

# Santistevan & Duclaud

ABOGADOS & ATTORNEYS AT LAW  
LICENSED IN MEXICO & U.S.A.

Legal Support for Business

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September 27, 2012

## ENVIRONMENTAL LEGISLATION IN MEXICO - OVERVIEW

### CONTENTS

- **Federal Environmental Statute.**
- **Federal Regulations.**
- **Official Technical Standards (NOMs).**
- **State and Municipalities Legislation.**
- **International Treaties and Agreements.**
- **Federal Agencies to be considered.**
- **Federal Ministry of Environment and Natural Resources.**
- **Environmental Regulations and Promotion Office.**
- **Federal Environmental Enforcement Office.**
- **Environmental Cooperation Commission.**
- **Distribution of Jurisdiction and Enforcement over Specified Matters and Activities.**
  - Federal Jurisdiction.**
  - State or Municipal Jurisdiction.**
- **Key Elements of Federal Environmental Enforcement.**
  - Environmental Impact and Risk Study**
    - Preliminary Report**
    - Environmental Impact Manifest**
    - Risk Study**
- **Hazardous Waste Management at Federal Level**
  - Definition**
  - Requirements for Handling**
    - Reporting and tracking**
    - Storage and Confinement**
    - Collection, Transport, and Disposal**
    - Export.**

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Mexican Environmental Legislation represents a complex system deriving from the Mexican Constitution, which allows the Federation, the States and their Municipalities to enact and enforce environmental provisions and penalties.

### **Federal Environmental Statute.**

In 1988, Mexico's Congress enacted the General Law of Ecological Equilibrium and Environmental Protection (the "Federal Environmental Statute") as the principal Federal environmental statute. Other Federal Statutes also address more specific topics, e.g., the Law of National Waters, the Forestry Law, Fisheries Law, Health Law, etc.

### **Federal Regulations.**

Several Regulations ("Reglamentos") were enacted that cover in greater detail various aspects addressed by the Ecology Statute.

Mexico's Ecology Statute emphasizes preservation of a good ecological "balance" or equilibrium between social/community activities and nature.

This Statute also supports environmental protection of Mexico's Natural Resources that generally refer to the quality of air, water, land, wildlife (flora and fauna), and soil (land).

To protect these Resources, one of the Ecology Statute's Regulations requires the assessment of the "environmental impact" of certain activities or by-products of certain activities, for example, hazardous waste generation, wastewater discharges, and air emissions that impact, whether negatively or not, the environment.

There has been a trend towards harmonization of environmental rules between the NAFTA Countries.

### **Official Technical Standards (NOMs).**

Further implementing Mexico's environmental laws and regulations are the Official Technical Standards known as official Mexican norms (Normas Oficiales Mexicanas or "NOMs") which are issued and enforced by the Federal Administration.

### **State and Municipalities Legislation.**

However, many of Mexico's environmental laws are enforced by Federal environmental agencies or authorities, while other related statutes, regulations and technical standards may contain environmentally related matters enforced by different Federal or State Government agencies.

The authority to enforce environmental law derives from the Mexican Constitution which expressly assigns powers to the federal government. Those powers not vested in the federal government may be exercised by the states and its municipalities.

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On the other hand the Ecology Statute specifically maintains responsibility for certain environmental matters at the federal government level, and allows for the decentralization and enforcement of specific matters to the local governments, through concurrent (shared) jurisdiction on environmental protection.

State laws and regulations also deal with the environment in areas related to health, urban development and planning.

It is necessary to understand which activities are usually enforced by each level of government, and whether there has been delegation of any Federal enforcement authority to the local level in a particular region.

Such delegation for enforcement of law normally maintained by the Federal government varies considerably throughout Mexican states, and is dependent on the level of competence the local authority may have to assume this responsibility.

Thus the investor should be aware that the comprehensive, a collection of Mexico's environmental laws include a broad range of Federal, state, and municipal laws, regulations and NOMs with environmental content.

