

Newsletter



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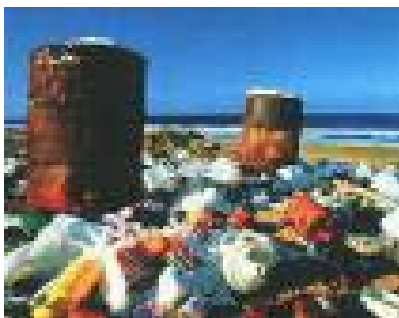
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Content

- 1 Project of the Regulations of the General Law for the Prevention and Integral Management of Wastes**



In Mexico, waste management is mainly regulated by the General Law for the Prevention and Integral Management of Wastes (referred to herein-after as "**LGPGIR**" for it's abbreviation in Spanish), which was published on the Official Gazette of the Federation on January 6, 2004. The main purpose of this legal instrument is to guarantee an adequate environment and to favor sustainable development through the prevention in the generation of hazardous wastes, solid urban wastes and those that need a special management.

As all General Laws, the LGPGIR delegates its implementation on Regulations, which until today has not been issued, leaving the Law without an effective management and implementation.

As a result of the aforementioned, currently, waste management is regulated by the Regulations of the General Law for Ecological Equilibrium and the Protection of the Environment ("**LGEEPA**"), in the Matters of Hazardous Wastes ("**RMRP**").

In order to improve the regulation of waste management, it has been prepared and discussed a Project of the Regulations of The LGPGIR ("**Project**"). This Project has involved a joint participation of the industrial and government sectors.

Nevertheless, the proposal of the Regulations is not adequate for the frame of the LGPGIR. Therefore, the Project is still on analysis.

In this sense and with reference on the comments done by the industrial sector, we have done our own analysis of the Regulations proposed, by dividing it on the following sections:

1. Requirements of Waste Management Plans.
2. New Obligations for the Generators.
3. Extralimitations of the Faculties of Environmental Authorities.
4. Ambiguity of Concepts.
5. Inefficient Proceedings.
6. Deficiencies of the Law that the Proposal does not solve.

1. Requirements of Waste Management Plans.

Even though, Waste Management Plans are established as obligatory in the LGPGIR¹, it has not been possible to oblige the Generators their implementation. If the proposal of the Project is published, the Environmental Authorities will have the instruments to require the implementation of this kind of Plans.

Article 13 of the Project establishes that Mexican Official Standards ("**NOMs**") will specify the elements and procedures that must be considered in order to formulate Waste Management Plans. Also, they will mention the main criteria that Generators have to follow so that they can prepare these Plans.

Whereas these NOMs are issued, the Project establishes the minimal requirements and procedures that have to be considered to implement the Plans.

¹ Article 28, LGPGIR.

In the matter, the Project mentions that Waste Management Plans can be presented to the Environmental Authorities by means of the Ministry of the Environment and Natural Resources website (“**SEMARNAT**”).

In addition, the Project indicates that the Waste Management Plans of Microgenerators will be monitored and regulated by Local Authorities. However, until the Federation consents or enter into Coordination Agreements with Local Authorities, the Microgenerators will have to register their Waste Management Plans before SEMARNAT.

With regards to the categories of Waste Management Plans, article 16 of the Project points out different classifications; though, it does not make a distinction between Management Plans of Hazardous Wastes, Solid Urban Wastes and Wastes of Special Management. This classification refers to the following categories:

I.- According to the participants in Management Plans, they can be: Public, Private or Joint;

II.- Considering the possibility of association of the participants in the preparation and execution of Management Plans, they can be: Individual or Collective;

III.- With reference on the authorities that regulate and monitor the Plans, they can be: Federal, Local or Municipal;

IV.- According to the origin of wastes;

V.- By industry, this category only applies for the wastes that are produced by Mining – Metallurgical Industries.

2.- New Obligations for the Generators.

The Project includes additional obligations that are not established in the Law and that may involve high expenses for the industries.

As part of these new obligations, we mention the following:

- Analysis of all kind of Wastes

According to Article 36 of the Project, it is necessary to carry out an analysis of all kind of wastes that are not listed in the NOM's, in order to determine if they are hazardous or non-hazardous. This analysis can be too expensive for the Generators, and sometimes unnecessary. Article 40 tries to commute this obligation by submitting to the proper authorities a declaration based on scientific knowledge and empirical evidence about materials and used processes that generate wastes.

