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Available at: https://digitalrepository.unm.edu/usmexlj/vol2/iss1/12
REGULATIONS TO PROTECT THE ENVIRONMENT IN MEXICO
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I. INTRODUCTION

Environmental legislation is considered to be very important in Mexico, but there are many people who ponder the manner in which Mexico is implementing its environmental regulations.

A. Background

Throughout the last decade of the Twentieth Century, Mexico is confronting the challenge of continued modernization while seeking to prevent adverse impacts on its natural resources and environment. As Mexico consolidates its economic development in the context of the global marketplace, it must respond to environmental hazards provoked by the use of technology necessitated by industrial expansion and the increased concentration in population. The increase in population has been created by a sudden migration of people to metropolitan areas who seek jobs within newly-established industries.

In response to new social needs and population growth, Mexico concentrated initially on a policy of economic diversification. As a result, Mexico failed to devote sufficient attention to conserving its natural resources and its environment. This early strategy was acknowledged as counter-productive when it became clear that the welfare and health of the population, as well as the potential wealth to be derived from a rational and sustainable use of natural resources, depended upon a healthy environment. Subsequently, the policy was subject to a radical change in 1988, beginning with the administration of Mexican President Carlos Salinas de Gortari.

In 1988, the revised economic diversification policy emphasized environmental considerations and made environmental protection and restoration a priority. Consequently, Mexican environmental legislation is

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1. María del Carmen Carmona Lara, Derecho Ecológico 44 (1991) (Mex.).
supported by a policy decision to consider the indirect impacts of technology on social and economic development. Thus, provisions are manifested in recent non-environmental legislation that order compliance with environmental legislation in any particular field. For example, Article 18 of the Decree for the Development and Operation of the Maquila [In-Bond] Industry for Exportation, provides that all the persons operating under the Maquila programs must comply with environmental legislation in order to maintain their authorization. Similarly, Article 5 of the regulations of the Law to Promote Mexican Investment and Regulate Foreign Investment requires that one-hundred percent (100%) of foreign-owned corporations, incorporated under the provisions of this law, must use proper technology and observe the legal provisions in effect on environmental issues.

In 1989, regarding enforcement, there were merely 160 industrial plants closed because of environmental non-compliance. In 1990, the Mexican government closed 357 plants; and in 1991, it closed 1,728 plants because of environmental non-compliance. Presently, most industries located in Mexico have complied with all environmental regulations and have improved their technological equipment required to comply with the provisions of the environmental regulations.

II. PRINCIPAL LAWS AND REGULATIONS

Current Mexican law established both enforcement and economic development mechanisms to effectuate Mexican environmental policy. Although the policy implementation remains incomplete, many provisions of the principal legislation have been enacted. Among the enforcement mechanisms are regulatory provisions (including local and state responsibility for certain matters), requirements for environmental impact studies, and ecological technical standards. The development mechanisms include planning, tax incentives, grants, and subsidies. The following discussion summarizes the legislative framework which will aid the environmental legal practitioner to develop an effective compliance strategy and identifies the most important environmental regulations of Mexico.

A. General Law of Ecological Equilibrium and Environmental Protection

The Political Constitution of the United Mexican States mandates preservation and restoration of the environment through a General Law of Ecological Equilibrium and Environmental Protection (the "General Law of Ecological Equilibrium and Environmental Protection"


Thus, environmental issues are elevated to a constitutional status. Accordingly, the General Law of Mexico implements these constitutional provisions and is composed of six titles.

1. Title One: General Provisions

The first title regulates the distribution of authority among federal, state, and local governments. It defines the authority of the federal agency charged with the overall jurisdiction, which is currently the Secretaria de Desarrollo Social (Secretariat of Social Development - SEDESOL). The first title also defines the interrelationship between SEDESOL and other agencies that share its authority.

2. Title Two: Protected Natural Areas

The second title regulates protected natural areas. It describes the classification system for areas that are subject to special regulations, such as unique animal habitats and areas bearing unique recreational uses. Additionally, it outlines the various regulatory schemes that apply to each type of protected area and explains the procedure for designation and assumption of control over the area by the Mexican government. There are nine areas that are subject to special regulations: biosphere reserves, special biosphere reserves, national parks, national marine parks, natural resources, natural monuments, flora and fauna, urban parks, and zones subject to ecological conservation.