### **International Treaties and Agreements.**

Mexico is a signatory to several international treaties dealing with the environment, among which are the 1944 International Water Treaty with the U.S., the Basel Convention, the La Paz Accord on the Environment of 1983, the North American Free Trade Agreement (NAFTA), with its Environmental Side Agreement, the Border XXI Plan and others.

### **Federal Agencies to be Considered.**

Any company planning to do business in Mexico or engaging in industrial, manufacturing or agricultural, hospitality or activities related with the environment should review compliance with the legal and technical implications of its activities.

With respect to facilities currently in operation, conducting periodic environmental audits, both of a legal and technical nature is highly recommended. This will avoid potential penalties resulting from inspections by federal, and/or state, and/or local environmental authorities.

### **Federal Ministry of Environment and Natural Resources.**

At the Federal level, is the Federal Ministry of Environment and Natural Resources ("SEMARNAT") is the Agency principally responsible for enforcing the environmental legislation in Mexico.

SEMARNAT has two divisions (i) the Environmental Regulations and Promotion Office, that generally authorizes activities, and the Federal Environmental Enforcement Office ("PROFEPA"-its initials in Spanish), which has the responsibility for enforcement.

SEMARNAT is concerned, among other matters, with issues related to industry, as follows:

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1. Encouraging the protection, restoration, and conservation of natural ecosystems and resources, to ensure their sustainable development;
2. Guiding national policy regarding national resources and the environment, urban development, environmental regulations, mining and fishery development;
3. Establishing, in conjunction with other federal authorities as well as state and municipal authorities, Mexican Official Standards on the preservation and restoration of the environment and natural ecosystems, the appropriate use of natural resources, waste water discharge, and the safe management of hazardous material and hazardous wastes;
4. Evaluating and approving environmental impact assessments and environmental risk assessments for development projects proposed by public, social, and private sectors, as well as evaluating and approving environmental accident prevention programs;
5. Managing, controlling and governing the use of water considered as federal property such as basins, reservoirs, rivers, and springs and federal zones including beaches and river banks; and
6. Granting contracts, concessions, licenses, permits, authorizations and assignments in protected areas, waters, and for forests and mining as well as the use of beaches, federal marine and land zones, etc.

### **Environmental Regulations and Promotion Office.**

The Environmental Regulations and Promotion Office, is the one that prepares all general policies on environmental matters, issues environmental standards and guidelines, grants licenses and permits of a federal nature, and publishes the Ecological Gazette.

There are a number of permits, approvals and reports, federal or at state level, concerning environmental matters which must be obtained to operate an industrial plant in Mexico and/or filed during the course of such operations, among them are:

1. Environmental impact authorization;
2. Operating license or one step environmental license ("LAU," - its initials in Spanish);
3. Environmental Annual Report ("COA," - its initials in Spanish);
4. Registration as a generator of hazardous waste followed by subsequent reports concerning production, transport, and disposal of hazardous wastes;
5. Water use concession, if the company is going to use water from wells or any other source not provided by a municipal or state water board or council;
6. Wastewater discharge applications and registration.

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## **Federal Environmental Enforcement Office.**

The PROFEPA's main activities are to deal with complaints, conduct inspections and, in general, verify compliance with all federal environmental laws and regulations.

It also imposes penalties for violations of environmental laws and regulations and monitors compliance with any preventive and mitigating measures issued by it. PROFEPA also conducts environmental audits.

## **Environmental Cooperation Commission.**

The Environmental Cooperation Commission was created after the North American Free Trade Agreement (NAFTA). This Commission has a Council, a Secretariat, and a Joint Public Consulting Committee.

This Commission promotes the cooperation between the three member countries: Mexico, United States, and Canada, for:

1. Making effective environmental laws;
2. Compliance with such laws and their regulations; and
3. Technical cooperation.

## **Distribution of Jurisdiction and Enforcement over Specified Matters and Activities.**

### **Federal Jurisdiction:**

The Federal Environmental Statute (Article 28) assigns federal jurisdiction and enforcement authority on:

The following Environmental Matters:

Air emissions from fixed sources under federal jurisdiction; wastewater discharges to the nation's property (land) or waters (rivers, streams, lakes, estuaries, oceans, etc); hazardous materials and waste; and "highly" hazardous activities (as defined).

