

The Río Sonora River Spill: Grupo México and the Mexican State's Evasion of Responsibility



Since 6 August 2014, when Mexico learned of the spill of 40 million litres of acidic copper sulphate in the Sonora and Bacánuchi rivers, hundreds of documents have been written to explain how the “worst environmental disaster in the mining sector in Mexico” happened, as described by Juan José Guerra Abud, who was then head of the Ministry of the Environment and Natural Resources (SEMARNAT, by its Spanish acronym). Likewise, there have been numerous radio, television, and digital media reports about the tragedy which, we now know, could have been avoided by Buenavista del Cobre, S.A. de C.V., a subsidiary of Grupo México.

Unfortunately for the 22,000 people whose lives have been changed by this terrible event, there has been little change since the questions asked soon after the spill, which are still being asked today nearly four years later: Why did the company not take measures to avoid the disaster? What has the government done to guarantee that the damage to communities is fixed? Is it possible for a company to pollute a river and continue operating as though nothing had happened?

Since September 2014, the Río Sonora Watershed Committees (CCRS, by its Spanish acronym), a citizen group created following the spill to fight for remedy and clean-up of the Sonora and Bacánuchi rivers and to demand compensation for the harm done to local populations, accompanied by the Project on Organizing, Development, Education, and Research (PODER), has conducted research to find out how the State and the company responded to this environmental emergency and to demand that both be held accountable.

Two years after the spill, the case was taken up by four United Nations Special Procedures: the Working Group on Business and Human Rights, the Rapporteur on toxic waste, the Rapporteur on the environment, and the Rapporteur on water. In October 2017, the Special Procedures collectively published a document that asked the government of Mexico and the company to answer a series of questions about their responses and follow-up to the disaster. The State's and company's answers arrived two months later, and they are surprising because they generate multiple contradic-

tions with the information given by different government agencies as well as by the Río Sonora Trust and they raise multiple questions that neither the State nor the company have wanted to answer.

At PODER, we have closely analysed the State's and company's answers and have compared them with documentary evidence obtained in the years since the spill, as well as with testimonies collected in the field from residents of the Río Sonora valley who live with the consequences of the spill every day.

The result of this analysis is a longer document available at www.projectpoder.org and www.ComitesCuencaRioSonora.wordpress.com. Below is a summary of that document.

1. Impact on the right to health

Mexican Government Response

“10,875 medical examinations were carried out that allowed the identification of 360 cases directly or indirectly related to heavy metal contamination.”

Buenavista del Cobre Responses

“There is no knowledge nor has any case been identified of people who have died as a consequence [of the spill] or who have illnesses directly related to the leakage of the solution, or who have had their health put at risk or harmed.”

“The reason that the building of treatment facilities and the clinic has not been completed is that it would be irresponsible to do so given that the municipal authorities do not have the capacity to operate them.”

Evidence of harm to health

The spill affected more than 22,000 people from seven municipalities located along the banks of Río Sonora: Arizpe, Banámichi, Huépac, Aconchi, San Felipe, Baviácora, and Ures. It is worth pointing out that heavy metals are bio-accumulative and that the affects of consuming them via contaminated water can take months or years to manifest.

There are sufficient indications that the contamination in the area is exposing residents to serious health risks, which is borne out by the increase in the

number of cases of determined illnesses among residents of the affected municipalities, as shown in the below table created using official data.

	September 2014	October 2014	March 2015	August 2016
# of people whose health has been affected	19	36	270	381

In July 2017, the ad-lib Sonora Unit for Epidemiological and Environmental Assessment (UVEAS, by its Spanish acronym) reported that 381 people from the river area had toxic waste in their blood and urine and had skin, kidney, cardiovascular, and eye conditions. Testimonies from the region’s residents confirm that stomach and skin conditions have become commonplace along Río Sonora.

Since August 2016, the Río Sonora Trust and COFE-PRIS – entities charged with detecting, attending to, and compensating those whose health has been affected by the spill – have stopped publishing information about health conditions.

The increase in the number of sick people coincides with the hypothesis of bio-accumulation of heavy metals in the blood and supports the demand for authorities to continue monitoring and attending to health impacts that will only increase with time. This was the objective in installing the UVEAS, whose creation was promised by the company and, it was said, would attend to victims until 2029. However, this health centre will no longer be built as Buenavista del Cobre has withdrawn its support.

