

THE ENVIRONMENT AND ITS REGULATION IN ARGENTINA

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SUMMARY

Due to the distribution of institutional liabilities Argentina's framework for environmental management is rather confused. The institutional capacity and authority for environmental management is spread among several agencies at the national, provincial and municipal levels. This leads to an overlapping of jurisdictions, weak controls, and breakdowns in compliance. Taking into account the overlapping roles among the National Government and local administrations and the frequent changes of institutional structures, the general scenario shows different legal requirements and authorities competing for enforcement resources and responsibility.

The lack of environmental enforcement and compliance is an important problem in Argentina because of the lack of adequate capacity building activities for the public sector, frequent changes in bureaucratic structure, overlapping roles at the national, provincial and municipal jurisdictions. Given that these problems are generally related to institutional aspects of environmental management, identified problems and necessities must be considered if the current situation on environmental enforcement and compliance in Argentina is to be improved.

1 INSTITUTIONAL FRAMEWORK

At the national level, the Secretariat of Environment and Sustainable Development (SayDS) is in charge of environmental policy. In addition to the SAYDS, there are several national agencies that play an important role in adopting, enforcing and managing policies related to the environment. A similar situation exists at the provincial and municipal level, where several agencies and offices are in charge of issues related to the environment.

This scenario gets more complex because of the relationship between the National and Provincial Governments, since the National Constitution has reserved for the provinces all functions not expressly delegated to the National State. The 1994 amendment to the Constitution empha-

sized that natural resources are under the exclusive control of the Provinces.

1.1 National Institutional Framework

The Secretariat of Environment and Sustainable Development is clearly the national central authority. In this capacity it is responsible for all failures in the system, although in some other cases, the responsibilities are shared by such a large number of agencies that the number itself generates problems of coordination and inconsistent approaches. Among the national environmental agencies in Argentina are:

1. SENASA (National Service for Animal Health);
2. IASCAV (Argentine Institute for Vegetal Health and Quality);

3. APN (Administration of National Parks);
4. INAA (National Institute for Water and the Environment);
5. ETOSS (Three-Party Agency for Waterworks);
6. Coast Guards;
7. Port Authority; and
8. Border Guards.

1.2 Provincial/Municipal Institutional Framework

At provincial level, the distribution of institutional responsibilities is also complex and varies from one province to the other. The Province of Buenos Aires, for example, has a Secretariat of Environmental Policy to coordinate all environmental issues, but all other provincial agencies with environmental responsibilities are still operating. The Provincial Secretariat of Public Health continues carrying out environmental inspections through its Office for the Environment simultaneously with the Province's Ecological Division and AGOS-BA, the provincial company responsible for the water and sewerage systems.

Additionally, each of the 23 provinces that make up the Republic of Argentina has centralized in one provincial authority the application of the regulations in force and the coordination of the provincial environmental policy. In some cases, the environmental enforcement authority is a ministry, and in some others, it is a secretariat, an undersecretariat or an office. This situation is mirrored at municipal level.

1.3 Basin Commissions

An additional level of bureaucracy came up in the last 10 years: Basin Commissions. Although none of them is fully operating, some issues of overlapping jurisdictions have arisen (e.g.: the COREBE Río Bermejo Commission, and the Río Pilcomayo Commission). In some cases, the jurisdictions overlapped are international, as in the case of the Paraguay/Uruguay Waterway. The Río Matanza-Riachuelo Basin represents a clear example with 22 institutions

from all levels with authority over it, as well as the case of the Río Reconquista, where 13 municipalities and the national and provincial governments have overlapping jurisdiction.

1.4 Need For An Adequate Institutional Framework

The National Secretariat of Environment and Sustainable Development, aware of the existing problems and the need to improve the design of Argentina's environmental policy, is actively working on reorganizing the institutions under its scope. National authorities are aiming to fully reorganize all environmental functions and concentrate the responsibility of policy-making in only one national agency to which local authorities may and should adapt.

2 ENVIRONMENTAL LAW IN ARGENTINA

Modern nations must have an environmental protection law and policy system that exhibits integrity and utilizes an updated approach to discover and resolve environmental compliance challenges. The management, use and protection of natural resources involved in the society-nature relationship cannot be treated separately, and the factors contributing to its disruption should be regulated.

