how to investigate accidents. During government inspections, representatives of the CHSH accompany the STPS representative and according to the Secretary of the Commission, she signs the inspection reports.

4. MEXICAN LABOUR LAW RELATED TO THE PREVENTION OF OCCUPATIONAL INJURIES AND ILLNESSES

The NAALC is not designed to determine whether or not employers and unions abide by labour legislation. Rather, it creates a framework of values and principles which the signatory countries must respect, notably in adopting and enforcing labour legislation.

As noted in section 3.1.1, the allegations made by the submitters are based on Articles 2 and 3 of the Agreement and refer to the manner in which Mexico has discharged its NAALC obligations as they pertain to the adoption and subsequent implementation and enforcement of labour laws. This chapter reviews the legislation that is relevant to the occupational safety and health issues raised by Public Communication CAN 98-1.

Mexican labour law has several domestic and international legal sources. The Political Constitution of the United Mexican States constitutes the country's basic charter and contains general labour principles. It also indicates the priority which should be given to domestic legislation and international agreements. These principles are expanded on in the *Ley Federal del Trabajo*¹⁸ (LFT) which is the key labour legislation in Mexico. Regulations, issued by the executive branch of the government, and procedures of labour agencies serve to implement particular statutes. Finally, international conventions and treaties are incorporated into domestic law after having been approved by the Senate and signed by the President of the Republic.

4.1 POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES

After the revolution of 1910-1917, the Political Constitution of the United Mexican States¹⁹ was promulgated and gave rise to a new constitutional order. A legal framework for labour legislation was included in Article 123²⁰ which aims to achieve a balance between labour and management interests.

Article 123 outlines a series of worker rights and labour standards which enjoy constitutional status. For example, on the issue of training, the Constitution requires each employer to "instruct and train its workers in their work" (Article 123-A.XIII). It also calls on employers to abide by OSH regulations. Indeed:

¹⁸ Federal Labour Law.

¹⁹ Hereinafter referred to as the "Constitution."

²⁰ Article 123 is the world's first enactment of social and economic rights in a country's basic legal text.

“An employer shall be required to observe, in the installation of his establishments, the legal regulations on hygiene and health, and to adopt adequate measures for the prevention of accidents in the use of machines, instruments, and materials of labour, as well as to organize the same in such a way as to ensure the greatest possible guarantee for the health and safety of workers as is compatible with the nature of the work, under the penalties established by law in this respect.”
(Article 123-A.XV)

Mexico is a signatory to numerous international conventions and treaties which have a particular constitutional status in Mexican law. The incorporation of these agreements into domestic law is provided for by Article 133 of the Constitution which states that:

“This Constitution, the laws of the Congress of the Union that emanate therefrom, and all treaties that have been made and shall be made in accordance therewith by the President of the Republic, with the approval of the Senate, shall be the supreme laws of the whole Union. The judges of each State shall conform to the said Constitution, the laws, and treaties, in spite of any contradictory provisions that may appear in the constitutions or laws of the States.”

As provided for in Article 123-A.XXXI, jurisdiction over labour matters is shared between the federal and state governments. The federal government enacts labour legislation and its enforcement is shared between both levels of governments. That is, all enterprises fall within the purview of state authorities except for some key manufacturing industries.²¹

4.2 LEY FEDERAL DEL TRABAJO (LFT)

The LFT is the legal statute that implements the constitutional provisions of Article 123. The regulations under the LFT are intended to “[prevent] employment injuries and to insure that the work is performed under conditions guaranteeing the workers’ safety and life and limb” (Article 512).

The Constitution incorporates obligations emanating from international treaties and conventions into domestic labour law. Article 6 of the LFT clearly highlights this integration: “[t]he respective laws and treaties concluded and approved in terms of Article 133 of the Constitution shall apply to labour relations insofar as they are to the worker’s advantage, as from the date of commencement of their validity.”

Under the LFT, an employer has the obligation to prevent occupational injuries and illnesses. Article 132.XVI calls on an employer:

²¹ These key industries are: electricity, textiles, cinematography, rubber, sugar, mining, production of metals and steel, hydrocarbons, petrochemicals, cement, limestone, automobiles and automotive parts, chemicals, cellulose and paper, oils and vegetable fats, food packaging, bottled or canned beverages, railroads, wood products, glass, tobacco, bank and credit services. Article 527 of the LFT also lists the economic sectors under federal jurisdiction.

“To adapt, in accordance with principles of safety and hygiene, factories, shops, offices and other places where work is to be performed, to prevent job-related risks and harm to the worker, and adopt the necessary measures to keep pollutants from exceeding the acceptable maximums, according to regulations and instructions issued by the official agencies in charge of such matters.”

Moreover, employers are required, under Article 132.XVIII, “[t]o post in conspicuous sites and distribute in places where work is performed, pertinent provisions of the health and safety rules and instructions” and:

“To comply with the rules on safety and hygiene which are established by laws and regulations, in order to prevent accidents and illnesses in the workplace, and, generally, wherever work is to be performed; at all times, to have available the essential medical treatment supplies and medications specified in instructions which are issued, to be able to render first aid promptly and efficiently, and, of course, to notify the appropriate authorities of each accident that occurs.” (Articles 132.XVII)

Employers are also to provide training to workers (Article 153.B) for the purpose, among others, of preventing work accidents (Article 153.F).

A worker who suffers an occupational injury is entitled to:

- I. medical and surgical attendance;
- II. rehabilitation;
- III. hospitalization if necessary;
- IV. medications and medical supplies;
- V. any necessary prosthetic and orthopedic supplies;
- VI. the compensation fixed in [the LFT].” (Article 487)

An occupational injury is defined as “any accident or disease to which workers are exposed in the course of their employment, or any consequences thereof” (Article 473).

The LFT contains provisions, under Article 132.XXIV, to ensure the labour authorities have access to business establishments for the purpose of inspecting and enforcing labour laws and standards. The same statute also requires employers “[t]o participate in the formation and operation of the commissions that must be formed in each work centre” (Article 132.XXXVIII). This article refers to the establishment, among others, of the CMSH. Finally, employers are prohibited to “[e]ngage in any act in restraint of the rights accorded [to] workers by law” (Article 133.VII).

Every enterprise of more than 300 workers must have a sick bay with the necessary first aid equipment (Article 504.I), medical and auxiliary personnel (Article 504.III).

The LFT also imposes obligations on workers to “comply with the provisions of the labour standards applicable to [them]” (Article 134.I) and to “observe the prevention and

health measures ordered by the competent authorities and those prescribed by the employer for the workers' personal safety and protection" (Article 134.II).

Article 3 (e) of the NAALC encourages Parties to establish "worker-management committees to address labour regulation of the workplace." In Mexico, safety and health committees "consisting of an equal number of representatives of the workers and the employer [must] be established [...] to investigate the causes of accidents and diseases²², proposing preventive measures and enabling compliance therewith" (Article 509).

The LFT stipulates the duties, obligations and liabilities of labour inspectors. They have a compliance monitoring, reporting, and information disseminating role (Articles 511 and 541). That is, they must ensure compliance with labour standards through inspections of workplaces and of relevant company documents. They must report any violations of labour standards and require that corrective measures be put in place. Finally, they are responsible for informing workers and management about relevant OSH laws and regulations.

In performing these duties, labour inspectors are obligated to conduct periodic inspections of the premises, to conduct special inspections when asked by their superiors or when a complaint is received regarding the non-observance of labour standards and to file a report after each inspection, a copy of which must be provided to the interested parties (Article 542).

Labour inspectors are subject to liability (up to dismissal) if they commit prohibited actions such as failing to carry out periodic or special inspections, including false information in their reports, and accepting direct or indirect bribes (Articles 547 and 548).

