



**COUNTRY
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Mexico

ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Mexico.

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MEXICO

ENVIRONMENT



1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

In Mexico, the current Environmental legal framework has its roots in the General Law of Ecological Equilibrium and Environment Protection (LGEEPA) issued back in 1988. Please note that as its name states, this ruling have the purpose to set a general frame for specific regulation in the 3 existent levels of governance (federal, state and municipality). Since its the time it was issued, this Law has been reformed approximately 50 times; also must be noted that it also is complemented by specific ruling in matters of environmental impact, natural protected areas, and air emissions. Furthermore, as part of the key pieces that enabled the construction of this provisions, can be found specific standards regarding water, forestry matters, emissions, special conservation of natural resources, among others.

Other key pieces that must be considered are: (i) General Law for Sustainable Forest Development (LGDFS); (ii) General Law for the Prevention and Integral Management of Wastes (LGPGIR) related to the management of the different types of wastes (hazardous, special management and urban solids); (iii) General Law of Wild Life related to the management and harnessing of wildlife (LGVS); (iv) General Law on Climate Change (LGCC) related to the emissions into the atmosphere, and its regulations; and the (v) Law on National Waters (LAN) related to the use of such liquid and the harnessing of federal water bodies.

Finally, must be noted that in the past months, the LGEEPA was modified in order to ban mining activities in natural protected areas. Also, the LGCC was amended with the purpose of including the obligation for the states to elaborate a risk atlas of climate change. In the same vein, at the local level were issued specific efforts in matter of circular economy.

2. Who are the primary environmental

regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The main environmental authority is the Federal Attorney's Office for Environmental Protection (PROFEPA), this office has jurisdiction for carrying out the surveillance of the aforementioned standards; there can be found central offices in Mexico City and representations in each one of the states. Also, for matters related to water resources, the National Water Commission (CONAGUA) is the competent authority for such purpose. Finally, local jurisdictions also have attorney offices for enforcing state and municipality rulings.

3. What is the framework for the environmental permitting regime in your jurisdiction?

As mentioned, the main legislation for the environmental permitting is the LGEEPA; also, can be found provisions regarding environmental impact, air pollution, hazardous wastes, etc.

Special mention should be done on general rulings such as LGDFS, LGCC, LGPGIR, LGVS and federal laws as LAN and the Federal Environmental Liability Law (LFRA).

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Yes, according to the provisions that are in the LGEEPA and its Rulings in matter of Environmental Impact in its article 49. The main way to excute it, is by celebrating an agreement with the entity that is going to be the new owner and submit a notice of change about the ownership to the authority that issued the permit.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

There are three main ways that a legal entity or a person exert in order to appeal the decision issued by the authority:

1. Submit a review resource before the authority that issued the resolution seeking for a change that is positive to the person who is trying to obtain the permit, and,
2. Submit a nullity trial before the Federal Court of Administrative Justice in order to nullify the resolution issued by the authority in the matter.
3. Additionally in Mexico, we have a legal remedy known as amparo, which basically is a resource that seeks for constitutional protection against authority acts.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

Yes, the EIAs are required for certain projects, according to the articles 28 of the LGEEPA and 5 of its Regulations in matter of Environmental Impact. As a reference the EIAs are required to develop projects in different matters, such as, energy, industry, mining, hazardous waste, tourism, among others.

The main elements that a EIA must have are: (i) the project description; (ii) the legal justification of it viability according to the applicable law and publica policy instruments; (iii) a characterization of the environmental components present in the area, in order to identify the possible impacts that the project may have derived from its development; (iv) and the proposed measures that will be implemented in order to minimize, mitigate as well as compensate those impacts.

The LGEEPA foresees that the EIAs can be challenged by the affected person of community where the project will take place. Also, according to the principles public participation and transparency it can be summited into process called public consultation or a publica hearing. This becomes more relevant in projects which area pretended to be located nearby indigenous communities.

7. What is the framework for determining

and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

The liability is determined by the Chapter V of the LGPGIR and by its regulation. Therein is established that any physical or legal entity who direct or indirectly cause harm to the environment, as a result of spilling, emitting, discharging, injecting, disposing or dumping is responsible for the correspondent reparation and compensation. Must be noted that according to article 70 of the same provisions, the land owner/occupier will have joint and several liability with the polluter.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

In case of generation, handling or release, discharge, infiltration or incorporation of hazardous materials or waste with evidence of pollution into the environment. Thereupon there is a positive obligation to provide investigative reports in case that an event of contamination of soil and groundwater has occurred.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Yes, there is an obligation to report to the authority that the site has been contaminated in order to take the necessary measures preventing the advance to other sites and seeking to implement the clean-up.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Yes, as mentioned above, according to the article 70 of the LGPGIR, the land owner/occupier is considered a jointly responsible, and has the right of action against the owner that cause the contamination.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The regime of waste in the jurisdiction is determined by the LGPGIR that it is related to the management of the different types of wastes (hazardous, special management and urban) and its three levels of competence. Also, the Official Mexican Standards are crucial for the compliance of the engagements in the matter.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

Yes, according to the article 42 of the LGPGIR, the producers retain joint liability after having transferred to another person for the treatment or disposal of the wastes. Special attention must be paid to the fact that waste should be transferred to a third party authorized by the authority in the matter. This third party, is responsible of having a waste management plan based in risk minimization of its handling.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

As general rule, producers must take their wastes to an authorized site for its disposal. However, they also have the option to agree and contract with authorized companies the take-back of waste. Specifically wastes such as packaging/electronic devices are classified as special management waste.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

As per LGPGIR asbestos are considered a hazardous waste; thereupon land owners/occupiers should have the obligation to report its existence to the authority in order to determine remediation activities if applicable. The specific election on the process to be executed will depend in the kind of: (i) pollutant; (ii) soil; (iii) location and land use; and (iv) applicable technology.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

Initially we must note that according to the article 150 of the LGEEPA, the rulings should consider criteria and listings that will identify and classify the materials and hazardous wastes attending to its grade of danger. Furthermore, Mexico has expended its efforts in the elaboration of a National Inventory of Chemical Substances which has the aim of providing updated information of the chemical substances in the territory. However, it is still at an informative stage; which means it needs to be updated and included officially in the applicable legislation.