The 1994 amendment to the National Constitution added as a new right the right to a healthy, balanced environment and laid the basic principles to guarantee this right. Section 41 of the National Constitution deals with fundamental issues such as:

1. minimum provisions to protect the environment;
2. sustainable development;
3. sustainable use of resources;
4. environmental education and information;
5. protection of biodiversity ;
6. preservation of the natural and cultural heritage;
7. bans on the entry of hazardous and radioactive waste into the country; and

8. principles whereby environmental damage creates clean-up obligations, subject to law.

2.1 Dispersed Legislation

The Environmental Federal Pact signed on July 5, 1993, was the starting point to systematize environmental protection in Argentina. The amendment to the Constitution reflected the shared will to entrust the enactment of the basic environmental rules to the National Congress. However, almost five years after the amendment has passed, Argentina still does not have a general environmental law.

Several draft bills for the general environmental law are waiting in the National Congress to be considered. Some draft bills for an Environmental Impact Assessment law are also being discussed and although not all of them are alike, they are quite similar and have the same objective and purposes: to preserve the environment and promote a rational use of resources for the sustainability of the ecosystem. Even though no national general environmental law has been passed, some efforts have been made to that end.

With respect to the regulation of natural resources, the rules in force at both the national and provincial level are overwhelming and complex. There are so many rules that it is safe to say Argentina is facing a case of legal pollution. When the number of rules enacted by a State increases without limit and they become contradictory, redundant, overlapping, confused and incomplete; when it is difficult to know which rules are in force and which are not and which of them have been revoked or modified, a national rule with minimum provisions becomes necessary to overcome this obstacle.

Argentina has ratified many international treaties that deal with environmental issues and current regulations at the national level have focused attention on natural resources. Although there is no basic environmental rule at the national level, the provinces have specifically addressed this issue and enacted general laws to systematize an integrated provincial

management policy. Of the 23 provinces that make up the Republic of Argentina, 14 have enacted general environmental laws.

With these constraints, it is not hard to understand why it has been very difficult to establish a coherent national environmental policy in Argentina. In the existing federal framework, common problems are handled differently according to the particular jurisdiction in which they arise and ignorance of regional ecological problems and overlapping jurisdictions exacerbates environmental problems and frustrates their resolution.

3 ENVIRONMENTAL IMPACT ASSESSMENT

3.1 General Rules

There is no national law in Argentina requiring the performance of Environmental Impact Assessments. All general environmental bills under discussion have considered environmental impact assessments as an environmental policy tool, and included them under a special chapter. On the other hand, some draft bills are aimed exclusively at regulating environmental impact assessments.

3.2 Historical Background Of Eia Law

Although national, provincial and municipal authorities are aware of the significance of environmental impact assessments, there is not much historical background in this respect. This is a fairly new subject in Argentina for both those in charge of performing an environmental assessment and the authorities that must review it. The human activities that most impact on the environment have also been the most controlled. And although clear regulations have been issued for these activities, there is little experience with these provisions at the national level.

The Salto Grande and Yacyretá hydroelectric plants, for example, were built with programs and plans that only mentioned environmental assessments in passing. On the other hand, the oil industry has cared the most for this subject and complied with all

provisions issued by the relevant enforcement authority: the Secretariat of Energy.

There are several examples of preliminary environmental assessments that have been made, bearing in mind that international requirements for this area, both in terms of quality and environmental management systems, impose conditions on the industry's sales and competitiveness.

The mining industry has also made some progress in environmental management and has recently implemented a system for preparing impact assessments, although the provinces will have to regulate pursuant to the national law. Various examples of environmental impact assessments, studies and reports may be taken from projects associated with industrial activities, where they are needed to obtain the highly appreciated certificate of environmental fitness. Some provinces have been stricter than others in implementing an environmental impact assessment system, which was pioneered in Argentina by the Province of Buenos Aires.