On Certain Industrial and Commercial Activities including:

Hydraulic (water) works, public communication /transport works (railroads, highways), pipelines for oil and gas and carbons, oil and petrochemical industry, steel industry, chemical industry, paper and cellulose industry, sugar industry, cement industry and energy industry, the exploration, exploitation and extraction of minerals and substances reserved to the federal government, the treatment, confinement or disposal of hazardous or radioactive wastes, the exploitation of forests, jungles, rain forests, and endangered species, and cultivation of forests, zoning changes in forests, jungles or dry (desert) areas, industrial parks housing highly hazardous activities, real estate developments affecting coastal ecosystems, natural reserves under federal jurisdiction, and activities carried out in rivers, lakes, lagoons, creeks discharging into the sea, including adjacent land or federal areas, fishing or farming activities where one or more species may be

endangered or there could be harm to the ecosystem, certain works under federal jurisdiction that may: harm the environment through damages beyond restitution, damage public health or ecosystems, or exceed the limits or conditions set forth under applicable law.

## **State or Municipal Jurisdiction:**

Generally, activities not under Article 28 of the Federal Environmental Statute are left to the States (local authorities).

This will include air emissions from fixed sources under local jurisdiction; wastewater discharges to urban and municipal sewage systems, non-hazardous materials and solid waste; and activities not deemed highly hazardous.

## **Key Elements of Federal Environmental Enforcement.**

### **Environmental Impact and Risk Study**

All private and public activities must have an Environmental Impact Authorization, prior review, and approval of an impact analysis.

The process includes three stages:

#### **- Preliminary Report**

Is required when any part of the activity under consideration includes air emissions, wastewater discharges, exploitation or use of natural resources, or any relevant environmental impact to which a Mexican Official Standard applies, or where the activities are part of an urban development plan or environmental program approved by SEMARNAT, or where an activity will be performed in authorized industrial parks.

#### **- Environmental Impact Manifest**

Three types of Impact Manifests are described in the Statute: (i) General, (ii) Intermediate, and (iii) Specific.

All three are described in the specific regulation to the Federal Environmental Statute.

The authority may require the applicant to file any type of EIM, depending on the complexity or risk of the activity involved.

#### **- Risk Study**

This Study may be required where highly hazardous activities are performed. These activities are included on lists of substances, the use of which above a certain threshold level, is deemed a highly hazardous activity, one where there is a use of toxic substances, and the other where there is use of flammable or explosive substances.

## Hazardous Waste Management at Federal Level

### Definition

Hazardous waste is any material generated in an extraction, benefit, transformation, production, consumption, use, control or treatment process which quality does not allow it to be used in the process that generated it." Hazardous waste is "any waste in any physical form which due to its corrosive, reactive, explosive, toxic, flammable, or biologically-infectious characteristics, represents a hazard to the environment or environmental equilibrium."

### Requirements for Handling

There are separate requirements for all Phases of Hazardous Waste Management, to include: (A) reporting and tracking, (B) storage and containment, (C) collection, transportation and disposal, and (D) export.

#### A. Reporting and tracking, include:

(a) submission of a hazardous waste Generator Manifest for each waste stream generated at a facility, (b) preparation and update of waste generation storage logs, (c) preparation and filing of BI-annual waste disposal reports, (d) preparation and submission of a training program for hazardous waste, (e) preparation and submission of a hazardous waste contingency plan, (f) preparation and submission of report on what individuals are responsible for day-to-day handling of operations.

#### B. Storage and Confinement, include:

(a) storage of hazardous waste in accordance with federal regulations, and (b) compliance with containment and labeling requirements.

#### C. Collection, Transport, and Disposal, include:

(a) preparation of a collection, transportation, and final disposal manifest, and (b) optional transfer of liability resulting from contracting authorized companies.

#### D. Export, include:

(a) hazardous waste generated from raw materials imported into Mexico under a temporary import regime must be exported to their country of origin, (b) an exporter's registration number, and (c) an export notice for each shipment.

We will be glad to answer any questions on the foregoing.

Respectfully

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