- Annual Emissions Inventory (COA)

The LGPGIR requires to all Generators of Hazardous Wastes to present an annual report of Hazardous Wastes Movement.

Additionally, the COA's format includes a section related to information about Hazardous Wastes Management. For the Generators the fulfillment of this section was voluntary; notwithstanding, now the Project requires to present the section related with Hazardous Wastes Movement as obligatory.

- Prevention Programs of Environmental Contingencies and Emergencies.

According to Article 80 Sub-section VI of the LGPGIR, only those persons, who want to obtain an authorization for rendering services related with transportation, stock, storage, reuse, recycling, treatment, and final disposal of wastes, are required to present this kind of Programs. On the other hand,

the Project is not clear, since it establishes the obligation for submitting this Program as an obligation to anyone that wants to obtain any kind of the authorizations mentioned in Article 50 of the LGPGIR. Therefore, the preparation and submittal of these Programs currently is extended for importers and exporters of Hazardous Wastes.

- Remediation Programs:

The LGPGIR defines remediation as the group of measures that must be applied to polluted sites in order to eliminate or reduce pollution until a safe level to human health and environment is reached.

With reference on Articles 138 and 142, the Project establishes the guidelines to prepare and submit Remediation Programs².

In addition, the Project points out that measures related with remediation must be done through programs in accordance with established in the Project. In this sense, the Project establishes the content of the Programs, which is the following:

- I. Characterization Studies;
- II. Environmental Risk Evaluation Studies;
- III. Historical Investigations;
- IV. Remediation Proposals.

On the other hand, article 150 of the Project mentions that SEMARNAT will have the faculty to evaluate

² Remediation Programs must be done when a site is polluted because of an environmental emergency or when there is an environmental passive.

remediation proposals included in Remediation Programs. Although the LGPGIR does not give this faculty to SEMARNAT, the Regulations establish that this faculty is found in Article 78 of the Law, which is about SEMARNAT's faculty to evaluate risks of polluted sites.

Also, we believe that the authorities did not consider in this Project the economic viability of this kind of Programs for the obligated parties.

- Formulation of Remediation Programs in Environmental Emergencies:

In accordance with article 138 of the Project, Remediation Programs must be formulated when a site is polluted because of an environmental emergency or when it exist an environmental cost. On the other hand, article 150 establishes that Remediation Proposals included in Remediation Programs have to be previously approved by the environmental authority. This last article also explains that in case of emergency, the terms for this approval will be reduced. On the other hand, article 138 of the Project defines an environmental emergency as the following: "when the pollution of a site is produced by an unexpected or undesirable event or circumstances, which suddenly occurs and causes as a result the uncontrolled liberation, fire or explosion of one or more hazardous materials that can immediately or long term affect human health or the environment."

In agreement with the aforementioned, it is impossible to require the same Remediation Programs for existing environmental costs and for environmental emergencies, since the last ones require immediate measures.

- Characterization Studies:

Articles 143 and 147 of the Regulations Project include the

specifications of the Characterization Studies. These studies are part of the content that must have a Remediation Program.

- Environmental Risk Evaluation Studies:

The Environmental Risk Evaluation Studies are part of the content of Remediation Programs, and their requirements are mentioned in Articles 145 to 147 of the Project. These studies also include the obligation of evaluating health risks according with the methodologies established by the Ministry of Health ("SSA").

The above-mentioned will cause confusion at the moment of the preparation and implementation of these studies, since the SEMARNAT will not be able to evaluate the referred Studies until the SSA establishes the methodologies for the evaluation of health risks.

- Eco-toxicological Study:

If it is the case, the sites where endangered plants or animals are located, or where the environmental risk is produced in Protected Natural Areas and as part of the Environmental Risks Evaluation Studies for Remediation Programs, article 146 Subsection X requires the preparation of an eco-toxicological study.