According to their laws, the provinces require the performance of environmental impact assessments before issuing relevant permits or authorizations required to carry out certain projects or activities. In addition, all projects in which the World Bank and the Interamerican Development Bank must submit environmental pre-feasibility and feasibility studies. Finally, in the last years, ISO Standards have played a key role, particularly ISO 14001, regarding the implementation of an environmental management system for those companies that voluntarily decide to comply with that international standard.

4 HAZARDOUS WASTE LAW 24.051 (DECREE 831/93)

Law No. 24.051 – Publication: O.B. 17/1/92 – establishes rules on generation, handling, transportation and treatment of hazardous wastes. Given its wide-ranging applicability, the standards it establishes, the rules it settles, and its federal scope, Law 24.051 may be considered as a law of minimum common standards for the pro-

tection of the environment. It establishes complete control on the life cycle of wastes, through the supervision of all the actors involved, linked by a unique document called a waste manifest.

In the ten years that this law has been in force, it has been possible to detect some aspects that can be improved, many of which have been adapted in practice in order to guarantee its enforcement. The regulations of the Law on Hazardous Wastes were established by the Executive Power through its Decree No. 831/93. This decree clarified some of the definitions contained in the law, as well as its scope, and it also established the procedures to be followed in order to comply with the general rule. In the same way, and through a number of resolutions issued by the Secretariat for Natural Resources and Human Environment, afterwards Secretariat for Natural Resources and Sustainable Development, currently Secretariat of Environment and Sustainable Development, the law has been improved with regard to specific issues, with a view to its better implementation, and better control and verification of waste management practices.

4.1 Scope Of The Law On Hazardous Wastes

Law 24.051 is a national law of local application, in some cases of federal application, and it contains rules of civil law. It is also a law of adhesion and, from the point of view of both doctrine and jurisprudence, it is considered a combined law.

4.1.1 Local/Federal National Law

Both the local and federal categories are derived from Section 1, which states: "The generation, manipulation, transport, treatment and final disposal of hazardous wastes will be subject to the provisions of the present law, whenever:

1. wastes are generated or located in places under national jurisdiction, or
2. although located within the territory of a province, the wastes in question are destined for transportation outside of it, or when,

3. in the opinion of the Competent Authority, such wastes may have adverse effects on human health and the environment beyond the boundaries of the province in which it was generated, or when,
4. the appropriate sanitary or safety measures concerning such wastes should have such an appreciable economic impact as to render their standardizing throughout the whole National territory advantageous, in order to ensure an effective competition among those companies that should carry the burden of complying with these measures.

As may be inferred, law 24.051 is a law of local character, but its application is extended to the whole national territory in a wide range of situations, especially with reference to the criteria of the authority and to the detrimental effects on human health or the environment that could result from improper management or disposal.

4.1.2 Substantive Law Or Civil/Penal Codes

With regard to public liability, the law is complementary to the regime established in the Civil Code, which is the fundamental code, the ruling guide of civil law, and is in force in the whole national territory (prevailing over provincial legislation). In the same way, the articles that refer to the penal regime are complementary to the Penal Code, and they are in force throughout the whole national territory.

4.1.3 Regime Of Adhesion

Law 24.051 is a law of Adhesion, since it "invites the provinces and the respective municipalities under their jurisdiction, to dictate rules of the same nature as the present one, to provide for the treatment of hazardous wastes." Also, its regulatory decree "invites the provinces that have adopted Law 24.051 or that have subscribed cooperation agreements with the environmental national authority, to adopt, as far as practicable, the provisions that emanate from the present regulations, in their respective areas of competence."

In this respect, some provinces have adopted the law and its regulatory decree; some have adopted only the law and have established their own regulations; others have passed their own law and regulations; and finally, some have no regulations of their own, nor have they adopted the present Law.

4.2 Categorization Of Hazardous Wastes

Section 2 of the Law 24.051, defines hazardous wastes as: "(a) In general: any type of waste that can be directly or indirectly detrimental to living beings, or pollute the soil, water, air or the environment." The law also applies to: "... those hazardous wastes that may be required as raw material for re-use in other industrial processes" (defined in the glossary of Annex I of Decree 831/93); and "(b) In particular: to those wastes included in Annex I, which lists 45 types of wastes to be controlled, categorized under waste streams and wastes having specific constituents. Annex II, also under Article 2, contains a list of hazardous characteristics; all wastes possessing any of such characteristics fall under the scope of this Law.