If corrective measures ordered by labour inspectors are not implemented by an employer, the STPS will impose a fine. Fines are increased if the measures are not implemented before the end of a specified deadline. If problems persist, the STPS, taking into account the gravity of the risk and the extent of the required modifications, may order a partial or complete closure of the workplace until the violation has been eliminated (Article 512.D).

Violations of labour rules on the part of employers and workers are punishable and fines are calculated using "the daily amount of the general minimum wage in force in the place and at the time in which the violation is committed" (Article 992) times a factor ranging from 15 to 315 (Article 994.V).²³ The fine is doubled if corrective measures are

²² The LFT list includes asbestosis (Article 513.20), bronchial asthma caused by poly-isocyanates and di-isocyanates of toluene (Article 513.47), poisoning by toluene and xylene (Articles 513.92 and 513.109) and broncho-pulmonary cancer (Article 513.153) as occupational diseases.

²³ This was also explained by the STPS officials during the January 18, 1999, meeting at ITAPSA. For violations of NOMs, the factor ranges from 20 to 20 000 (see section 4.5).

not implemented by the specified deadline. Fines can be imposed by the STPS, the State Governor, the Chief of the Federal District or their officials (Article 1008).

4.3 INTERNATIONAL TREATY OBLIGATIONS

Mexico has ratified several International Labour Organization (ILO) conventions relevant to the OSH issues raised in Public Communication CAN 98-1: Convention 150 on Labour Administration, Convention 155 on Occupational Safety and Health, Convention 161 on Occupational Health Services and Convention 170 on Chemicals.²⁴

In particular, Convention 150 stipulates that the competent bodies within the labour administration system must give notice of deficiencies in working conditions, propose corrective measures (Article 6.2 (b)) and “make technical advice available” (Article 6.2 (d)). The Convention also specifies that labour administration staff must be “suitably qualified” and “independent of improper external influences” (Article 10.1) as well as possess the necessary means to perform their duties (Article 10.2).

Convention 155 deals specifically with the field of OSH and imposes explicit obligations on its signatories. For example, they are required to “formulate, implement and periodically review a coherent national policy on occupational safety [and health] [...] and the working environment” whose objective must be to prevent injuries and illnesses (Article 4). This national policy should incorporate measures to make “the material elements of work” safer, training, information and protection of workers from disciplinary measures if they seek redress (Article 5).²⁵ To ensure compliance with the national policy, an “adequate and appropriate system of inspection,” accompanied by “adequate penalties for violations” (Article 9), and “[m]easures [...] to provide guidance to employers and workers” (Article 10) should be established.

Furthermore, the implementation of the national policy must include:

- the determination of the conditions of design, construction, layout and operations of workplaces;
- the relative health hazards associated with work processes and substances used therein;
- the establishment of notification procedures and inquiries in cases of occupational injuries and illnesses;
- the publication of corrective measures; and

²⁴ This is not an exhaustive list. Other conventions include Convention 3 concerning the Employment of Women before and after Childbirth, Convention 62 concerning Safety Provisions in the Building Industry, Convention 115 concerning the Protection of Workers against Ionising Radiations, Convention 119 concerning the Guarding of Machinery, Convention 127 concerning the Maximum Permissible Weight to Be Carried by One Worker.

²⁵ Article 13 expands on this protection. It states that “[a] worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice.”

- the study of health hazards of chemical, physical and biological agents used in workplaces (Article 11).

Convention 155 also imposes obligations on the part of employers. They must ensure that “the workplaces, machinery, equipment and processes under their control are safe and without risk to health” (Article 16.1) and “the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken” (Article 16.2). They must also “provide, [...], adequate protective clothing and protective equipment to prevent, so far [as] is reasonably practicable, risk of accidents or of adverse effects on health” (Article 16.3).

Moreover, employers must ensure that arrangements are in place so that workers are adequately informed about measures designed to promote OSH (Article 19 (c)), trained in this area (Article 19 (d)) and able to inquire about all OSH aspects associated with their work (Article 19 (e)). An employer cannot force a worker to return to an unsafe work situation until corrective measures have been implemented (Article 19 (f)) or charge a worker for OSH measures (Article 21).

Finally, workers also have obligations. They must cooperate with their employer in the area of OSH (Article 19 (b)) and immediately report any situation which could present an “imminent and serious danger” to life or health” (Article 19 (f)).

Convention 161 on Occupational Health Services calls for the creation of preventive health services to promote, on a cooperative basis, the well-being of workers.²⁶ It stipulates that “[a]ll workers shall be informed of health hazards involved in their work” (Article 13). Occupational health services are also to be informed of any factor which is or could be detrimental to workers’ health and of any occurrences of health problems among workers so that a causal effect may be established (Articles 14 and 15).

Convention 170 on Chemicals calls for detailed regulations on the safe use of chemical products in workplaces. In particular, it requires signatories to “formulate, implement and periodically review a coherent policy on safety in the use of chemicals at work” (Article 4).

Convention 170 includes specific requirements regarding labeling and marking as well as chemical safety data sheets.²⁷ Article 7 stipulates that not only must the identity of all chemicals be marked, their classification, the hazards they present and the necessary precautions to be used must also be labeled “in a way easily understandable to the workers.” These requirements must be established by “the competent authority.” Chemical safety data sheets must be provided to the employer (Article 8.1).

Convention 170 imposes several obligations on employers. They must ensure that:

²⁶ See Article 5 for specific functions.

²⁷ Chemical safety data sheets are usually referred to as material safety data sheets.

- “all chemicals used at work are labeled or marked as required by Article 7 and that chemical safety data sheets have been provided as required by Article 8 and are made available to workers and their representatives” (Article 10.1);
- for improperly labeled or marked chemicals, or for chemicals which do not have safety data sheets, the chemicals not be used until “the relevant information from the supplier or from other reasonably available sources” is obtained (Article 10.2);
- the chemicals used have been properly classified, identified, assessed and labeled or marked and that necessary precautions are taken when they are used (Article 10.3); and
- “a record of hazardous chemicals used at the workplace, cross-referenced to the appropriate chemical safety data sheets” is maintained and accessible to all workers (Article 10.4).

On the issue of exposure, employers must “ensure that workers are not exposed to chemicals to an extent which exceeds exposure limits or other exposure criteria [...] established by the competent authority” (Article 12 (a)). They must assess (Article 12 (b)), monitor and record the exposure of workers to hazardous chemicals (Article 12 (c)) and make these records accessible to the workers (Article 12 (d)). They must also “limit exposure to hazardous chemicals so as to protect the safety and health of workers” (Article 13.2 (a)) and assess the potential health risks arising from the use of chemicals and protect workers by appropriate means (Article 13.1).

According to Article 15, employers are required to inform workers of the risks associated with the use of chemicals and provide the appropriate safety training.

Workers have corresponding duties and rights. For instance, they must cooperate “as closely as possible with their employers in the discharge by the employers of their responsibilities and comply with all procedures and practices relating to safety” (Article 17.1) and “take all reasonable steps to eliminate or minimize risk to themselves and to others” (Article 17.2). Workers have the right to remove themselves from a situation which they believe represents “an imminent and serious risk to their safety or health” (Article 18.1) without being punished (Article 18.2).

4.4 REGLAMENTO INTERIOR DE LA SECRETARÍA DEL TRABAJO Y PREVISIÓN SOCIAL (RISTPS)²⁸

The RISTPS lays out the internal procedures of the STPS for carrying out its responsibilities. The conduct of workplace inspections falls under the purview of the DGIFT and the promotion of OSH is the responsibility of the *Dirección General de Seguridad e Higiene en el Trabajo*²⁹(DGSHT).