However, in case that these studies are considered as obligatory, it would be necessary to inform their ranges, contents, methodologies, availability of accredited labs, as well as their costs. In accordance with the Regulatory Impact Assessment carried out by the Federal Commission of Regulatory Improvement, the costs of this study may vary are between \$ 50, 000 and \$

10, 000, 000.00 Mexican Pesos (very inaccurate).

- Vulnerability Studies:

With regards to obtaining authorizations in order to build and operate hazardous waste final disposals landfills, article 56 Subsection III of the Project establishes that it is necessary to carry out a vulnerability study. Nevertheless, the LGPGIR does not establish the faculties of the SEMARNAT for require this kind of studies.

3. Extralimitations of the Faculties of Environmental Authorities.

- For the classification of Special Management Wastes:

Article 11 of the Project grants to the Local and Municipal Authorities the faculty of determining which wastes are considered of Special Management. These faculties can not be derived from Regulations, but strictly from the LGPGIR, which only gives to the Local and Municipal Authorities the possibility to suggest to the SEMARNAT which wastes should be considered as of Special Management³.

- For determining of Solid Urban Wastes:

The Project establishes in its article 12 the criteria that NOMs carried out by SEMARNAT must follow in order to determine which Solid Urban Wastes and Special Management Wastes need to be submitted to a Waste Management Plan. Taking into account that Solid Urban Wastes are competence of Municipal Authorities, it is important to consider if the Federation, through the SEMARNAT, has the authority to intervene in municipal affairs.

³ Article 20, LGPGIR.

- With regards to Management Plans of Solid Urban Wastes:

Article 18 of the Project establish a new obligation for Public Wastes Management Plans that is not included at the LGPGIR. According to this Article, this kind of Plans must incorporate the management of Hazardous Wastes that are produced at homes in equal or minor quantity as the Hazardous Waste Micro generators. By adding this article new obligations are being included for the classification of wastes that are produced at homes: Solid Urban Wastes and Hazardous Wastes. In this sense, it is important to delimit and define the obligations for Micro generators and to establish if Hazardous Wastes generated at homes will be included in this classification.

The incorporation of this article will create new obligations for landfills implementations and for the collection of wastes, which will lead the authorities to modify the NOMs that regulate landfills and the Municipal Regulations regarding the integral management of municipal wastes..

- Environmental Toxicity of Characterized Hazardous Wastes:

In accordance with article 37 Subsection VII of the Project, NOMs will establish if a Hazardous Waste is considered as a Characterized Waste. These NOMs will only determine the environmental toxicity of this type of wastes. Further on, article 38 of the Project includes a classification of the type of toxicities that can exist, including "acute": lethal amounts in human and animals and "chronic"; carcinogen, teratogenic, and mutagenic effects. These two classifications are competence of a different authority; therefore the SEMARNAT must collaborate with the competent authority in order to issue the corresponding NOMs.

4. Ambiguity and Contradiction of the Technical Language included on the Project.

- Transfer of Legal Property of Sub Products:

Article 20 of the Project includes the transfer of legal property of wastes for their valorization and reuse as long as this is included in the Wastes Management Plan registered before SEMARNAT. This transfer of rights is not contemplated at the LGPGIR and gives the Generators the possibility to sell their wastes as a raw material in another productive process.

The above-mentioned can be understood as an incentive for the market of raw materials, since this article mentions that wastes that are not considered as remainders can be considered as "sub products" (concept which is not define in the Project or in the LGPGIR).

However, we consider that it is important to clearly define when a waste can be considered as a sub product in order to delimit the obligations for its management.

- Generation Sites:

As Article 2 Subsection IX, the Article 34 of the Project includes in an inefficient way the concept of Generation Site for mining-metallurgic industries, which is defined as "the site where is located the installations that produce wastes, as well as those sites that belong to the same company that produces those wastes, and the contiguous or bordering properties." According to this concept, the sites that are property of a company, located in different territory, and where the process is not carried out, could be considered as a generation site. As for contiguous and bordering sites, article 34 does not consider that these sites can belong to a different proprietary, or that they are not

involved in any kind of waste generation.

- Hazardous and Non Hazardous Wastes:

Article 5 Subsection XXIX of the LGPGIR indicates that every material disposed is considered as a waste. However, article 20 of the Project establishes that wastes that have been valorized are still considered wastes. As in contraposition with this, article 43 points out that wastes that have been reused in another process as a substitute of products, or those that have been incorporated to the same process, or those that need to be processed before reusing them, are considered as non hazardous wastes.