4.2.1 Wastes Excluded

Wastes collected from households, radioactive wastes and wastes from the normal operation of vessels are expressly excluded from the scope of this law.

4.2.2 Clinical Wastes

According to the national law, clinical wastes are hazardous wastes, and they fall under its scope. Law 24.051 makes particular reference to clinical wastes in Annexes I and II, and in Section 19. Wastes in Annex I include clinical wastes from medical care in hospitals, medical centres and clinics for human and animal health and related wastes in the waste stream; wastes from the production and preparation of pharmaceutical products; and wastes from pharmaceuticals and medicines for human and animal health.

Wastes in Annex II include infectious substances, substances or wastes

containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans. Clinical wastes subject to the regulation under Art. 19 include wastes derived from laboratory cultures; blood residues and their derivatives; organic wastes from surgery; animal wastes from medical research; cotton wool, medical gauzes, used bandages, ampoules, syringes, sharp or piercing objects, disposable material, non-sterilized elements saturated with blood or other putrescible substances; and chemotherapeutic agents.

Wastes of a radioactive nature, derived from medical care, are subject to the provisions in force for such matters, in accordance with the provisions in Article 2.

4.3 National Register Of Generators And Operators

Section 4 of Law 24.051 establishes that the competent authority "will maintain an up-dated National Register of Generators and Operators of Hazardous Wastes, which should include natural or legal persons responsible for the generation, transport, treatment and final disposal of hazardous wastes".

4.3.1 Functions

The Register is the area in charge of all procedures related to the issuance of Annual Environmental Certificates, in accordance with Article 5 of Law 24.051. Its main functions are:

1. to provide the forms for Sworn Statements under Law 24.051;
2. to provide the forms and approval of Manifests of Law 24.051;
3. to endorse the Operations Register Books for Generators, Operators and Carriers of Hazardous Wastes;
4. to perform the technical, legal and accounting analysis of the Sworn Statements submitted by Generators, Operators and Carriers;
5. to carry out the enrollment in the Register of Generators, Carriers and Operators of Hazardous Wastes;

6. to collect the Fee for Assessment and Control;
7. to issue the Annual Environmental Certificate;
8. to apply sanctions for violations of Law 24.051, and determine and collect fines;
9. to exert control through the inspection of sites and facilities, with a view to carrying out an "in situ" verification of the Declaration submitted;
10. to evaluate consultations relating to the verification of the legislation in force, applicable by area, whether from national and provincial governmental agencies or from the public in general; and
11. to intervene, as appropriate, in the case of official letters addressed to the environmental authority.

The enrolment in the National Register of Generators and Operators of Hazardous Wastes is formalized through the submission, by those persons under the scope of the Law, of a standard Sworn Statement form, which constitutes the starting point for the corresponding procedure. The said procedure is analyzed from the technical, legal and accounting point of view.

4.3.2 Registration By The Authority At Its Own Initiative

Section 9 of Law 24.051 provides a specific mechanism for those persons under its jurisdiction among the categories mentioned, but who have not, however, enrolled in the National Register. This procedure consists in their registration by the authority at its own initiative. The declaratory decision determines the enrollment, in accordance with Article 9 of Law 24.051, of all Firms under the scope of the Law which have not duly enrolled in the National Register.

4.3.3 Inspections

The different procedures implemented by the Coordination of the Register include inspections at premises of firms involved in the Generation, Operation and Transport of hazardous wastes having enrolled in its Register with the purpose of

obtaining or renewing the Annual Environmental Certificate. The inspections are conducted by 'ad hoc' commissions composed of, according to the requirements and the scope of the company involved, professionals of the different areas of the sector, whose aim is to carry out the "in situ" verification of the integral, environmentally sound management of the hazardous wastes generated, transported, treated, or disposed of, from a technical, legal and accounting point of view.