More specifically, the responsibilities of the DGIFT include:³⁰

- monitor compliance with all labour laws, regulations, directives, standards and international agreements (Article 17.I);
- schedule, order and perform all types of inspections for workplaces under federal jurisdiction to ensure compliance and supervise the work of labour inspectors (Article 17.IV);
- monitor the functioning of workplace CSMs (Article 17.IX);
- set deadlines in which corrective OSH measures, as instructed in labour inspections, must be implemented. In cases of imminent danger, the DGIFT can order the adoption of measures of immediate application, including those related to the functioning of the enterprise, machinery, installations and equipment as well as work areas and methods (Article 17.X);
- order and execute, taking into account the views of the DGSHT, the closure of workplaces (Article 17.XI);
- carry out the notification procedures resulting from inspections and the assessment of sanctions for labour law violations (Article 17.XVIII); and
- Remit to the *Dirección General de Asuntos Jurídicos*³¹ (or the corresponding authority), for pertinent legal measures, files related to suspected labour law violations (Article 17.XXI).

As for the DGSHT, its responsibilities include³²:

- conduct OSH-related studies and research to propose adjustments to the regulatory framework (or to look at specific cases at the request of the DGIFT) and draft new NOMs (Article 22.I);
- promote the improvement of physical and environmental conditions in workplaces (Article 22.II);

²⁸ Internal Regulation of the Department of Labour and Social Welfare.

²⁹ General Directorate for Workplace Safety and Health.

³⁰ For a complete list, see Article 17 in the RISTPS, a Spanish copy of which can be obtained from the Canadian NAO.

³¹ General Directorate for Legal Affairs.

³² For a complete list, see Article 22 of the RISTPS, a Spanish copy of which can be obtained from the Canadian NAO.

- promote the establishment and operation of workplace CSMs, the training of their members and provide advice to these commissions so that they can adequately perform their functions (Article 22.III); and
- promote the training of OSH professional and technical personnel (Article 22.IV).

4.5 LEY FEDERAL SOBRE METROLOGÍA Y NORMALIZACIÓN (LFMN)³³

The LFMN aims at, among other things, promoting transparency and effectiveness in the elaboration and observance of NOMs (Article 2.II (a)), including those related to OSH. Its field of application includes the certification, verification and inspection of products, processes, methods, installations, services or activities to ensure they are in conformity with NOMs (Article 38.V).

All products, processes, methods, installations, services or activities must be in conformity with NOMs (Article 52). Producers, manufacturers and service providers subject to NOMs must maintain systems of quality control compatible with the applicable standards (Article 56).

Failure to respect the provisions of the LFMN can be sanctioned by fines or temporary or permanent closure of the production facility³⁴ (Article 112). The assessment of the fines is based on the intentional or unintentional character of the violation, the gravity of the violation and the economic situation of the violator (Article 115) as well as the nature of the violation (Article 112-A).

Nature of Violation	Multiplier of Minimum Wage
Failure to show document confirming compliance with required NOMs	20 to 3 000
Substantial modification of a process subject to an evaluation of conformity without notifying the competent authority	500 to 8 000
Violations of NOMs	500 to 8 000
Action which puts at grave risk human health, life or safety	5 000 to 20 000

Table 1. Level of Fines Under the LFMN

As depicted in Table 1, fines range from 20 to 20 000 times the minimum wage.³⁵

³³ Federal Law on Metrology and Standardization.

³⁴ The sanctions are the two most relevant for this review. Other sanctions include arrest (up to 36 hours) and suspension of trade marks, to name a few. Fines for NOM violations are higher than those related to the violations of *Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo* provisions (see section 4.6).

³⁵ Table 1 shows the most relevant violations for this review. For a complete list, see Article 112-A of the LFMN, which is available in Spanish from the Canadian NAO.

According to Article 113, if the same violation is repeated within two years, a fine is imposed again (the total amount not to exceed twice the maximum fine permissible under Article 112-A).

4.6 REGLAMENTO FEDERAL DE SEGURIDAD, HIGIENE Y MEDIO AMBIENTE DE TRABAJO (RFSHMAT)³⁶

Following broad public consultations on labour policy in 1995, the STPS released the *Programa de Empleo, Capacitación y Defensa de los Derechos Laborales: 1995-2000*³⁷ which called for a reform of OSH regulations and an improvement in the system of labour inspections.

With this goal in mind, the STPS published the RFSHMAT which was the result of the work of the *Comisión Consultativa Nacional de Seguridad e Higiene en el Trabajo*.³⁸ The RFSHMAT came into effect on April 21, 1997, and replaced the *Reglamento General de Seguridad e Higiene en el Trabajo*³⁹ along with five other OSH regulations. It represents an effort to modernize and simplify the OSH regulatory framework, including the strengthening of enforcement mechanisms, in order to improve the health of workers.⁴⁰

The RFSHMAT contains a series of obligations and responsibilities for employers such as:⁴¹

- conduct OSH studies in the workplace to identify possible causes of accidents and occupational illnesses and adopt corrective measures in accordance with the applicable standards⁴² (Article 17.III);
- determine and keep within permissible limits workplace environmental conditions, using procedures for each contaminating substance established in the corresponding standards (Article 17.IV);
- place in visible workplace locations OSH signs and notices to prevent risks (Article 17.V);
- establish programs of safety and health to improve the working environment and reduce exposure to chemical substances (Articles 17.VI, 84 and 130);
- train workers in the prevention of risks and attention to emergencies in their workplaces (Article 17.VII);

³⁶ Federal Regulation on Safety, Health, and the Workplace.

³⁷ Program for Employment, Training and Defence of Labour Rights: 1995-2000.

³⁸ The National Consultative Commission on Workplace Safety and Health.

³⁹ The General Regulation on Workplace Safety and Health.

⁴⁰ Correspondence from STPS dated February 26, 1997 (available in NAO public file).

⁴¹ This list (and the corresponding one for workers) is not exhaustive. For more details, see the RFSHMAT, which is available in Spanish from the Canadian NAO.

⁴² Many RFSHMAT articles are linked to specific official standards and legal orders (see Annex 1 of the RFSHMAT). Some of these standards will be discussed in section 4.8.

- install and keep in working order permanent devices to handle emergencies and dangerous activities in order to safeguard the life and health of workers (Article 17.XI);
- participate in the composition and operation of CSMHs and provide them with the facilities necessary to their optimal operation (Article 17.XIII);
- develop and circulate safety data sheets for dangerous materials and chemical substances (Article 63);
- provide medical examinations to workers exposed to contaminating chemical substances in solid, liquid or gaseous form which may contaminate the environment and alter the health of workers (Article 83); and
- in workplaces where substances which may affect the workers' health and be a risk to life (and where control and preventive measures cannot be applied), provide workers with adequate protective equipment in conformity with the applicable standards (Article 101).

Employers must also adopt appropriate OSH measures to prevent occupational accidents occurring while using machinery, equipment, instruments and materials as well as occupational illnesses resulting from exposure to chemical, physical, biological, ergonomical and psychosocial agents (Article 13). Furthermore, employers must inform workers about risks related to the use of or exposure to contaminants in the workplace environment and must train them in preventive and control measures (Articles 15, 62 and 82).

Some of the corresponding worker obligations include:

- observe OSH preventive measures established in the regulation (Article 18.I);
- designate the workers' representatives on the CSMH and participate in the composition and operation of this commission (Article 18.II);
- immediately inform the employer and the CSMH of unsafe conditions or actions observed and accidents that occur in the workplace and collaborate in the investigation (Article 18.III); and
- use the personal protective equipment provided by the employer and respect the other control measures established to prevent occupational injuries (Article 18.VII).

The RFSHMAT stipulates that violations of NOMs now fall under the purview of the LFMN thereby allowing for the application of higher fines in these cases (Article 163).⁴³

Other articles pertinent to Public Communication CAN 98-1 relate to ventilation and the tasks of the CSMH. For example, Articles 99 and 100 stipulate that, in workplaces where conditions or contaminants may affect the health of workers, the employer must conduct an inspection, evaluate and control these conditions or contaminants, taking into account adequate natural and artificial ventilation, air quality and volume. If an artificial ventilation system is put in place, it is the responsibility of the employer to establish a program of inspection and preventive and corrective maintenance.