The medical attention to people whose health has declined because of the spill has, in general, not been good: testimonies show questionable diagnostics [“they tell us all that we have an allergy,” said one woman], or test results take months to arrive, or there is a lack of medicine to treat conditions. Only in exceptional cases have there been reports of good health care experiences.

2. Impact on the right to a healthy environment

Mexican Government Response

“The remediation programme deals with the affected area thoroughly, by zones. It is not a partial measure [...] National legislation imposes an obligation to remedy the relevant contaminated land. In this case, it refers in particular to zone 1.”

Buenavista del Cobre Responses

“There is no knowledge nor has any case been identified of [...] loss of animal species as a consequences of the accident.”

“The prior conclusions allow us to conclude that, up to the 50cm depth studied, the earth and sediments in the areas surrounding the Tinajas stream and the Sonora and Bacánuchi rivers have not been affected by the presence of metals connected to the 6 August 2014 spill.”

Evidence of harm to the environment

The research conducted by PODER and CCRS provides sufficient data to confirm that the contamination of Río Sonora is on-going. An October 2014 study by Intertek Testing Services of Mexico, solicited by PROFEPA, concludes that, of the samples collected in the dry basin of the Tinajas stream and the Río Bacánuchi, nine exceed the legal limit for arsenic, one for vanadium, and another for lead.

We know that these substances come from leaching material that has spilled into both rivers, since the content of the spilt substance matches the substances found in the ground, according to information provided by the company on 9 August 2014.

Likewise, the 2014 Laboratorio ABC study, requested by the company and published on the Río Sonora Trust’s website, confirms that, using data provided by CONAGUA, it is estimated that 74.8 tonnes of metals have been introduced into the ecosystem as a result of the spill – mainly iron and aluminium (83%), followed by magnesium and zinc (8%).

These estimates match the environmental assessment done in 2016 by the UNAM, which indicates that the data collected shows

[...] the existence of harm to the state of ecosystems and natural resources, and to the chemical, physical, and biological conditions of the Sonora and Bacánuchi Rivers. This summary provides sufficient elements (1) to prove the environmental damage and the causal link between the impact on the ecosystem and the spill, and (2) to justify the follow-up programme that must be implemented to measure, over the long term, the evolution of the environmental impact caused by the spill.

These three studies call into question the government’s and company’s versions insofar as they deny the presence of metals in the ground associated with the spill, since the studies cited were commissioned by the same Río Sonora Trust, in whose Technical

Committee federal authorities and representatives of the companies responsible for the spill participate.

As if this were not enough, a 2015 PROFEPA study confirms that Buenavista del Cobre committed 55 errors, was negligent, and profited from lowering their costs by avoiding compliance with environmental laws related to the handling of leaching material, hazardous waste, and the control of emissions that pollute the atmosphere.

The same study indicates that the facts and omissions by the company are serious, risky, and could provoke harm to human health, natural resources, ecosystems, and biodiversity, putting at risk the ecological balance and violating the human right to a healthy environment.

The lack of transparency and concealing of information about the state of the environment in the Río Sonora basin by the federal government and subsidiaries of Grupo México have made it difficult for us to obtain documentation that shows that Río Sonora continues to pollute, and reveals the intention of the company and the government agencies involved to conceal information needed to clarify what happened.

3. Impact on the human right to safe drinking water

Mexican Government Responses

“CONAGUA has conducted, and will continue to implement, exhaustive interim measures designed to maintain the quality of the bodies of water.”

“The Trust’s Technical Committee authorised the drilling of new wells, renovation and construction of, and equipment for existing drinking water infrastructure, as well as the respective studies. This meant funding infrastructure for 41 wells.”

“As a result of a series of commitments acquired by the parties involved, emergency drinking water stations will soon be installed as a short-term measure to guarantee the quality of water for human consumption even in extremely adverse situations.”

Buenavista del Cobre Responses

“The quality of water in the wells that have been closed as a precautionary measure is constantly analysed and, since October 2014, has been determined by COFEPRIS to be suitable for human consumption.”

“MXN125.8 million from the Trust has been made available for the drilling and construction of, and equipment for water infrastructure for, 63 new wells

for the benefit of the affected population, to guarantee the delivery of water.”

“2 portable drinking water stations have been installed.”