4.3.4 Inscription System In The National Register Of Hazardous Wastes (Sirp)

The application form was carried out with magnetic support: a diskette. The SIRP diskette contains a self-sufficient program, which runs in any personal computer, with minimum requirements and is able to print from basic printers. The SIRP program (module: application) will check out basic consistencies of the data and monitor compliance with form completion obligations. The application form content was updated for compliance with all applicable technical, financial and legal requirements.

The files stored in the Register Office (3600) started the Database by 2000. The data analysis and controls for consistency were carried out in order to verify coherency. All of the Administration areas of the Register Office use the System to assist in automatic incorporation of the application form, assignment of the file number, technical analysis and company categorisation, determining which waste are able to handle with the declared technology, financial analysis to determinate the tax amount to be paid, legal analysis, and monitoring of other compliance parameters.

4.4 Persons Under The Scope Of Law 24.051

Law 24.051 creates three legal entities – the generator, the carrier and the operator – linked via the manifest document, which makes it possible to conduct a complete monitoring of the wastes, from

the point of origin to the point of treatment, elimination or final disposal.

4.4.1 Generators

"Generator" means any natural or legal person whose actions, processes, operations or activities result in the production of hazardous wastes, and who is responsible for the destination of such wastes". Different kinds of firms, whether producers of goods or suppliers of services, are included within this category. Examples of the former include petrochemical, pharmaceutical and mining industries, manufacturers of chemical products in general, and paper mills. The latter category includes filling stations, lubrication centres for automobiles, energy-generating plants, transportation mechanisms in general, airports, as well as hospitals, clinics and health centres in general, and research centres.

4.4.2 Operators

In terms of Law 24.051, "Operator" means the person responsible for the complete operation of a plant or facility for the treatment and/or final disposal of hazardous wastes. The category of Operator includes several types of firms whose main activity is based on a wide range of technologies for the treatment and disposal of industrial or clinical wastes. Techniques such as incineration, biological or physico-chemical treatments, specially engineered landfill, among others, characterise the activities of operators. In this respect, Law 24.051 contains, in its Annex III, a comprehensive list of activities considered as valid and possible operations for the treatment of hazardous wastes, making the distinction between those operations which may lead to resource recovery or recycling, and those which do not.

4.4.3 Carriers

"Carrier" means the person whom the Generator entrusts with the operations of collection and transport of hazardous wastes from their point of origin to the treatment or final disposal site.

4.5 Special Legal Entities

Law 24.051 contemplates cases in which such clearly defined legal entities as that of the Generator and Operator have special characteristics that deserve a particular treatment. This applies in the following cases.

4.5.1 Eventual Generator

Such is the case of an occasional, non-habitual generation of hazardous wastes by any natural or legal person. This case is provided for in the Regulatory Decree of the Law on Hazardous Wastes, Decree 831/93, under its section 14. The above-mentioned legal framework includes those firms, whether or not registered as Generators of hazardous wastes on account of their habitual activities, that occasionally generate wastes that are not part of their regular activity. It also includes eventual generators of PCBs, eventual generators through accidents, road accidents, eventual generators through incidental detection of illegally interred wastes or polluted sites.

4.5.2 Operators With Mobile Equipment

The enforcement of Resolution 185/99 by the Secretariat of Sustainable Development and Environmental Policy, provided a legal instrument for the evaluation and control of a special type of operators. Such operators are characterised by their utilization of mobile equipment, which enables them to perform treatment operations of hazardous wastes at the very place where they are generated. This kind of operators usually offer a wide range of alternatives, whether for the destruction of the wastes via incineration, for the recovery of hydrocarbons from petroleum sludge, for the remediation of the environment in polluted sites by means of diverse strategies, for the decontamination or sterilization of clinical wastes through the utilisation of autoclaves, and many other options.

4.5.3 Operators/Exporters

This refers to firms that have obtained a permit from the National

Register of Generators and Operators of Hazardous Wastes to arrange for such wastes to be exported.

4.5.4 Operators For Storage

This refers to firms devoted to transitory storage of wastes -in general, destined for transfer-, and to the sites where wastes are stored until their final disposal. Such operators must have premises and facilities that are adequate from the point of view of their construction and operation. Likewise, it is important to notify the term of the transitory storage. (Res. 123/95).