In the other hand, the **NOM-165-SEMARNAT-2013**, was enabled with the purpose of ruling which substances are subject to report for the Registry of Emissions and Transfer of Pollutants. Related to it, in labor matters, has been issued standards such as **NOM-010-STPS-2014** and **NOM-018-STPS-2015**, which rule the procedures for the substance's identification in work centers; also, **NOM-005-STPS-2017**, that establishes the management of hazardous chemical substances and the correspondent procedures in work areas.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

There are many provisions that are in the legal framework that area settled in form of Official Mexican Standards (NOM-ENER). Among its content, this ruling includes provisions about: (i) technical specifications; (ii) test method; (iii) labelling; and (iv) conformity assessment procedures. In the big picture the Law Energy Transition (LTE) establishes the purposes that Mexico should consider in matters of energy generation from renewable resources.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

There are two principal regulations in Mexico, the first one is the LGCC that in its second transitory article

establishes the obligation of the country to reduce the greenhouse emissions and the second one is the LTE, that in its third transitory article establishes the commitment of the country to increase the use of renewable energy.

18. Does your jurisdiction have an overarching “net zero” or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

Indeed, there is an overarching low-carbon target, and principally the legal measures that have been implemented is the creation of inventories in which the third parties register their greenhouse emissions seeking to reduce it every year.

Also, there is an obligation to obtain a Unique Environmental License (LAU) in order to comply that the project is within the maximum limits allowed by the official Mexican standards and to report the emissions generated by the annual operating report (COA).

19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as “green”, “sustainable” or similar terms? Who are the regulators in relation to greenwashing allegations?

In Mexico there are many certificates that a product could have in order to be referred as a green or sustainable product that consigned in the regulation of the LGEEPA in matter of self-regulation and environmental audits, and the official Mexican standards.

In such matter there are several procedures in order to obtain those certificates, the main procedure is issued by the PROFEPA on subjects of clean industry and environmental quality.

20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

Not yet included in the law, so far this is still under private agreements scope.

21. Have there been any notable court

judgments in relation to climate change litigation over the past three years?

Yes, there have been several judgements about climate change that were related to updates in the regulations of industrial energy matters for the use of renewable energy. This becomes relevant due to the Mexican government energy policy adopted in the past years, which privilege fossil fuels.

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

According to the current political context, we expect that there will be no major update on the climate change framework near the future.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

In this case, the company and the directors of the company are direct responsible for the pollution or breaches in the environmental matter, in this sense, the shareholders of the company, parent companies and the entities related are only indirectly harmed by the problems generated for the breaches made.

The Shareholders and directors of the company; Under the LFRA, companies will be responsible for the damage to the environment caused by their representatives, administrators, managers, directors, employees and those who exercise functional control of their operations when they act in the exercise of their functions, on behalf of or under the protection or benefit of the company, or when the company orders or consents to harmful conduct.

A parent company. A parent company's liability is limited to the total amount of its capital contribution to the subsidiary.

Financial entities. Banks and financial entities' liability has focused on issues of money laundering, or financing of terrorism and organized crime. In this case, the company and the directors of the company are direct responsible for the pollution or breaches in the environmental matter, in this sense, the shareholders of the company, parent companies and the entities related are only indirectly harmed by the problems generated due the existence of the breaches.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

A buyer can assume any pre-acquisition through an agreement signed with the seller where the consent is perfected, and it is acknowledged of the pre-acquisitions in the asset.

A seller retains environmental liability in case that the asset has hidden defects or does not correspond to what was agreed.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

The seller has the duty to disclose all the important aspects of the environmental information in order to allow the buyer to know what the specific and special matters are related to the project or asset that is going to buy. This in the understanding, that the disclosure of the environmental information could represent a measure to prevent lawsuits in a future.

In such matter, due diligences are fundamental to acknowledge all the environmental information that represent the basis for the transaction.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

The main types of the insurance that a company must

have, is the civil response and environmental response insurances. The aforementioned cover the incidents that could harm third parties and its infrastructure as well as the environmental components present in the project area.

Yes, the obtention of insurance is a fundamental requirement in practice and its mandated by the legal environmental framework

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Every authority in our jurisdiction is obligated to keep the environmental information in their files for at least 5 years, in that sense, third parties can access the information by two assumptions:

1. That the third parties have a legitimate interest on the matter that could represent a risk for their rights, and;
2. By submitting a request on the National Transparency Platform (PNT)

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

According to the General Law of Transparency and Access to Public Information the authorities are obligated to disclose the environmental information in public versions safeguarding the personal and sensitive area of the documents that are being given to the person that requested it.

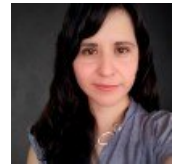
29. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

As stated above, must be noted that in the past months, the LGEEPA was modified in order to ban mining activities in natural protected areas. Also the LGCC was amended with the purpose of including the obligation for the states to elaborate a risk atlas of climate change. In the same vein, at the local level were issued specific efforts in matter of Circular Economy.

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