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

The right to enjoy a healthy environment is enshrined in the Mexican Constitution. Article 4 states that every person has a right to a healthy environment for his or her development and wellbeing and that the government must ensure that this right is afforded and protected.

All man-made activities that may adversely affect the environment and public health, must comply with federal and state environmental laws. There are currently many laws, regulations and standards in place that regulate different environmental matters, such as environmental impact, air quality, water and wastewater, hazardous and non-hazardous waste as well as flora and fauna protection, among others.

The most important federal environmental laws are the General Ecological Balance and Environmental Protection Law (the "General Law"), the Climate Change Law, the Federal Environmental Liability Law (the "Environmental Liability Law"), the National Water Law, the General Waste Prevention and Integral Management Law (the "General Waste Law") as well as the General Wildlife Law.

All of Mexico's 32 states have enacted their own environmental laws and regulations, because certain activities that may produce environmental effects or that mandate environmental permits, require state oversight.

In the area of international law, Mexico is a party to several environmental treaties, such as the Paris Climate Agreement, the North American Agreement on Environmental Cooperation with the United States and Canada, the Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area (also known as the "La Paz Agreement") with the United States, the Marpol Protocols to Prevent Pollution from Ships, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

More than 100 environmental standards have been developed and published by the federal government. These standards (referred to as Mexican Official Standards or NOMs) provide technical guidelines that help laws and regulations to be complied with, because they establish maximum allowable limits in the area of water quality, air emissions and soil or groundwater contamination. They also help determine whether a waste is hazardous or not or whether a site needs to be remediated if there is soil contamination.

Environmental damage is defined by the Liability Law as any "adverse and measurable loss, change deterioration, detriment, affectation or modification of habitats, ecosystems, natural resources and elements, their chemical physical or biological conditions, of their interaction as well as of the environmental services they provide". They key components of this definition is that damage needs to be adverse and measurable. It is also worth mentioning that no environmental damage is deemed caused if it is reported in advance to authorities when applying for an environmental impact permit, or if the maximum allowable pollutant limits established in applicable standards are not exceeded.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

At the federal level, the authority that has a mandate to oversee environmental policy in Mexico is the Ministry of Environment and Natural Resources ("SEMARNAT"). This cabinet ministry is comprised of three decentralized agencies:

- The Federal Bureau of Environmental Protection ("PROFEPA") entrusted with carrying out inspections and being the enforcer of environmental laws.
- The National Water Commission ("CONAGUA") which sets federal policy in the area of water and also oversees waste water discharges into

federal water bodies or federal land (discharges into municipal sewage systems are regulated by state or municipal agencies).
- The National Agency of Industrial Safety and Environmental Protection of the Hydrocarbons Sector ("ASEA") which, as the name suggests, oversees the oil and gas industry and has a legal mandate to issue environmental permits and authorisations as well as to conduct inspections and impose penalties.

States have their own environmental agencies that regulate matters that do not require federal oversight, such as certain industrial activities in the area of environmental impact, waste water discharges into urban sewage systems, state stationary and mobile air emission sources and non-hazardous waste-handling and disposal.

Many municipalities also have their own environmental agencies that regulate issues that are not entrusted to federal or state authorities.

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

Federal and state environmental laws require that certain activities secure permits, particularly in the area of environmental impact, waste water discharges, air emissions and forestry land use modifications. Waste generators only require registrations. The requirements for securing permits are established in in each law and regulation. It is always important to determine whether an activity to be undertaken is regulated by a federal or state environmental authority.

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

Some permits are transferable by simply providing a written notice to a regulator. This is the case with regard to a federal environmental impact permit. A transferor submits a notice to SEMARNAT or to ASEA, informing the agencies that a transferee will be carrying out the activities authorised under a permit. The transferee also signs the letter, expressly agreeing to abide by all of the requirements of the permit. No responses from the federal agencies are required.

In the case of a water concession or waste water discharge permit, CONAGUA's approval is required for these documents to be transferred. The same is true in the case of an air emissions license issued by SEMARNAT or ASEA.

In cases involving a transfer of assets of an industrial site, environmental permits may be transferred by notifying environmental agencies that a new entity will take over the site that already holds environmental permits. In many cases, regulators simply amend existing permits to reflect the name of the new permit holder. However, since there are no specific rules on how to transfer permits in the case of asset transfers, it is left for regulators to decide how to authorize the permit transfers.