4.6 Legal Instruments

4.6.1 Environmental Certificate

The annual environmental certificate is an instrument that accredits, "exclusively, the approval of the manner in which the persons enrolled in the Register will carry out the handling, transport, treatment or final disposal of hazardous wastes". (Art. 5). It is the administrative instrument that authorises the activities that have been regulated. The environmental certificate must be renewed annually.

4.6.2 The Manifest

The Manifest is the document that records the nature, amount and origin of wastes; the transfer of wastes from the generator to the carrier, and from the carrier to the treatment or final disposal plant; the treatment and elimination processes to which the wastes are to be subjected; and any operation that is carried out. The Manifest is a very important document. It ensures the control of the management of the wastes, from the Generator where they originate, through the Operator, to their final disposal, verifying that the provisions of this law have been complied with, and with the ratification of the Competent Authority.

4.6.3 Environmental Fee

The Competent Authority determines the value and periodicity of the fee that generators must pay. The amount in

direct relation with the potential danger and quantity of the wastes they produce, and may not exceed one percent (1%) of the estimated average profit derived from the activity resulting in the generation of such hazardous wastes. The Secretariat of Environment and Sustainable Development issues the Annual Environmental Certificate to Generators and Operators enrolled in the National Register, and collects the fees they must pay. In fact, this fee depends on the potential danger of the wastes generated, as notified in the sworn statement submitted by the Generator and Operator themselves, and it is in direct relation to the characteristics declared concerning the proportion of hazardous substances they contain.

Under Argentine jurisprudence, these fees do not constitute a tax but rather an administrative instrument to provide a direct compensation for expenses incurred for the provision of a certain administrative service to its users and, unlike taxes, they are only related to the utilization of public services, and only require an authorisation of a general nature for their institution. The State has the authority to create so-called "green" taxes, which are those required for activities related to hazardous wastes, ensuring compliance with the mechanisms provided, with a view to preventing damage to the environment. The aim of the environmental tax differs from that of general taxes, since it fosters an indirect action aimed at preventing pollution.

4.7 Administrative Sanctions

The Law on Hazardous Wastes establishes a regime of administrative penalties, corresponding to the field of administrative infractions, via a system of penalties imposed pursuant to an administrative investigation that guarantees the right to reply to charges made. These penalties are set forth in Section 49, and include admonitions, fines ranging from five thousand pesos to one hundred times that sum, suspensions of enrolment in the National Register for a period of between 30 (thirty) days and one year, and cancellation of enrollment in the Register.

4.7.1 Administrative Investigation

The preliminary administrative investigation mentioned above is regulated through Resolution SDSyPA No. 255/01. This resolution implements the procedures to be followed in administrative investigations arising from non-compliance with the provisions of Law 24.051. These legal proceedings are instituted when the Register verifies a violation of, or non-compliance with, any of the provisions of Law 24.051 or its complementary rules. Once these contraventions have been enunciated, the formulation of charges gives rise to the pertinent proceedings.

The person under investigation then receives proper notice, and is granted a term of 10 (ten) court days, in order that he/she may effectively exercise his/her right to reply to charges made, presenting the pertinent plea. If the assessment of the plea does not determine that the charges have been partially or totally refuted, the arguments for the defense are evaluated, and the corresponding sanctions are imposed.

4.8 Liability

Under Law 24.051, the Generator is the owner of the hazardous wastes, and will continue to be so even though he/she may voluntarily transfer or abandon them. That is to say, the Generator's legal ownership is not cannot be transferred. The generator's liability for eventual damage does not disappear with the transformation, specification, development, evolution or treatment of the hazardous wastes. Liability extends from the generation of the hazardous waste to its elimination or, as has often been maintained, from cradle to grave (section 48).

Analyzing in particular the regime of public liability incorporated by Law 24.051, it arises that this law establishes that any hazardous waste is dangerous (as specified in the terms of Article 1113, paragraph 2 of the Civil Code). In this respect, Law 24.051 has instituted a system of objective liability for the risk implied. The law complements such a concept when it adds, in its Article 47, that the generator is not exempted from liability, even though

he/she may demonstrate that the damage resulted from the negligence of a third party, if that action might have been prevented by taking appropriate measures, and in accordance with the particular circumstances of each case.