Evidence of contamination of bodies of water

Since the spill, the main complaint of those living in affected municipalities has been the lack of safe drinking water, as well as the inaction of the authorities regarding the guarantee of optimum quality water.

It was publicly announced that the water wells would be constantly monitored, but CONAGUA, one of the two authorities responsible for doing so, has said at trial that this is not within its mandate. The other responsible authority, COFEPRIS, has used a questionable methodology.

The water analyses that appear on the Río Sonora Trust website do not explicitly mention how the sampling process was designed, and the frequency with which the data is published is inadequate: there are months without data and some results are repeated verbatim over various months. This is shocking given the low probability of obtaining the same results when the water is constantly flowing. The lack of rigour in the Trust’s monitoring processes means that the results cannot be considered conclusive.

One of the advances, which the company and government refer to in their answers to the UN Working Group, is the opening of new wells. But this has been done in the affected region using laws (like the NOM-127-SSA1-1994, regarding environmental health and water for human use and consumption) that fall below international standards, therefore violating the right to safe and quality water.

According to the testimony of one resident: “In some communities, the wells that provide water to the community were not relocated following the spill of toxic waste into the river, despite this being necessary, because some of them are located scarcely 200 metres from the river tributary. It is even known that, in the past, some of these wells have flooded when the river tributary has swollen.”

Another promise which was made through the Río Sonora Trust, soon after the spill, was the installation of 36 potable water stations to get rid of heavy metals in the water. In February 2016, these 36 stations were reduced to 28 and, finally, in April 2017, it was announced that only nine of them would be built. The

company's justification for reducing the number was that the contamination levels "had stabilised".

The company told the UN Working Group that the reason it had not completed construction of the treatment centres and health clinic to attend to the communities was that "it would be irresponsible to do so given that the municipal authorities do not have the capacity to operate them."

PODER, together with residents from the places where the potable water stations were installed, visited the stations and verified that none of the fixed plants located in Mazocahui, San Felipe, La Capilla, Banámichi, and San Rafael are working, just as the four mobile potable water stations are not operational either.

4. Bad management of substances and hazardous waste by the company

Using different freedom of information requests we have been able to verify that the company, Buenavista del Cobre, did not have the requisite SEMARNAT authorisations for the handling of hazardous waste at the time of the spill.

In 2011, the mine sent SEMARNAT its Plan for the Handling of Waste and, one year later, the agency asked for more information in order to authorise it. The company asked for an extension and, for three years, SEMARNAT did not demand the information from the mine and the mine did not provide it. So the authorisation remained outstanding. On 6 March 2018, we were informed that the company had registered its Plan for the Handling of Waste in August 2018, three years after the spill happened.

Over the last year, different cases have been reported of animals dying after drinking water from Río Sonora. In December 2017, in Huépac, six horses and six cows died following days of rain, which caused the river to swell and flood the surrounding areas. The owner of one of the horses saw it collapse suddenly, not more than 10 metres from and only 30 minutes after having drunk the water.

5. Impunity and lack of access to justice for the people affected

In the nearly four years during which the CCRS have demanded reparations for the damage caused in Río Sonora, they have faced multiple obstacles in terms of access to justice. Below are some examples:

- In order to file for legal protection, the citizens must prove their identity, but the local authorities deny residents the residency cards they apply for, or impose excessive charges.
- Even with the proof of identity of those seeking justice, the courts ask them to ratify signatures, including for the elderly who are unable to travel.
- In Aconchi and Banámichi, the municipal presidents have taken reprisal actions against those who have signed as complainants in appeals for legal protection. In Aconchi, they fired a local council employee. In Banámichi, they withdrew support for construction from a resident who had signed the appeal for legal protection.

The result of these practices is a lack of guarantees of access to the most basic rights. Another result is that, in practice, the exercise of individuals' civil and political rights is limited.

According to the PODER attorney representing the CCRS, when the communities want to access justice, there are obstacles that prevent appeals for legal protection from being simple, accessible, and effective. This is highlighted by the fact that the possibility of suing the company as directly responsible for the human rights abuses has been denied, since the competent judges and courts have refused to consider the company as an authority for the purposes of appeals for legal protection, therefore deviating from principle 26 of the UN Guiding Principles.

In the end, what is at stake is the system which regulates relations between the government and companies and which seeks to exclude affected people.