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

Permits may be appealed by parties that object to environmental permits being granted, This is particularly the case with regard to environmental impact permits. There are different ways to lodge appeals. One involves simply filing a public complaint alleging that the activity that has secured an approval may cause harm to the environment. This may trigger an investigation. Another more formal way to contest an approval is through a review recourse or a nullity complaint. The recourse is filed before the agency that granted the permit; the second is submitted before a Federal Administrative Law Court.

Although any person or entity has legal standing to file an action alleging environmental damage (after being caused), in the case of a permit that has been granted for an activity that is yet to begin, the appellant must show why it is that it should have not been allowed. This may involve arguing that there are zoning restrictions or that the activity may cause harm to vulnerable communities.

Also, collective actions may be filed by 30 or more individuals, government agencies or non-governmental organisations against any activity that has caused or may cause environmental damage and these types of actions are filed before federal civil courts.

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?

Any activity that may produce adverse environmental

effects, requires an EIA. This is generally considered the most important permitting requirement, because it allows regulators the opportunity to review in advance the most relevant environmental effects that a work or activity will produce and to order the implementation of mitigation activities. Certain industries or activities such as hydraulic projects, federal highways, petrochemical installations, power plants, high-risk industries or tourism developments that may affect coastal ecosystems, require environmental impact permits from SEMARNAT or from ASEA. Activities not expressly regulated by federal agencies, require environmental impact permits from state authorities.

An EIA should identify the project developer and should describe in detail the work or activity to be carried out and its effects over water, the air, the soil and groundwater as well as the surrounding communities; it should also describe the waste stream to be generated. The key portion of an EIA is the description of all of the protective and mitigating actions to be carried out during the project's construction and operating phases.

EIAs cannot be appealed because they only constitute applications that have not been approved. However, the resulting environmental impact permits may be contested through administrative appeals or through nullity complaints, particularly if a public review process (mandated for all EIAs) was not fully carried out. When submitting an EIA, an extract must be published before a large circulation news outlet and any person from a community that may be affected by the work or activity may request a thorough pubic review and in some cases a public hearing.

If any person from a potentially-affected community deems that the proposed mitigation activities may not be sufficient or that the activity may cause environmental harm, he or she may go to court to seek a nullification of the permit that has been granted. It should be noted that these actions are rare in Mexico.

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?

Any party that causes soil contamination is legally required to remediate it and may face administrative, civil and in some cases criminal liability (if it wilfully caused contamination or if acting with gross negligence).

The General Waste Law states that owners or occupants (such as tenants) of a contaminated property are jointly liable for remediation regardless of fault. They in turn, can bring an action against the party that caused contamination. Prior to transferring title over a contaminated property, a seller and a buyer must agree on who will carry out remediation. To determine if a property is contaminated, it is advisable to carry out soil characterisation studies.

The government has published two standards in the area of soil contamination. One is standard NOM-138-SEMARNAT/SSA1-2012 that establishes maximum allowable limits for hydrocarbons in soils and the other is NOM-147-SEMARNAT/SSA1-2004 that sets limits for heavy metals. In the absence of clear regulatory guidelines, human health and risk studies are required to determine the need of remediation.

SEMARNAT and/or ASEA must approve the transfer of a contaminated site. However, failing to secure an authorisation will not prevent the transfer from taking effect. If a seller failed to inform a buyer that a site was contaminated and buyer later discovers that it was, the seller will be liable for remediation according to the Regulation to the Waste Law.

The statute of limitations for making a claim of environmental liability is 12 years as of the moment when contamination occurs or its effects cease.

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?

There is no positive obligation to investigate or to provide investigative reports to regulatory authorities.

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?

If the contamination does not exceed one cubic meter, actions to contain it may be carried out without having to notify regulators. Otherwise, the party responsible for the hazardous material that has been spilled must immediately execute actions to prevent contamination and must immediately notify PROFEPA and other regulatory agencies of the situation, complying with any measures ordered by the agency, including carrying out remedial actions.

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. A civil action may be filed alleging environmental harm in order to have a judge order the party that caused contamination to remediate it but keeping in mind the statute of limitations. Also, the obligation to remediate irrespective of fault survives and makes the current owner liable.