4.9 Penal System

Regarding the penal regime of Law 24.051, liability may be imposed for endangering public health. Human health is the legal asset under guardianship. However, not just any danger will suffice to require the imposition of penalties; this demands that the danger be serious and of great magnitude.

In its Section 55, the Law establishes penalties for any person who, through the management of hazardous wastes, should poison, contaminate, or adulterate the soil, air, or the environment, in a manner that should endanger human health. It is worth noting that neither the regime of civil liability nor the formally enacted penal rules require the agreement of the provincial governments, or any specific authorization for their enforcement and adjudication, and they are in force throughout the National territory.

4.10 Competent Authority

The national environmental organism is the competent authority and that is the Secretariat of Environment and Sustainable Development, currently under the Ministry of Social Development and Environment.

5 ENFORCEMENT

5.1 Enforcement Scenario

Conflicts and difficulties arise in Argentina because the institutional capacity and authority for environmental management is spread among several agencies at the national, provincial and municipal levels, overlapping jurisdictions, poor controls, weaknesses in rule compliance and a persistent confusion between policies and

objectives. This scenario gets more complex due to the relationship between the National and Provincial Governments, between Provinces, between Municipality and Province, and between Municipalities. Taking into account the overlapping of roles among the National Government and local administrations and the frequent changes of institutional structures, the general scenario shows different legal requirements and authorities competing to enforce the law. With respect to the regulation on natural resources, the rules in force at both national and provincial level are overwhelming and complex.

Argentina's federal system poses a challenge: How to define and subsequently apply a policy throughout the national territory without affecting the powers exclusively vested in the provinces and so as to generate true and effective vertical coordination among governmental units.

5.2 Major Constraints

The main problems include:

1. lack of a general basic national standard – the standard, or minimum provisions law (sect. 41 of the Argentine Constitution), will be the basis for future rules and will also strengthen and refresh those in force;
2. disordered, overlapped and contradictory institutional framework;
3. uncoordinated national environmental policy – since the national policy is weakly integrated and there is neither coordination nor consistency in the institutional structure, it is very difficult to have an adequate ecological and sustainable action;
4. only partial knowledge of environmental management at all levels of authority (national, provincial and municipal);
5. lack of resources at the monitoring agencies necessary to review, observe and follow-up, control, monitor and verify compliance;
6. insufficient awareness of the importance of environmental compliance and enforcement; and

7. Lack of financial and economic means.

5.3 Recommendations To Solve The Problems

A solution should be sought for each problem. It is therefore necessary:

1. to pass minimum provisions law – it should be a general legal set to which the sectional environmental laws may refer, also enabling the consistent enforcement of any existing and future rule;
2. to reorganize the environmental institutional structure with coordinated limits for institutional responsibilities;
3. to provide the country with an environmental policy to be taken as a key variable for development, securing the incorporation of all regions and human groups;
4. to provide the country, at all levels, with professionals working together with the authorities to achieve the goals proposed;
5. to provide capacity for an effective implementation of existing and future rules to control and follow-up compliance;
6. to build general awareness on environmental compliance and enforcement; and
7. to identify and create economic instruments to get enough financial support for achieving the goals.

5.4 Hazardous Wastes Enforcement As A Model

National Law 24.051 for the environmental sound management of hazardous wastes has the virtue of being the first law to integrate attempts at environmental preservation, previously scattered in partial and/or local legislation, in a unique rule of national scope. The Law on Hazardous Wastes is a strict law that provided the means to establish management guidelines at a time when there were few technical instruments of con-

trol. However, the implementation of new technologies and the enhanced knowledge on environmental issues clearly point to the need for a more encompassing and flexible law. The National Register of Hazardous Wastes is considered to be hardly the unique system for federal enforcement. But it is also fair to say that many changes must be made in order to guarantee compliance in the overlapped institutional framework described before.