3. Title Three: Rational Use of Natural Elements

The third title regulates rational use of natural elements, including water and aquatic ecosystems, land use, and land resources. The policy underlying this title is to ensure that exploration and exploitation is conducted in a manner consonant with retaining an ecological balance and sustaining renewable resources.

4. Title Four: Environmental Protection

The fourth title regulates environmental protection as it pertains to seven general categories including air, water, soil, hazardous residues, and the various governmental bodies authorized to enact norms and regulations. The first category concerns air pollution and its control, and classifies emission sources as either static or dynamic. The jurisdiction over these issues is delegated to state and local governments. The second category pertains to the prevention and control of water pollution, with special emphasis on aquatic ecosystems. Similarly, the jurisdiction over

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5. Constitución Política de los Estados Unidos Mexicanos [Const. - Political Constitution of the United Mexican States], art. 73, § XXIX, at 54 (10th ed. Delma Edition) (Mex.).
6. See discussion infra at part VI (Recent Changes in the Administrative Structure of Mexico's Environmental Protection).
certain issues is delegated to state and local governments. The third category pertains to the prevention and control of soil contamination and addresses solid and non-hazardous waste from industrial and urban sources. It also mandates coordination between agencies with respect to the regulation of pesticides, fertilizers, and toxic chemicals. The fourth category pertains to hazardous waste, the method of identifying hazardous waste, and proposed programs to reduce hazardous waste risks. The remaining categories pertain to the governmental entities that are granted the authority to enact standards and regulations for the control of hazardous substances, nuclear energy, and general nuisances, such as noise, vibration, thermal energy, lighting, odor, and visual pollution.

5. Title Five: Public Participation

The fifth title provides for public participation. Under this title, the Mexican government is obligated to encourage public participation in the formulation of environmental policy. Combined actions by groups, private enterprises, and the general public is necessary to solve specific environmental problems. For example, an agreement may be entered into with a labor union to ensure that environmental conditions in a workplace are acceptable.

6. Title Six: Measures for Control, Safety, and Sanctions

The sixth title establishes measures for control and safety and corresponding sanctions for violations. The sixth title also regulates inspections, monitoring procedures, administrative sanctions, and administrative appeal procedures, as well as federal environmental crimes and penalties. Moreover, it contains a whistle-blowing provision that protects any person, whether or not his or her interests are affected, who approaches the proper authority to file a complaint regarding actual or potential violations of the law. Because of the whistle-blowing provision, any person who believes that a party is contaminating the environment, may submit a claim to the Attorney General’s Office for the Protection of the Environment (the “Attorney General’s Office”). The Attorney General’s Office will investigate the claim and determine whether the accused party is in fact contaminating the environment. If it is determined that the party is contaminating the environment, the Attorney General’s Office imposes corresponding sanctions and requires clean-up of the contamination.

B. Regulations to the General Law

The Regulations to the General Law establish Environmental Impact Statement requirements that must be fulfilled according to Articles 28 and 29 of the Environmental Protection Law for the grant of authorization for projects subject to approval.7 The goal of these regulations is to

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7. See Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente [Regulations to the General Law of Ecological Equilibrium and Environmental Protection], D.O., at 86 (June 7, 1988) (Mex.).
provide the Mexican government with the authority to maintain control over private and public construction projects prior to their commencement and to maintain control over any activities that have a potential adverse impact on the environment. An Environmental Impact Statement allows for the assessment of the environmental impact of a construction project and ensures that proper safeguards are established.

The regulations contain very important provisions that concern environmental impact. Before an enterprise may begin its operations, it must submit notice of its proposed operations to the environmental authority, the Secretaria de Desarrollo Social (Secretariat of Social Development). If no harm to the environment is expected before the activities of the enterprise are to be performed, the Secretariat grants the authorization so that operations may begin.