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

The main federal statue governing waste is the General Waste Law. All of Mexico states have their own waste laws in place. All activities involving hazardous waste are overseen by federal agencies (SEMARNAT or ASEA), while state authorities regulate all activities involving non-hazardous waste, also classified as waste subject to special handling.

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)?

They may if they hired a waste transportation and disposal company that is not licensed to handle the waste. The General Waste Law provides that liability remains with the generator if waste is transferred unlawfully.

Once the waste is transferred to a licensed disposal company or facility, the producer is relieved from liability if the waste handling company goes bankrupt or does not properly handle or dispose of the waste.

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

There are a number of obligations that producers of certain waste must meet. Implementing take-back protocols are one of them. Generators of waste subject to special handling, must prepare a waste management plan and have it approved either by federal agencies (such as SEMARNAT or ASEA) or by state or municipal authorities.

Waste streams requiring a management plan include, spent lubricants, used organic solvents, mercury or nickel-cadmium spent batteries, automobile batteries, fluorescent and mercury vapour lamps, pesticides and oil-drilling muds. Also, large hazardous waste generators (those generating more than 10 metric tonnes in one year) are required to prepare and register waste management plans.

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?

Asbestos fibres are classified as a hazardous waste once freed from the areas or places where they are affixed, present or found and must be handled, contained, transported and disposed of in compliance with federal regulations.

There are no asbestos abatement regulations in Mexico. Occupational health and safety laws require workers that are exposed to asbestos fibres to wear protective equipment and to undergo medical examinations if exposed to certain quantities.

There is one Mexican Official Standard that regulates the sanitary requirements for the processing and use of asbestos: NOM-125-SSA1-2016.

Asbestos is not required to be removed except when becoming a hazardous waste by being disengaged from where it was affixed or in an emergency situation where the levels of asbestos are surpassed in specific areas.

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.

Mexico has its own laws and regulations dealing with chemicals and toxic substances. The General Health Law and its Regulations provide a number of reporting requirements that must be met when importing, handling, marketing and handling toxic products and substances. Some of these requirements involve securing licenses and registration numbers. The Federal Commission on the Prevention of Sanitary Risks (“COFEPRIS”) is the agency in charge of implementing

rules on product distribution and handling, including rules relating to containment and labelling.

COFEPRIS is also involved in the licensing of all medical products including medicines and certain chemicals substances manufactured in Mexico.

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

Mexico does not have any laws mandating energy to be produced or consumed in an efficient manner. Although Mexico is a signatory of the Paris Agreement and the Federal Electricity Energy Law requires the country to transition into cleaner sources of energy, Mexico is yet to enforce guidelines on achieving energy efficiency and more importantly, economic incentives to promote the generation of power through renewable sources.

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?

The General Climate Change Law states that it is in Mexico's strategic interest to carry out actions designed to mitigate or compensate for climate change and to develop the corresponding technical, as well as economic instruments. As a signatory to the Paris Climate Agreement, Mexico has agreed to contribute to fighting climate change and reducing greenhouse gas (GHG) emissions within the country and to implement mitigation and compensation policies.

The General Climate Change Law established an aspirational 30% GHG reduction target by 2020, increasing to 50% by 2050 with regard to the year 2000 emissions. However, these targets may only be achieved if an international regime is in place that provides for financial and technological support afforded by developed countries. Currently, the government has a target for 35% of the nation's energy output to come from renewable or "clean" sources by the year 2024. It is unclear whether it will be achieved.

SEMARNAT is requiring that emitters of a minimum of 25,000 tonnes of GHGs a year report their emissions. This is widely seen as a prelude to a future emissions trading scheme. There is also an emissions-trading pilot program that SEMARNAT is in the process of implementing throughout Mexico.

Also, according to Mexico's REDD+ 2017-2030 Strategy published by the federal government, rights over carbon credits should be bestowed exclusively to the government and not to the owners of the land where the credits are generated. This has created some controversy within indigenous communities and farming towns and it is likely that this claim by the government may be challenged in the courts.

18. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and ESG due diligence in supply chains becoming mandatory or more common? To what extent are companies obliged to report on ESG matters? Has COVID-19 had any impact in relation to companies' approach to ESG in your jurisdiction?

Yes, and particularly in energy projects. Before carrying out any project involving oil, gas or power, a social impact study has to be prepared and the project's impact on vulnerable communities has to be properly analysed.