5.5 The Real Challenge In Argentina

There is an urgent need for improving the current situation on environmental enforcement and compliance in Argentina because provincial and federal responsibilities that are mostly concurrent generally turn to be overlapped and need urgently to be coordinated and harmonized. In order to enhance environmental enforcement, non-bureaucratic structures of governmental agencies, and intergovernmental coherence have to be granted. Establishing an institutional framework for environmental policy is the real challenge that has to be promptly faced in order to achieve the goal in Argentina. In order to get an efficient and harmonized coordination it will not be enough to pass a minimum provision statute. Other formal and informal mechanisms to strongly encourage a real implementation of standards and to guarantee enforcement activities will be needed to bring about compliance.

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Any enforcement results???

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APPENDIX

SECTION 41 NATIONAL CONSTITUTION

All the habitants have the right to enjoy a balanced and healthy environment, apt to human development and productive activities that satisfy the current needs without compromising its use by future generation, and have a duty to keep it. The environmental damage will basically carry out the duty to compensate according to law.

The authorities will provide for the protection of this right, for the rational use of natural resources, for the preservation of the natural and cultural inheritance, for biological diversity and for the environmental information and education.

The Nation shall enact rules that contain minimum requirements of protection and the complementary ones must be prescribed by the provinces without the jurisdiction of the latter being altered by the former.

The entrance to national territory of hazardous and radioactive waste is forbidden.

INTERNATIONAL TREATIES

Oilpol and MARPOL Prevention of Pollution of the Sea

SOLAS Safety of Life at Sea

RAMSAR Wetlands of international importance

CITES Wild flora and fauna species

Basel Convention Transboundary Movements of Hazardous Wastes and their disposal

Montreal Protocol on substances that deplete the Ozone Layer

Biodiversity Convention of Rio de Janeiro
Climate Change Convention

PIC Convention

POPs Convention (signed and not yet ratified)

Treaties between Brazil and Argentina on hydraulic resources

Treaties between Uruguay and Argentina

NATURAL RESOURCES. National Laws

a. Water:

Law 20.094: Navigation Law

Decree 674/89: Water pollution. Quality standards.

Decree 776/92: Water preservation and control of pollution

b. Air:

Law 20.284: Rules for preservation of air resources. Quality standards.

Law 23.724: Ratifies Vienna Convention for the protection of Ozone Layer.

Law 23.778: Ratifies Montreal Protocol, substances that deplete Ozone Layer.

Law 24.040: Manufacturing and commerce of substances that deplete Ozone Layer.

Law 24.167: Ratifies Amendments to Montreal Protocol.

c. Fauna:

Law 22.421: Protection of Wild Fauna.

Decree 691/81: regulates law 22.421

Law 22.344: Ratifies CITES convention.

d. Flora:

Law 13.273: Defensa de la riqueza forestal.

Law 22.344: Ratifies CITES convention.

e. Soil:

Law 22.428: Soil preservation.

f. Protected Areas:

Law 22.351: National areas. Natural Monuments. National Parks Administration.
Decree 637/80: Regulates Law 22.351.

g. Underground:

Law 1919: Mining Code.
Law 24.585: Modifies Mining Code. Includes a complementary title on environmental protection.
Law 17.319: Hydrocarbons Law.
Decrees (Secretariat of Energy): Environmental protection on hydrocarbons upstream activities.

Environmental Impact Assessment:

Chubut: Law 4.032
Misiones: Law 3.079
City of Buenos Aires: Law 123

Both General Environmental and EIA laws:

Corrientes:	G. Law 4.731	EIA 5.067
San Juan:	G. Law 6.634	EIA 6.571
Mendoza:	G. Law 5.961	EIA Decree 2109/96
Tucumán:	G. Law 6.253	EIA Decree 2204/91

ENVIRONMENTAL PROVINCIAL LAWS**General Environmental Laws**

Jujuy:	Law 5.063
Formosa:	Law 1.060
Chaco:	Law 3.964
Córdoba:	Law 7.343
Buenos Aires:	Law 11.723
Neuquén:	Law 1.875
Río Negro:	Law 2.342
Tierra del Fuego:	Law 55
Salta:	Law 7.070
Santa Fe:	Law 11.717