1. Regulation for Protection and Control of Air Pollution

Other regulations govern air pollution control, define the scope of federal jurisdiction, and govern corresponding air pollution issues. These specific provisions of the regulations include reporting requirements, as well as requirements to obtain an operational license, which involves establishing an emissions inventory. In other words, these regulations require an industry to obtain an operational license if it intends to release emissions to the atmosphere. The operational license should reflect the processes and the type of emissions that will be generated, the hazardous residues that will be generated, and the method in which the emissions will be controlled.

2. Regulation for Prevention and Control of Water Pollution

Additionally, there exists a regulation for the prevention and control of water pollution, which was adopted about twenty years ago. This regulation is one of the first of its type, but is becoming obsolete. In order to fill these gaps left by this obsolete regulation, the Mexican government recently published its National Water Law. The purpose of Mexico's National Water Law is to regulate federal waters, whether flowing or stationary or above ground or subterranean, as well as to govern water rights issues. Under Mexico's National Water Law, the Secretaria de Agricultura y Recursos Hidraulicos (Secretariat of Agriculture and Hydraulic Resources - SARH), rather than SEDESOL, is granted primary jurisdiction over federal waters. Also, SARH exercises its authority, in large part, through the Comisión Nacional del Agua (National Water Commission), an independent regulatory agency of the Mexican government. Under SARH, municipalities in Mexico, especially

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8. Id. at 243 (Nov. 25, 1988).
9. See Reglamento para la Prevención y Control de la Contaminación de Aguas [Regulations to the Law of Ecological and Environmental Protection Relating to Prevention and Control of Water Pollution], D.O., at 267 (Mar. 29, 1973) (Mex.).
along the United States-Mexico borders, are implementing waste water clean-up projects. The municipalities now have authority to control, verify, and sanction waste water contamination that originates with an enterprise and is discharged to a sewer system.11

3. Regulation for Hazardous Waste Control

Furthermore, there is an additional regulation that governs environmental protection from hazardous waste,12 which is the most easily-enforced regulation. This regulation requires facilities that generate hazardous waste to register with the SEDESOL and describe the type of waste that will be generated. The regulation addresses the transportation, storage, collection, and disposal of hazardous waste. The regulation provides for safety control measures, a monitoring system, and an enforcement system that includes sanctions for violations. The import and export of hazardous substances is subject to prior authorization under an import/export manifest, referred to in the law as a Guia Ecológica (Ecological Way Bill).

The control of hazardous waste is solely within federal jurisdiction, therefore, the only agency that has authority to regulate hazardous waste is the SEDESOL. The states nor municipalities have authority to regulate hazardous waste. There is an agreement, however, between SEDESOL and specific states relating to surveillance to assure that there are no illegal hazardous waste disposal sites and for the performance of minor duties to implement the regulations.

III. ECOLOGICAL TECHNICAL STANDARDS

The Normas Técnicas Ecológicas (Ecological Technical Standards) are rules adopted by SEDESOL,13 which establish the specifications, conditions, procedures, and parameters that must be observed by industry when conducting activities that may be harmful to the environment. These standards establish maximum permissible limits for air emissions from specific industrial processes and minimum standards for building a controlled waste confinement facility.

IV. FEDERAL LAW OF MEASUREMENTS AND STANDARDS

The Federal Law of Measurements and Standards14 has also been enacted by the Mexican government (primarily due to the North American Free Trade Agreement). The Law of Measurements and Standards provides

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11. Id. at 36, art. 88.
13. Various standards have been published in the Diario Oficial de la Federación [Official Gazette of the Federation] on several dates since 1988.
standards relating to product and waste measurements, and the manner in which these activities are performed, including the collection and test of chemical substances. A Comité Consultivo Nacional de Normalización (National Advisory Council on Standards) assists the various Mexican federal agencies in defining the standards within their jurisdiction, thereby providing uniform procedures for developing Normas Oficiales Mexicanas (Official Mexican Standards - NOMs). The Mexican government adopted this legislation to support its efforts in demonstrating its ability to comply with technical standards provisions negotiated as part of the North American Free Trade Agreement.