There is also an indigenous consultation law being discussed in the Mexican congress. The purpose of this law would be to allow members of indigenous communities to have a say on the environmental viability of energy and infrastructure projects, particularly if they may affect their communities.

19. 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?

The Liability Law states that any individual or entity that causes environmental damage is liable for restoring it or paying compensation. Companies are liable for environmental damage caused by their legal representatives, officers, administrators, managers, directors, employees and by any person having functional control over the company's operations, if such

persons are careless or acting in accordance with their functions.

Officers, employees, directors and agents are generally liable for:

- Negligence or misconduct when discharging their duties;
- breaches of instructions received from management;
- actions that exceed their authority; and
- allowing, within the scope of their functions, violations to the Federal Criminal Code, solely in the case of officers, legal representatives, managers or employees.

With regard to shareholder liability, there is no piercing of the corporate veil in the area of environmental liability. Therefore, shareholders may not be liable. Only the legal entity (a company) may be found liable along with its legal representatives, directors, administrators, managers, or employees.

It is rare for parent companies be accused of playing a role in environmental damage caused by their subsidiaries. However, collective actions on environmental matters could target parent companies if there is evidence that they may have been complicit in any action or omission that causes environmental damage.

Banks or financial institutions that lend money to individuals or entities that cause environmental damage cannot be made liable for such damage. However, if a bank becomes the beneficial owner or occupier of contaminated land (because of a lien or a surety guarantee), it may be liable for its remediation.

20. 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?

This type of liability may be assumed through private contracts. A buyer may agree to accept all post-closing environmental liability and a seller may agree to indemnify a buyer if environmental liability is generated after a sale of assets or shares. Seller may also agree to carry out remedial actions after the operation takes place. These types of agreements are common in Mexico.

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

Under the General Waste Law, if a seller is aware that a property to be sold is contaminated with hazardous waste, he must inform the buyer and both (seller and buyer) must agree on who will carry out remediation. No title over contaminated property may be transferred without the express written approval of SEMARNAT.

Environmental due diligence is common in Mexico, in may cases focusing on whether there may be soil contamination at a site to be acquired, but also to determine whether the target company holds valid environmental permits.

22. 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?

Environmental liability insurance may be acquired to cover against environmental damage that may be caused as a result of breaching a legal obligation or an environmental permit.

In the case of large projects, such as petrochemical installations, infrastructure projects, power plants or industrial facilities that may be deemed “high-risk”, regulators will order the project owners or developers to purchase insurance to cover any type of environmental damage that may be caused. According to the Environmental Liability Law, if an entity has caused contamination, penalties against it may be reduced if it is able to show that it has acquired insurance.

There are a number of carriers that offer coverage for any of the following risks:

- Personal or material damage;
- remediation costs;
- civil liability for environmental damage;
- liability for economic loss; and
- environmental liability arising from the conditions of environmental impact permits.

ASEA has issued administrative guidelines that establish the amounts that insurance must cover against losses and damages caused by parties that carry out activities

relating to the hydrocarbons sector.

Regulated entities must register their insurance policies with ASEA prior to carrying out any works or activities. If regulated entities have already secured a valid insurance policy as of the date of publication of the guidelines, they may register it with ASEA, and at the end of the term of the insurance policy, the corresponding adjustments must be made in accordance to the guidelines.

23. 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?

There is a federal registry kept by the federal government that keeps track of stationary air emission sources. This registry is updated with information provided by emitters of GHGs. The purpose of this registry is to allow an emissions trading system in the future.

Companies or establishments that generate more than 25,000 tonnes a year of GHGs through direct or indirect emissions, are required to register their output with SEMARNAT on a yearly basis.

24. 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, and the Law of Access to Public Information, any person has the right to have SEMARNAT, ASEA, as well as other federal or state environmental agencies, put at his or her disposal any environmental information requested. Any petition must be in writing, specifying the type of information being requested and the reasons behind the request.

In some cases, regulatory agencies may deny access to information if it is deemed of a confidential nature or if its disclosure may damage third-party rights.

25. What impact, if any, has COVID-19 had in relation to environmental regulations and enforcement in your jurisdiction?

N/A

26. 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?

There have not been any significant updates in the past three years, aside from several administrative guidelines dealing with the oil, gas and power sectors.

In the near future we may expect a new Water Law to be published. There is also the possibility of having an Indigenous Consultation Law be enacted.

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