⁴³ See section 4.5 and Table 1 for more details.

Nature of Violation	Multiplier of Minimum Wage
Failure to implement an inspection and preventive maintenance program for ventilation systems (Article 100)	15 to 105
Failure to provide potable water, sinks, lockers and change rooms (Article 103)	15 to 105
Failure to conduct a risk analysis to be used for the selection of personal protective equipment (Article 101)	15 to 210
Failure to establish a CMSH within 30 days of the beginning of operations of a plant (Article 125)	15 to 210
Failure to establish OSH measures in workplaces where chemical products capable of affecting the health of workers are used (Article 82)	15 to 315
Failure to conduct a study of the risk related to dangerous material and chemical substances in order to establish pertinent control measures (Article 57)	15 to 315

Table 2. Level of Fines Under the RFSHMAT

The RFSHMAT specifies the tasks to be performed by the CMSH (Article 126). These include:

- investigate occupational accidents and illnesses with the elements provided by the employer and others they deem necessary;
- monitor the application of RFSHMAT provisions and applicable OSH-related standards and report any violations;
- propose preventive OSH measures to the employer; and
- perform other tasks as stipulated in NOM-019-STPS on plant level CMSHs.

Employers must provide, at the worksite, sinks, toilets, showers, change rooms and lockers, a clean place for the consumption of food as well as potable water (Articles 103, 104, 106). They must also establish a program for the tidiness and cleanliness of the premises, machinery and installations (Articles 107). Waste produced in the workplace must be identified, classified, handled and controlled so as not to injure workers and damage the workplace (Article 109).

Violations to the RFSHMAT are subject to fines based on the general minimum daily wage in effect in the economic area where the workplace is located (Articles 165-167). Fines are doubled if violations have not been corrected within the allotted time

(Article 168). Table 2 shows the multiplier used to calculate the amount of a fine for a sample of violations.⁴⁴

4.7 REGLAMENTO GENERAL PARA LA INSPECCIÓN Y APLICACIÓN DE SANCIONES POR VIOLACIONES A LA LEGISLACIÓN LABORAL (RGIASVLL)⁴⁵

The RGIASVLL, which came into effect on August 5, 1998, is another by-product of the *Programa de Empleo, Capacitación y Defensa de los Derechos Laborales: 1995-2000* and the decision to modernize the Mexican labour law system. It aims at establishing a more transparent and efficient regulatory framework underpinning the implementation of both periodic and extraordinary inspections and sanctions.

The RGIASVLL reiterates the obligations of inspectors, as laid out in the LFT, but in greater detail. Among other things, inspectors must:⁴⁶

- monitor the application of labour provisions which establish the rights and obligations of workers and employers as well as OSH-related provisions, including the content of NOMs (Article 8.I);
- suggest the adoption of OSH measures of immediate application in the event of imminent danger including recommending to the competent STPS authority the partial or complete closure of the workplace (Article 8.IV);
- obtain, if necessary, samples of substances and materials used in the production process for examination (Article 8.VI);
- ensure that, in each workplace, the CSMH has been constituted and functions properly (Article 9.III);
- ensure that employers fulfill the existing provisions of labour law (Article 9.IV); and
- ensure that employers carry out the modifications ordered by labour authorities to make their establishments, installations, machinery and equipment conform to the LFT, labour regulations and NOMs (Article 9.V).

Inspectors may also advise workers and employers on provisions related to general working conditions, OSH, workers' training and other matters regulated by labour law (Article 10).

Four kinds of workplace inspections are now in effect in Mexico (Articles 13 and 14):

- initial inspections: performed on a first visit to a workplace or when the latter has been expanded or modified (Article 13.1);
- periodic inspections: performed once a year. The frequency can vary depending on the results of previous inspections and taking into account the industrial sector, the

⁴⁴ For a complete list of violations subject to sanctions, see Title Six in the RFSHMAT.

⁴⁵ General Regulation for the Inspection and Application of Sanctions for Labour Legislation Violations.

⁴⁶ For a complete list, see pages 11 to 13 in the RGIASVLL, which is available in Spanish from the Canadian NAO.

nature of the activities, the degree of risk, the number of workers and geographic location (Article 13.II);

- verification inspections: performed to ensure compliance with OSH-related measures or orders previously issued by labour authorities (Article 13.III); and
- extraordinary inspections.

Extraordinary inspections, under Article 14, are a special class of inspection. They are performed by labour authorities at any time when:

- they have knowledge of a possible violation of labour law (Article 14.I);
- while reviewing requests for authorization, they become aware of possible irregularities or false information attributable to the employer (Article 14.II);
- they learn of an accident in a workplace (Article 14.III);
- during an ordinary inspection, the employer provides false information or behaves improperly, in bad faith or violently (Article 14.IV);
- they learn of an imminent danger to the physical integrity or health of workers (Article 14.V);
- they examine materials and have reason to believe that the inspector committed irregularities (Article 14.VI); and
- they supervise the work of inspectors as provided for by Article 26⁴⁷ (Article 14.VII).

Articles 17-20, 23 and 26 provide guidelines on how to conduct an inspection. For instance, notice must be given at least 24 hours in advance, specifying the kind of inspection to be conducted and the list of documents to be presented to the inspector (Article 17). Complete collaboration from the employer, the workers and the CSMH, access to facilities and documents must be provided to the inspector (Articles 18 and 19). The inspector is authorized to interview workers and the employer (or employer representative), separately to avoid the possible influence of one party on the other if necessary (Article 20). If, during an OSH-related inspection, an inspector finds deficiencies which involve an imminent danger to the safety of the workplace or its workers or their health, the inspector must order corrective measures to be implemented immediately and recommend the partial or complete closure of the workplace to the competent STPS authorities (Article 23).

Article 26 stipulates that the work of inspectors will be supervised by competent labour authorities through verification visits of inspected workplaces and verification of facts noted in inspection reports. Randomly selected inspection reports will also be verified by an internal control unit (Article 26).

The RGIASVLL imposes specific obligations on inspectors. For example, they cannot inspect workplaces in which they have a personal direct or indirect interest (Article 28.I). Nor can they receive gifts or donations from employers, workers or their representatives (Article 28.V).

⁴⁷ Article 26 of the RGIASVLL is discussed below.

After the verification inspection is conducted, fines are to be calculated in accordance with procedures described in Title Six in the LFMN (see section 4.5) or Title Six of the RFSHMAT (see section 4.6) (Article 38). Labour authorities will remit the necessary paperwork to the competent enforcement authorities for the purpose of collecting the fines (Article 41).

4.8 NORMAS OFICIALES MEXICANAS (NOMS)

NOMs are technical standards which must be complied with and which are applicable to products, processes, installations, systems, activities, services, production or operation methods (LFMN, Article 3.XI). NOMs are designed to establish:⁴⁸

- characteristics and/or specifications which products and processes must possess when they may pose a risk to the safety of people or be harmful to their health or work environment (LFMN, Article 40.I);
- specifications and/or packaging procedures of products which may pose a risk to the safety of people, their health or the environment (LFMN, Article 40.V);
- conditions of health, safety and hygiene that must be observed in workplaces and public places (LFMN, Article 40.VII);
- characteristics and/or specifications, criteria and procedures to protect and promote human, animal or plant health (LFMN, Article 40.XI);
- characteristics and/or specifications, criteria and procedures for the handling, transportation and confinement of dangerous industrial materials, waste and radioactive substances (LFMN, Article 40.XVII).

Several NOMs are related to the OSH issues raised in Public Communication CAN 98-1 (see Table 3 for examples). Some of the most pertinent ones will be discussed here.⁴⁹

NOM-009-STPS-1994 aims at protecting workers from risks related to the storage, transportation and handling of corrosive, irritating or toxic substances. It calls on employers to adopt safety measures which must take into account:⁵⁰

- the harmful characteristics of the substances in question (Article 3.1.1 A)); and
- the use of the corresponding personal protective equipment (Article 3.1.1 E)).