On October 18, 1993, the Mexican government enacted thirty-three (33) Official Mexican Standards that regulate the maximum contaminants allowed in any waste water that is discharged, depending on the type of industry. Also, on October 22, 1993, thirteen (13) Official Mexican Standards were enacted, which regulate the maximum permissible levels of contaminants that are allowed to be discharged into the atmosphere.

V. ADMINISTRATIVE, CIVIL, AND CRIMINAL PENALTIES FOR VIOLATIONS

Pursuant to the General Law of Ecological Equilibrium and Environmental Protection, administrative, criminal, and civil penalties exist for environmental non-compliance. The three types of sanctions may be imposed concurrently, depending upon the nature and extent of the harm caused by the non-compliance. This general law, however, does not specify the types of activities that qualify as an administrative, civil, or criminal violation. Consequently, the Mexican government has the discretionary authority to apply the sanction it deems will most appropriately remedy the violation.

A. Administrative Penalties

The administrative penalties for violation of the Mexican environmental law regulations include fines, facility closings, or administrative arrests. The fines range from 20 to 20,000 times the minimum wage for the Federal District of Mexico at the time the penalty is imposed. The penalty may result in approximately the equivalent of $84,000 (U.S.). A facility may be completely or partially closed through a facility closing or through a revocation of a business operations permit. An administrative arrest may require the violator to remain under arrest for up to thirty-six (36) hours.

B. Civil Penalties

State and local authorities are authorized to impose civil sanctions under applicable state law. The sanctions are imposed under coordination.

agreements between the federal and state government pursuant to the General Law of Ecological Equilibrium and Environmental Protection.

If the regulation is violated more than once, then the fine may be doubled and the facility may be closed. To date, the law has been construed to allow the imposition of a fixed-sum penalty assessed on a one-time basis upon a finding of liability.

C. Criminal Penalties

SEDESOL is authorized to file a criminal complaint with the proper authorities if the conduct of an enterprise is suspected to be a criminal violation. Criminal sanctions may be imposed on a violator which could result in imprisonment (ranging from three months to nine years) and a fine of 100 to 20,000 times the general, daily minimum wage (based on 1994 figures, $15.27 new pesos = $4.53 U.S.) in the Federal District of Mexico, depending upon the nature and extent of the violation.

VI. RECENT CHANGES IN THE ADMINISTRATIVE STRUCTURE OF MEXICO'S ENVIRONMENTAL PROTECTION

Since 1982, the implementation and enforcement of environmental protection was governed by the Secretaria de Desarrollo Urbano y Ecología (Secretariat of Urban Development and Ecology - SEDUE). On May 25, 1992, the Mexican government announced that the new administrative agency, the Secretaría de Desarrollo Social (Secretariat of Social Development - SEDESOL), would be responsible for environmental enforcement. Consequently, SEDUE was abolished. On June 24, 1992, the Internal Regulations for SEDESOL describing its function and structure were published in the Diario Oficial (Official Gazette of the Federation).

To enforce the environmental legislation in Mexico, SEDESOL has been divided into two main agencies: (1) the Instituto Nacional de Ecología (National Institute of Ecology) and (2) the Procuraduría Federal de Protección al Ambiente (Federal Attorney-General’s Office of the Environment).

A. National Institute for Ecology

The first agency of the SEDESOL, the Instituto Nacional de Ecología (National Institute of Ecology), establishes environmental policy and administers the regulations, while the Federal Attorney-General’s Office of the Environment enforces environmental legislation.

The National Institute of Ecology is further subdivided into an Unidad Administración (Administrative Unit) and four separate bureaus: (1) the Dirección General de Planeacion Ecológica (Bureau of Environmental Planning); (2) the Dirección General de Normatividad Ambiental (Bureau of Environmental Standards); (3) the Dirección General de Aprovechamiento Ecológico de los Recursos Naturales (Bureau of Environmental Benefit from Natural Resources; and (4) the Dirección General de Investigación y Desarrollo Tecnológico (Bureau of Research and Development). The administrative unit operates and controls the systems,
1. Bureau of Environmental Planning

The Dirección General de Planeación Ecológica (Bureau of Environmental Planning) develops environmental policy, criteria for implementing environmental regulations, and general environmental remediation rules. It also acts as a technical consultant to the states and proposes programs to provide tax incentives for enterprises that use pollution control equipment.

