

Mexico Legal Highlights (Volume II, 2013)

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Mexico Enacts Landmark Environmental Liability Law

On June 7, 2013, Mexico published its long-awaited Federal Environmental Liability Law (*Ley Federal de Responsabilidad Ambiental*; the “Law”), establishing the types of harms that incur liability and specifying which parties have standing to sue for environmental restoration. The scope of occurrences that create liability under the Law is broad: “Any person or entity who by act or omission directly or indirectly occasions a harm to the environment, will be liable and will be obligated for the reparation of the harm or, when reparation is not possible, to environmental compensation.” (Art. 10) The Law provides important exceptions, stating that “environmental harm” is not deemed to have occurred if: (1) the activity that caused it was previously authorized through an environmental impact assessment process; or (2) the limits (i.e., of emissions, etc.) established by the relevant laws or regulations were not exceeded. (Art. 6) Where there is a qualifying activity and harm, the Law grants standing to the following: (1) the inhabitant of the community adjacent to the environmental harm; (2) Mexican environmental non-profit organizations; (3) the federal government through its environmental prosecution office (*Procuraduría Federal de Protección al Ambiente*; commonly known as “PROFEPA”); and (4) the state governments through their prosecutorial offices or institutions that exercise environmental protection functions. (Art. 28)

The Law enumerates the factors that judges must observe in the issuance of judgments, both in determining the appropriate measure of liability (Art. 39) and in the elements that a judicial decision must contain (Art. 37). Rather than money damages, the principal restoration due under the Law is either remediation of the harm or “compensatory” investment in other environmental improvements. For cases of intentional causation of environmental harm, in addition to requiring restoration, courts may assess “economic sanctions” (apparently a counterpart to punitive damages) ranging from 300 to 50,000 (for individuals) or 1,000 to 600,000 (for companies) times the daily minimum wage in Mexico City. (Art. 19) The Law provides for two forums in addition to the existing court system: first, the Law envisions the creation of District courts specialized in environmental issues to be established within two years (Art. 30; Third Transitory Art.); second, the Law encourages the use of alternative dispute resolution in parallel with formal judicial proceedings (Arts. 47-51). The statute of limitations for bringing actions under the Law is twelve years from the date on which the environmental harm and its effects were caused. (Art. 29)

Reference Sources (in Spanish):

- [Mexico Federal Environmental Liability Law](#)

Mexico Regulates Vehicle Greenhouse Gas Emissions

A new Official Mexican Standard (*Norma Oficial Mexicana*; “NOM”), NOM-163-SEMARNAT-ENER-SCFI-2013, limits the emissions of greenhouse gases allowed from passenger vehicles and light trucks sold in Mexico. The emission limits are mandatory for new vehicles up to 3,857 kilograms, and apply to the fleets of vehicles sold by a given company in model-years 2014-2016; however, companies that sell less than 500 vehicles per model-year are exempt. (Art. 2) The bulk of NOM-163 sets forth the parameters and methodology used to calculate corporate targets and actual averages of carbon dioxide emissions (reported in grams of carbon dioxide per kilometer) and its equivalent in terms of fuel efficiency (reported in kilometers per liter). Companies that registered sales of between 501 and 2,500 vehicles in 2012 may opt for an alternative, potentially less stringent program that requires emissions reductions of approximately 25% from 2012 levels. (Art. 6) A credit system will be established in order to incentivize the use and development of high-efficiency vehicles. (Art. 5.5.2)

Reference Sources (in Spanish):

- [NOM-163-SEMARNAT-ENER-SCFI-2013](#)

Mexico Issues Product Stewardship Requirements for Plastics

Through a May 21, 2013, decree (the “Decree”) amending the General Law for the Prevention and Integral Management of Wastes (*Ley General para la Prevención y Gestión Integral de los Residuos*; the “Waste Law”), Mexico has enacted product stewardship requirements for plastics at both the beginning and end of their life. The Decree provides for the issuance of Official Mexican Standards (*Normas Oficiales Mexicanas*; “NOMs”) that establish environmental and technical criteria for the plastic and expanded polystyrene materials used in products and packaging and which becomes wastes. (Art. 7(VI)) The NOMs must consider the principles of reduction, recycling and reuse. Unlike the technical standards of most countries, most NOMs stand as binding law (i.e., without being incorporated by legal provisions), so criteria developed in Mexico can potentially have a direct impact on materials used internationally. At the end of life, the Decree subjects plastics and expanded polystyrene to the producer take-back requirements that apply to special management wastes. (Art. 28) For certain circumstances, plastics and expanded polystyrene had already been included in the regulation on special management waste take-back plans, NOM-161-SEMARNAT-2011, issued in February 2013. Their inclusion in the Waste Law may be intended to backfill a legal gap, and could also be used as authority to expand take-back requirements for these materials.

Reference Sources (in Spanish):

- [Decree Amending Waste Law \(May 2013\)](#)
- [NOM-161-SEMARNAT-2011](#)

Mexico Will Establish Voluntary Sustainability Certification for Goods and

Services

On May 24, 2013, Mexico amended its General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección del Ambiente*; “LGEEPA”) to provide for the establishment of a certification and labeling program for environmentally sustainable goods and services. Specifically, LGEEPA now directs the Secretariat of Environment and Natural Resources (*Secretaría del Medio Ambiente y Recursos Naturales*; “SEMARNAT”) “to promote the identification of those products, goods, inputs and services with lesser environmental impact.” (Art. 37 bis) Such identification would be through a voluntary marking or certificate, and would have to be based on environmental criteria taking into account the life cycle of the product or service to be certified. The new LGEEPA text also includes a broadly worded directive for SEMARNAT to issue regulations on the “requirements, specifications, conditions, procedures, goals, parameters and permissible limits that must be observed . . . in the use of natural resources, in the development of economic activities, in the production, use and disposition of goods, in inputs and in processes.” (Art. 36)

Reference Sources (in Spanish):

- [Decree Amending LGEEPA \(May 2013\)](#)

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