They must also:

- substitute corrosive, irritating or toxic substances with less hazardous ones (Article 3.1.1 F));
- reduce as much as possible the use of corrosive, irritating or toxic substances (Article 3.1.1 G));

⁴⁸ For a complete list, see Article 40 of the LFMN.

⁴⁹ Spanish versions of the NOMs listed in table 3 are available from the Canadian NAO. There are currently 122 NOMs in total. As of April 1, 1999, this number will be reduced through consolidation.

⁵⁰ This is not an exhaustive list, see Article 3.1.1 for more details.

- develop safety data sheets for substances handled by workers, in accordance with the information presented in Annex 1 of NOM-009-STPS-1994 (Article 3.1.1 J));
- modify risk-producing work procedures and equipment (Article 3.1.1 H));
- train workers in safety procedures (Article 3.1.1 K)); and
- put in writing the dangerous tasks which lead to exposure to corrosive, irritating or toxic substances and which require authorization to be performed (Article 3.1.1 L)).

Employers must also inform workers of the risks related to the use and handling of such substances so that they observe the corresponding safety standards and use their personal protective equipment (Article 3.1.3). In workplaces where gases, vapours, emanations or dust are generated, employers must install control devices (Article 3.1.4).

Workers are responsible for observing the safety and health measures established by their employer, participating in training activities and using their personal protective equipment (Article 3.2).

The employer (manufacturer, importer, distributor or consumer) who handles these substances must ensure that each container is appropriately labeled (Annex 1, Article 2.1). Labels must be in Spanish, visible and legible (Annex 1, Article 2.4).⁵¹ Moreover, these substances must be stored in appropriate containers which must be identified with safety notices and signs (Article 4.1.3).

NOM-010-STPS-1994 deals with the safe storage and handling of chemical substances. It requires employers to:⁵²

- adopt preventive measures taking into account the characteristics, nature, duration and frequency of exposure of workers to physical, chemical and toxic characteristics of substances (Article 3.1.1 C));
- carry out the necessary identification, evaluation and control to prevent changes in the health of exposed workers (Article 3.1.2);
- keep, maintain up-to-date and show to competent authorities a record of concentration levels of chemical substances in order to control exposure to these substances (Article 3.1.3);
- develop health, safety and hygiene procedures for workers exposed to chemical substances (Article 3.1.4);
- inform workers of the possible health consequences of exposure to chemical substances found in the workplace (Article 3.1.5);
- train workers and members of the CSMH on safety procedures and preventive measures to protect their health (Article 3.1.6); and

⁵¹ Generally speaking, labels of products must contain warnings, if required. Labels must be at least in Spanish, legible and easy to understand (see NOM-050-SCFI-1994, Articles 5.2.1 e), 5.2.2 a), and 5.2.2 b)).

⁵² This list is not complete. For more details, see Article 3.1.

- indicate with safety notices in visible locations, the storage rooms and exposure zones for chemical substances (Article 3.1.7).

For their part, workers must collaborate in the evaluation measures, observe control measures, participate in the training and use the personal protective equipment provided by the employer (Article 3.2).

NOM-010-STPS-1994 also specifies the maximum allowable concentration limits of chemical substances in the work environment. For instance, the maximum time weighted concentration (for an 8-hour period) for toluene is 100 parts per million (Table I) and the limit for asbestos is 2 fibres per cc (Appendix A).

NOM-016-STPS-1994 is related to natural and artificial ventilation in workplaces. It requires employers to:⁵³

- maintain the necessary ventilation (by natural or artificial means) to protect the health of workers (Article 3.1.1); and
- develop a procedure to verify and maintain adequate ventilation in the workplace (Article 3.1.2).

In workplaces where dust, smoke, gases, vapours or mists of chemical substances are generated, the employer must put in place a ventilation system which will extract them (at source if possible) in order to ensure that the permissible concentrations established in NOM-010-STPS-1994 are never exceeded (Article 3.3.1).

For their part, workers must observe safety measures to maintain an adequate ventilation.

⁵³ For a complete list, see Article 3.1.

Identification Number	Title	Objective
NOM-001-STPS-1994	Safety and Health Conditions in Buildings, Rooms, Installations and Workplace Areas	Establish safety and health conditions in rooms, buildings, adjacent installations and workplace areas
NOM-002-STPS-1993	Safety Conditions for Fire Prevention and Protection in Workplaces	Establish safety conditions for fire prevention in workplaces and for workers' protection
NOM-004-STPS-1994	Protection Systems and Safety Devices on Machinery, Equipment and Accessories in Workplaces	Establish protection systems and safety devices on machinery and equipment to prevent, and protect workers from, occupational injuries
NOM-005-STPS-1993	Safety Conditions in Workplaces for the Storage, Transportation and Handling of Flammable and Combustible Substances	Establish safety conditions for the storage, transportation and handling of flammable and combustible substances to prevent, and protect workers from, occupational injuries and fire
NOM-009-STPS-1994	Safety and Health Conditions for the Storage, Transportation and Handling of Corrosive, Irritating and Toxic Substances in Workplaces	Establish safety and health conditions for the storage, transportation and handling of corrosive, irritating or toxic substances to prevent and protect workers against burns, irritation and intoxication in workplaces
NOM-010-STPS-1994	Safety and Health Conditions in Workplaces Where the Storage and Handling of Chemical Substances Can Produce Contamination of the Work Environment	a) Establish measures to protect the health of workers and improve safety and health conditions in workplaces where the storage and handling of chemical substances can, because of their properties, levels of concentration and action time, contaminate the work environment and affect the health of workers; and b) Establish maximum permissible levels of these substances, according to the type of exposure
NOM-011-STPS-1994	Safety and Health Conditions in Workplaces Where Noise Is Generated	a) Establish measures to improve the safety and health conditions in workplaces where noise is generated and which, because of its characteristics, levels and duration, can affect the health of workers b) Establish the correlation between maximum permissible levels of noise and maximum permissible exposure times per day of work
NOM-015-STPS-1994	Exposure to High or Falling Thermal Conditions in Workplaces	Establish preventive measures to protect workers from high or falling thermal conditions as well as the determination of the fatigue index and exposure limits
NOM-016-STPS-1994	Workplace Safety and Health Conditions Relating to Ventilation	Establish the necessary ventilation through natural or artificial means to prevent injuries to workers

Table 3. Sample of NOMs Relevant to Public Communication CAN 98-1

Identification Number	Title	Objective
NOM-017-STPS-1994	Personal Protective Equipment for Workers	Establish the requirements for the selection and use of personal protective equipment to protect workers against agents that can affect their health or life in the workplace
NOM-018-STPS-1993	Requirements for and Characteristics of Showers, Change Rooms and Lockers in Workplaces	Establish the requirements and characteristics regarding the installation of showers for the use of workers and the general characteristics of change rooms and lockers
NOM-019-STPS-1993	Constitution and Functioning of Workplace Safety and Health Commissions	Establish guidelines for the composition and operation of safety and health commissions that must be set up in all enterprises or establishments, in accordance with the LFT
NOM-027-STPS-1994	Safety and Health Signs and Notices	Establish a code for the development of safety and health signs and notices as well as the characteristics and specifications they must fulfill
NOM-029-STPS-1993	Safety Equipment for Respiratory Protection-Safety Code for the Identification of Air Purifying Canisters and Cartridges	Establish a safety code for the identification of air purifying canisters and cartridges
NOM-030-STPS-1993	Safety-Respiratory Protection Equipment-Definitions and Classification	Establish definitions for the use of respiratory protective equipment as well as its classification, required training and limitations
NOM-048-STPS-1993	Industrial Hygiene-Work Environment-Determination of Asbestos Fibres in Suspension in the Occupational Atmosphere-Microscopic Method	Establish the procedures and necessary equipment to determine the quantity of suspended asbestos fibres in the occupational atmosphere through the use of sampling and microscopic evaluation of samples
NOM-080-STPS-1993	Industrial Hygiene-Work Environment-Determination of Equivalent Continuous Noise Level to Which Workers Are Exposed in Workplaces	Establish the methods to determine the equivalent continuous noise level to which workers are exposed in the workplace
NOM-085-STPS-1994	Industrial Hygiene-Work Environment-Determination of Total Dust in the Work Environment-Gravimetric Method	Establish the procedure for the gravimetric determination by weight difference (filter weight) of the total dust concentration in the air of the work environment