2. Bureau of Environmental Standards

The Dirección General de Normatividad Ambiental (Bureau of Environmental Standards) proposes and develops technical standards, measures, and criteria for environmental protection and restoration. It prepares the National Pollution Source Inventory on sources that fall under federal jurisdiction and reviews environmental impact statements. The Bureau of Environmental Standards is subject to additional responsibilities including granting of permits, concessions, authorizations, licenses; performing investigations; issuing opinion reports and registrations relating to environmental control; and establishing emergency response measures for environmental hazards. The Bureau of Environmental Standards defines the environmental criteria and technical standards that apply to highly-hazardous activities and prepares the official list of hazardous materials. Also, it establishes the general standards and criteria applicable to waste water discharge.

3. Bureau of Environmental Benefit from Natural Resources

The Dirección General de Aprovechamiento Ecológico de los Recursos Naturales (Bureau of Environmental Benefit from Natural Resources) establishes policies, programs, standards, and guidelines for natural resource conservation and use. The scope of this responsibility extends to protected natural areas, flora and fauna, and hunting.

4. Bureau of Research and Development

Finally, the Dirección General de Investigación y Desarrollo Tecnológico (Bureau of Research and Development) promotes technological research and development. Its primary focus is to stimulate technology transfer and technology adaptation for the effective use of technology in Mexico.

B. Federal Attorney-General's Office

The second agency of SEDESOL, the Procuraduría Federal de Protección al Ambiente (Federal Attorney-General's Office of the Environment), consists of a Unidad Jurídica y de Administración (Legal and Administrative Unit) and an Unidad Jurídica (Attorney-General Unit), which is subdivided into three branches: (1) public participation and complaints; (2) environmental auditing; and (3) standards verification.
The first branch, the *Subprocuraduría de Participación Social y Quejas* (Assistant Attorney-General for Public Participation and Complaints), acts as a conciliator between private interests and the Mexican government. In this regard, the assistant attorney-general evaluates an environmental problem or violation and attempts to assist interested parties in reaching a resolution. For example, the assistant attorney-general may offer suggestions for the amount of restitution a company should offer to a neighboring company for noxious air emissions. The assistant attorney-general may also suggest alternatives for the reduction or clean-up of existing pollution.

The second branch, the *Subprocuraduría de Auditoría Ambiental* (Assistant Attorney-General for Environmental Auditing), consists of two divisions: (1) the *Unidad de Planeación de Auditoría Ambiental* (Unit for Environmental Audit Planning); and (2) the *Unidad de Operación* (Operations Unit). The Unit for Environmental Audit Planning develops systems to identify professionals who are knowledgeable in conducting audits and environmental assessment reports and advising whether tax incentives are appropriate. The Operations Unit conducts environmental audits and prepares expert reports for both private and public projects. Additionally, it determines remedial action for non-compliance, audit assessments, decides whether to apply sanctions and the appropriate sanction, and imposes applicable measures to avoid and reduce environmental risks (in coordination with enforcement authorities).

Finally, the third branch, the *Subprocuraduría de Verificación Normativa* (Assistant Attorney-General for Standards Verification), is further comprised of a *Unidad de Programación y Apoyo Técnico* (Planning and Technical Support Unit) and a *Unidad de Verificación* (Verifications Unit). The Planning and Technical Support Unit provides a technical assessment of actual environmental damage due to violations of standards and assists the federal, state, and local enforcement authorities in the application of standards. It also formulates standards and procedures for inspection of industry. The Verifications Unit orders and effectuates inspections, ensures compliance with standards, determines sanctions, drafts decisions, and recommends revocations, modifications, suspensions, or cancellations of permits and licenses that are implicated in environmental risks.

**VII. CONCLUSION**

As the foregoing discussion demonstrates, the legal framework for environmental protection in Mexico has been formed. To be successful in an international market, as well as to achieve equivalent standards of developing countries, Mexico will continue to develop its environmental regulations in the future.