Table 3. Sample of NOMs Relevant to Public Communication CAN 98-1 (continued)

Identification Number	Title	Objective
NOM-108-STPS-1994	Technical Prevention of Accidents on Machinery and Equipment, Design or Adjustment of Systems and Protection Devices, Risks Related to Mechanical Movements	Establish elements and/or mechanical movements, which may represent risk factors, to eliminate or reduce the magnitude and frequency of occupational injuries
NOM-109-STPS-1994	Technical Prevention of Accidents on Immobile Machinery-Guards and Safety Devices, Types and Characteristics	Classify and establish characteristics of types of guards and safety devices, used on immobile machinery
NOM-114-STPS-1994	System for the Identification and Communication of Risks Related to Chemical Substances in Workplaces	Establish a system for the identification and communication of risks related to chemical substances according to their physico-chemical characteristics or toxicity, concentration and exposure time which may affect the worker's health and life and/or the workplace
NOM-116-STPS-1994	Safety-Air Purifying Respirators Against Harmful Particles	Establish the characteristics and minimum requirements that must be met by air purifying respirators against harmful particles present in the work environment
NOM-125-SSA1-1994	Sanitary Requirements for the Processing and Use of Asbestos	Establish the sanitary requirements that must be met by establishments involved in the processing of asbestos, to protect the health of the personnel exposed to asbestos fibres as well as the population surrounding these establishments

Table 3. Sample of NOMs Relevant to Public Communication CAN 98-1 (continued)

NOM-017-STPS-1994 deals with personal protective equipment.⁵⁴ It imposes on employers the obligation to conduct risk analyses (and be ready to provide them to the labour authorities) to determine the required characteristics of the equipment and train workers in its use, cleaning, maintenance, limitations and storage. Moreover, the CMSH must be informed of the equipment requirements so that it can ensure compliance with NOM-017-STPS-1994 (Article 3.1). The selected personal protective equipment must (Article 4):⁵⁵

- protect against the risk in question;
- be for personal use;
- include information on its maintenance and useful life;
- fit the physical dimensions of the user; and
- lower the levels of exposure below the maximum permissible limits.

Workers must use the equipment provided, participate in appropriate training and put it in practice as well as properly maintain and clean the equipment (Article 3.2).

NOM-116-STPS-1994 establishes the minimum characteristics and requirements that must be met by air purifying respirators to protect workers from harmful particles. For instance, material used to make the respirators must resist the action of cleaning agents (Article 5.2) and a temperature of 70⁰ Celsius over a 24-hour period (Article 6.1). Procedures for testing respirators are also described. Surgical masks⁵⁶ and sponges used as respirators are excluded from this standard because they do not provide respiratory protection against harmful particles (Article 1.2).

The use and processing of asbestos are regulated by NOM-125-SSA1-1994. It makes clear that problems associated with this substance (such as asbestosis) arise many years after the exposure and are a function of the duration of exposure to as well as the density, dosage and concentration of the fibres.

⁵⁴ NOM-030-STPS-1993 specifically deals with safety equipment for respiratory protection. It provides a classification system for respirators and explains their advantages and limitations. It specifies that the proper respiratory protection equipment must be selected according to the particular conditions of the environment where it will be used (Article 5.2).⁵⁵ This is not an exhaustive list. For more details, see Article 4.

⁵⁶ The term used in Spanish is “cubre bocas”.

Some of the objectives of this standard include:⁵⁷

- the prevention of harmful effects on the health of those exposed to asbestos fibres (Article 5.3);
- establishing monitoring procedures and programs for those exposed to asbestos fibres as well as related medical records (Article 5.5); and
- establishing viable and feasible sanitary control procedures and programs to reduce exposure to asbestos fibres (Article 5.6).

The obligations to implement the environmental and sanitary controls and to ensure the medical examination of workers exposed to asbestos fibres, to prevent health risks related to exposure to airborne asbestos fibres, and to keep the concentration of asbestos fibres below permissible levels as well as cleaning work clothes rest with the employer (Articles 6.1.1, 6.1.3 and 6.1.7).

Workers are required to undergo medical examinations (Article 6.2.2), to cooperate with the authorities in the implementation of sanitary control measures (Article 6.2.3) and to adequately use the protective equipment and clothing (Article 6.2.4). Moreover, they are not permitted to bring their work clothes home to prevent exposing family members to asbestos fibres (Article 6.2.5).

The monitoring of workers' health must include:

a) for new workers:

- a complete clinical history (Article 7.1.4.1);
- a complete physical examination (Article 7.1.4.2);
- x-rays after six months of work (Article 7.1.4.3); and
- a spirometric test (Article 7.1.4.4).

b) for current workers:

- an annual update of the clinical history and detailed physical examination (Article 7.2.3.1);
- biannual x-rays (Article 7.2.3.2);
- an annual spirometric test (Article 7.2.3.3); and
- other annual examinations, if necessary (Article 7.2.3.4).

The monitoring of workers' health must also be accompanied by a training program on the prevention of respiratory illnesses (Article 7.6.1) and an anti-tobacco education program (Article 7.6.2).

⁵⁷ For a complete list, see Article 5. A Spanish copy of this standard is available from the Canadian NAO.

Mexican labour law related to occupational safety and health is detailed and comprehensive and the regulations have recently been updated. The legislation contains many cross-references (including to international conventions) which are expected to reinforce one another. Its holistic approach clearly aims at protecting workers and, to a large degree, places the responsibility of achieving this goal on employers with supervision by labour authorities.

5. ANALYSIS AND CONCLUSIONS

This review deals with Mexican OSH laws and regulations and their effective application. In this context, the NAO notes that inspections were carried out routinely at the plant. Corrective measures were ordered and follow-up inspections for compliance were conducted. Studies of plant environmental conditions were conducted by independent certified laboratories.

The promotion of occupational safety and health is embodied in the Mexican Constitution and federal law as well as in several ILO conventions ratified by Mexico. As explained in chapter 4, various regulations contain more specific requirements to ensure this constitutional and legal obligation is put into practice.

The principle of due diligence is embedded in the Mexican OSH legislation. That is, a general duty is placed on employers to protect the safety and health of their work force. This could be interpreted as adopting best international industrial hygiene practices. For their part, workers are obligated to follow their employer's rules and directives to help prevent occupational injuries and illnesses. Government supervision is intended to promote compliance and to provide the necessary framework, guidance and information for employers and workers.

Concerns and questions in three areas emerged from the information that the NAO received during the review: the operation of the CMSH, the protection of workers handling hazardous substances and the enforcement of OSH legislation. There was insufficient information to assess the claims of sexual harassment and pregnancy-based discrimination.

5.1 THE OPERATION OF THE CMSH

The CMSH plays a central role in the implementation of OSH regulations and in ensuring workers are adequately informed about OSH. The fact that Mexican legislation makes several references to this commission illustrates its importance.

As required by the LFT, a CMSH is in place at the plant. Based on the inspection reports available to the NAO, the composition and operation of the

CMSH were examined by STPS inspectors during each periodic inspection. In particular, they looked at the monthly minutes, the annual program and monthly inspection reports. However, not all workers seemed to be aware of its existence despite the conduct of regular meetings.

Members of the CMSH received training in how to conduct inspections and investigate accidents. They may be the workers that are best-trained in OSH. It would seem useful for them to accompany STPS inspectors during periodic or verification inspections. For example, this would give them an opportunity to discuss specific concerns with the inspectors and acquire more information about OSH regulations. Workers could report the results of the inspections to their colleagues. STPS inspectors would also benefit from another source of information. Yet, no members of the CMSH accompanied the inspectors although advance notice was always given.

The NAO was unable to ascertain whether the presence of CMSH members (especially worker representatives) is legally required or recommended during STPS inspections and would like more information from the Mexican NAO on this question.

5.2 HAZARDOUS SUBSTANCES

The Mexican OSH legislation related to the storage and handling of hazardous substances is comprehensive. It contains requirements to train and inform workers, provide them with proper personal protective equipment, closely monitor their health, control the use of these substances, including adequate ventilation systems, and minimize their effects on workers. The onus is on employers to implement these requirements under the supervision of labour authorities. This supervision is not only of an enforcement nature but intended to guide and inform.

After careful consideration of the information received, the NAO raises the following concerns:

- the extent to which workers receive all the necessary information about the handling of hazardous substances and the risks associated with their use;
- the attention paid to the requirement for labeling in Spanish of hazardous substances, such as asbestos and chemicals; and
- the adequacy of personal protective equipment.

Article 63 of the RFSHMAT (which is in conformity with Article 10.1 of Convention 170 on Chemicals) requires employers to develop and provide to workers safety data sheets. STPS inspectors confirmed that safety data sheets

exist at the plant but the NAO has not been able to ascertain whether they are readily available to workers.

Information regarding hazardous substances and the effects associated with exposure to them can also be provided through warning labels on packaging and containers as well as signs. Article 2.4 in Annex 1 of NOM-009-STPS-1994 (which is in conformity with Article 8.1 of Convention 170) specifically states that labels must be in Spanish, visible and legible. The NAO is concerned that materials such as the bags of asbestos handled by Mexican workers are not labeled in Spanish. No inspection report mentioned this requirement or the failure to satisfy it.

A question arises as to whether Mexico is in conformity with Article 3(1)(b) of the NAALC with respect to safety data sheets and labeling.

Personal protective equipment includes respirators to prevent the inhalation of harmful particles and protective clothing to prevent the contamination of areas outside of the work station. In the context of this review, a major concern is the adequacy of the personal respiratory protective equipment provided to Mexican workers at plants in which exposure samplings sometimes exceed permissible limits. None of the STPS inspection reports raised this issue even though 3M mask 8710 does not appear to be in conformity with Mexican regulations under NOM-017-STPS-1994 (Article 4).⁵⁸

Although asbestos can be used safely under controlled conditions, exposure to asbestos fibres can lead to illnesses such as asbestosis, pleura mesothelioma and lung cancer many years later. According to the U.S. National Institute for Occupational Safety and Health (NIOSH) Certified Equipment List, the 3M mask 8710 offers protection against dust or mist of substances that can produce pneumoconiosis and fibrosis but not against carcinogenic substances such as asbestos fibres.

The 3M mask 8710 does not provide adequate protection against chemical fumes either. In this case, a chemical cartridge respirator specific to the chemical product handled must be worn by the person to trap vapours and gases.⁵⁹ The use of this mask during the handling of chemical products that produce harmful fumes does not appear to be in conformity with Article 4 of NOM-017-STPS-1994.

⁵⁸ This type of mask is not approved for similar use in Canada.

⁵⁹ See Ontario Ministry of Labour, Designated Substances in the Workplace: A General Guide to the Regulations, Toronto: Queen's Printer, 1995, p.43.

While corrective measures were ordered to decrease dust levels, the failure to highlight the use of appropriate respirators by workers potentially exposed to asbestos fibres and harmful chemical fumes in the production process raises questions about whether Mexico is fulfilling its NAALC obligations under Article 3(1)(b).

5.3 STPS ENFORCEMENT

It is to be expected that, at any one time, a plant may not be fully compliant with every OSH regulation. During the course of inspections, it is the responsibility of labour authorities to notify the employer and require corrective measures.

Workplace inspectors are rarely experts in all fields. A second level of in-depth inspection can assess requirements in specialized situations. More experienced inspectors or experts in specific fields of OSH can assess compliance with the more technical aspects of the legislation. In addition, unannounced visits by inspectors can help to monitor continuing compliance.

Mexico has recently revamped its OSH and workplace inspection regulations in order to improve the transparency and efficiency of its regulatory framework as well as the health of workers. For example, the STPS informed the NAO that it is in the process of training more industrial hygienists and establishing a second level of inspections. This is a positive development and will further the extent to which Mexico can meet its NAALC obligations.

The STPS inspection reports reviewed by the NAO were comprehensive. However, regular inspectors may not be experts in the safe handling of substances such as asbestos fibres and the required personal protection. More specialized inspectors, able to conduct in-depth and thorough inspections, will be able to evaluate more thoroughly items such as training programs, ventilation systems, the adequacy of personal protective equipment as well as the labeling, handling and storage of hazardous substances. The NAO is interested in learning more about the implementation of new OSH regulations and how this will address these important aspects of inspections of workplaces where hazardous substances are used.

The NAO is also interested in obtaining more information regarding the conduct of risk analysis studies concerning factors such as noise, fire prevention and the level of airborne contaminants. Such studies were mentioned on a number of occasions in STPS reports. These studies are generally performed by outside consulting firms. The NAO would like to know how these consulting firms are certified to conduct the studies and how the STPS verifies that the results are accurate without undertaking its own sampling.

The RFSHMAT, which represents an effort to modernize and simplify the OSH regulatory framework, puts more emphasis on prevention. This goal is in line with the NAALC objective of promoting, among other things, the prevention of occupational injuries and illnesses. The NAO would like to know what concrete effect this new regulation will have on the efforts of the Mexican government to promote the prevention of occupational injuries and illnesses.

The NAO would welcome additional information on how the Mexican system of compensation would apply to workers who develop occupational injuries and illnesses such as asbestosis over the longer term. In particular, the NAO is interested in:

- the legal mechanisms at the disposal of such workers;
- the administrative process available to them to seek compensation;
- the type of information they would have to provide;
- the level of compensation they and their families would receive; and
- the liability of the employer in the long run.

More information about the collection of fines would also be useful. The RGIASVLL states that the STPS remits the necessary paperwork to the competent enforcement authorities for the purpose of collecting the fines (Article 41) but these enforcement authorities are not specified. Moreover, the NAO could not find any regulations or procedures in the RGIASVLL (or elsewhere) that allow or require the STPS, or another body, to collect unpaid fines or refer the matter to a tribunal.

Although the NAO was not able to find answers to all of its technical questions before issuing this second report, this does not have any effect on the recommendations made to the Minister of Labour with respect to Public Communication CAN 98-1. Pursuant to Article 16(2)(c), the NAO consequently

Issues	Questions
Role of CMSH during STPS inspections	Is there a legal requirement for CMSH worker representatives to accompany STPS inspectors? Is it the usual practice?
Efficacy of STPS inspections	How will the new two-level inspection system improve the inspection process as well as compliance with regulations designed to protect workers from the effects of hazardous substances (including, for example, ventilation systems)?
Collection of fines	Which specific enforcement agency is responsible for collecting fines and does the STPS confirm that the collection has taken place? Is the collection of fines part of the enforcement process? What actions are taken if fines are unpaid?
Risk analysis studies	How do consulting firms become certified to perform risk analysis studies? How does the STPS verify the results of these studies? Do inspectors review specialized results or conduct any direct sampling?
RFSHMAT	What concrete effect will this new regulation have on Mexican government efforts to promote the prevention of occupational injuries and illnesses?

Table 4. Issues Requiring Additional Information

requests additional information on issues mentioned in table 4 in the spirit of continuing cooperative dialogue and exchange of information. Once this information is received, the NAO will report to the Minister of Labour on any outstanding issues.

6. RECOMMENDATIONS

The NAO makes the following recommendations in the spirit of Cooperative Consultations and in a desire to build on our comparative knowledge and understanding of labour law and its enforcement in North America.

Pursuant to Article 22 of the NAALC, which provides that Ministers may request in writing consultations with another country regarding any matter within the scope of the Agreement, the NAO recommends that the Minister of Labour seek

Consultations with the Mexican Secretary of Labour and Social Welfare on the following issues related to occupational safety and health:

- a) how the requirement to label in Spanish hazardous substances such as asbestos and chemicals is effectively enforced, particularly on imported materials;
- b) how labour authorities enforce the requirement that employers disseminate information to workers, such as material safety data sheets and CSMH minutes;
- c) how labour authorities monitor compliance with the requirement to provide workers who handle hazardous substances, such as asbestos and chemicals, with the proper personal protective equipment;
- d) the type of inspections carried out in plants using hazardous substances that rely on reports from independently certified laboratories to monitor exposure and the training provided for specialized inspections in high risk workplaces as well as the efficacy of inspections when advance notice is given; and
- e) how the Mexican injury and illness compensation system works in relation to long term illnesses, such as asbestosis, that may be caused by working conditions and that may not be detected until after a worker has left a work site, as well as worker access to this system.

Moreover, the NAO recommends that the Minister of Labour engage her Mexican counterpart in a cooperative dialogue on responsible care and international best practices to protect workers who process, adapt or use asbestos in the production of goods.

March 12, 1999

ANNEX 1

CANADIAN NAO GUIDELINES FOR PUBLIC COMMUNICATIONS UNDER ARTICLES 16(3) and 21 OF THE NORTH AMERICAN AGREEMENT ON LABOUR COOPERATION (NAALC)

1. ELIGIBLE PUBLIC COMMUNICATIONS

- a) Any person or organization may submit a public communication to the Canadian NAO regarding labour law matters arising in the territory of another Party to the Agreement.
- b) To be eligible for review, the public communication must:
 - (i) address and explain how the matters complained of may constitute a failure of another Party to comply with its obligations under Part Two of the NAALC, including, where applicable, whether there appears to be non-enforcement of labour law by the other Party;
 - (ii) be substantially different from previous communications or include new or supplemental information not available in previous communications; and
 - (iii) meet the requirements in paragraph 2 below.

2. REQUIREMENTS FOR PUBLIC COMMUNICATIONS

- a) Public communications must:
 - (i) be signed and dated and include the name, title, address and telephone and fax numbers of the submitter;
 - (ii) clearly state the matters the submitter requests the NAO to consider and include any relevant supporting information;
 - (iii) indicate if relief has been sought under domestic laws or before an international tribunal and whether these actions have concluded;
 - (iv) identify any confidential information included with the communication.
- b) Public communications should be submitted in two copies by mail, hand, fax or e-mail to the Secretary of the Canadian NAO. For submissions received by

fax, the NAO reserves the right to request a hard copy if required to facilitate the review of the communication.

c) Public communications may be submitted in English or French. Supporting documents may be submitted in any of the three languages of the Agreement (English, French or Spanish).

3. WHEN A PUBLIC COMMUNICATION IS RECEIVED

a) The NAO will promptly acknowledge receipt of the communication and inform the NAOs of the other Parties, the Secretariat of the Commission for Labour Cooperation and the Canadian Governmental Committee.

b) The NAO will, within 60 days of receipt of the public communication, decide whether to accept it for review. A communication will be accepted for review if it meets the conditions set out in paragraph 2(b) and is submitted in accordance with the procedures in paragraph 3. During this time, the NAO will consult with the Canadian Governmental Committee and may communicate with the submitter to request additional information or clarification, with the NAOs of the other Parties and with other Canadian government departments and agencies.

c) If the communication is accepted for review, the NAO will provide written notification to the submitter, the NAOs of the other Parties, the Secretariat of the Commission for Labour Cooperation and the Canadian Governmental Committee. The NAO will also publicly announce the decision to undertake the review.

d) If the public communication is declined, the NAO will provide written notification to the submitter, the NAOs of the other Parties, the Secretariat of the Commission for Labour Cooperation and the Canadian Governmental Committee, including the reason for the decision.

e) Authors of public communications may re-submit or revise a communication to ensure it meets these guidelines. If a communication is declined by the NAO, the submitter may appeal in writing to the National Administrative Office providing reasons why the decision should be reconsidered. If the communication is declined again, the NAO will provide its reasons.

4. WHEN A PUBLIC COMMUNICATION IS ACCEPTED FOR REVIEW

a) The NAO will have 120 days to examine the communication to better understand and report on the issues raised. This timeframe may be extended to 180 days if circumstances warrant. The format for the examination may vary depending on the issue in question and could include meetings with the submitters and other interested parties, public meetings or consultations, appointment of an independent reviewer, requests for additional information or any other information gathering process that will enable the NAO to carry out its responsibilities. Underlying the review will be an emphasis on ensuring an accessible, open and transparent examination of the issues.

b) Several public communications on related matters may be combined in one review.

c) The provisions of annex 46, paragraph 2 of the NAALC (Extent of Obligations) will apply when a communication is forwarded to the NAO of another Party for consultation.

d) Within the review period, the Canadian NAO may request additional information from the submitters as well as information from the NAOs of other Parties. Consultations between NAOs, as described in Article 21 of the NAALC, may be undertaken. The NAO may also request additional information and analysis from experts, academics, consultants and other interested individuals or organizations.

e) By the end of the review period, the NAO will produce a report in both of Canada's official languages, including its decision on whether to recommend Ministerial Consultations as provided for under Article 22 of the NAALC. The report will be made available to the submitter, the NAOs of the other Parties, the Secretariat and the Canadian Governmental Committee and other members of the public. Other relevant information received by the NAO will also be publicly available except for any confidential or proprietary information described in Article 44.

ANNEX 2

LIST OF SUBMITTERS

United Steelworkers of America-Canadian National Office	Canada
United Steelworkers of America (USWA)	U.S.
International Association of Machinists and Aerospace Workers (IAM)	U.S.
National Automobile, Aerospace, Transportation and General Workers Union (CAW-Canada)	Canada
International Brotherhood of Teamsters (IBT)	U.S.
Union of Needle Trades, Industrial and Textile Employees (UNITE)	U.S.
United Electrical, Radio and Machine Workers of America (UE)	U.S.
Industrial Union of Electrical Workers	U.S.
United Paperworkers International Union (UPIU)	U.S.
Canadian Labour Congress (CLC)	Canada
<i>Union Nacional de Trabajadores (UNT)</i>	Mexico
American Federation of Labour and Congress of Industrial Organizations (AFL-CIO)	U.S.
<i>Frente Auténtico del Trabajo (FAT)</i>	Mexico
35 other concerned organizations	Canada, Mexico and U.S.

ANNEX 3

ACTION REQUESTED BY SUBMITTERS CONCERNING THE PREVENTION OF OCCUPATIONAL INJURIES AND ILLNESSES

- hold a full and public inquiry;
- demand that the JFCA and other Mexican labour authorities require Dana Corporation, Echlin Inc., ITAPSA, American Brakeblock and the *Confederación de Trabajadores Mexicanos*⁶⁰ to comply with Mexican labour laws providing for occupational safety and health standards, and protections for freedom of association and the right to organize;
- recommend that the Minister of Labour request Ministerial Consultations;
- following such consultations, recommend that the Minister of Labour request that an Evaluation Committee of Experts be established;
- grant such further relief as it may deem just and proper.

⁶⁰ Confederation of Mexican Workers.