From the aforementioned, we can conclude that the Project and the LGPGIR do not establish the same moments when wastes stop being wastes and become raw materials or sub products. This confusion leaves with no faculty regulation to the Project and the LGPGIR.

5. Inefficient Proceedings.

- Recognition and Incentive Systems:

As part of the activities of the environmental authority to promote an adequate waste management, article 6 of the Project establishes that SEMARNAT will provide recognition and incentive systems for those companies that minimize the generation of Hazardous Wastes. However, the Project does not specify how these companies will be recognized or will receive incentives; it does not mentions anything about tax, economic or publicity benefits.

- Registration Procedure for Waste Management Plans:

With regards to the registration of Wastes Management Plans, article 25

of the Project establishes that those Plans that do not contain management proposals authorized by law will be automatically rejected. The deficiency of this article is based that neither the LGPGIR nor the Project establishes which the authorized proposals are, only includes that NOMs issued by SEMARNAT will determine the elements and procedures that must be followed in order to formulate the Management Plans⁴.

- Terms of Authorizations:

According with article 64 of the Project, each authorization will have a different term that can only be renewed three times, so that for the fourth renewal it will be necessary to request a new authorization. It is important to mention that the requirements established in the Project to obtain an authorization renewal are enough to accredit if the individual is accomplishing or not with its obligations. In this sense, the terms of some authorizations should be for an indefinite time.

With regards to the opinions of the industrial sector about this Project, the terms proposed can deter investment, increase cost services, and open the possibility of corruption since companies need to keep operating even before recovering their investment. Also, this can produce an unfair competition since artificial advantages are imposed based on the non-retroactivity of law.

- Cancellation of the Registry at the Real State Public Register as a Polluted Site and the removal from the National Inventory of Polluted Sites:

Once a remediation procedure is done, the obligated party must inform to SEMARNAT that the remediation program has concluded. Likewise, the inform must be joint with the final

⁴ Article 32, LGPGIR.

verifying samples and their corresponding analysis. The authority must compare the samples with the standards established in the NOMs, and if they are accomplished the SEMARNAT will proceed to cancel the registry in the Real State Public Register as a Polluted Site and do the removal from the National Inventory of Polluted Sites.

Although this procedure can seem simple and short, it is important to mention that the Project does not establish a term for the authority to do the cancellation and the removal. In this sense, the private individuals have no defense to claim if the authority does not comply with its obligations.

- Terms for the Requirements Derived from Inspections Visits carried out by the Attorney's General Office for the Protection of the Environment ("PROFEPA"):

From an inspection visit carried out by PROFEPA, certain fulfillments can be required, such as: corrective measures or urgent application measures⁵. The term that this article grants for complying with these measures is five working days. This term makes impossible to accomplish almost any requirement done by the environmental authority. Once the measures are fulfilled the obligated party have another five working days in order to notify the authority; therefore, the total term for the submittal of this kind of requirements before the PROFEPA is ten working days.

Nevertheless, article 163 of the Project establishes that any requirement can be submitted with an alternative proposal for its accomplishment. By submitting this proposal, the term for complying with the referred measures is suspended until the proposal is evaluated and

⁵ Article 163, RLGPGIR.

approved by the authority. Therefore, if the interested party considers it will be no time for fulfilling these requirements, a proposal can be submitted, extending the term for ten additional days. Nevertheless, it is clear that the terms are too short.

6. Deficiencies of the Law that the Proposal does not solve.

- Management Plans:

Even though the LGPGIR defines Management Plans in its Article 5, it is important to point out that this concept leaves open spaces related with Plans content, range, and participants. From the latter, the Project does not clarify these deficiencies.

- Special Management Wastes:

Since the LGPGIR come into effect, a lot of confusion has been caused about Special Management Wastes concept. Article 5, Subsection XXX of the Law indicates that Special Management Wastes are those produced in productive processes, that does not meet the characteristics in order to be considered as Hazardous or Solid Urban Wastes, or that are produced by Large Generators of Solid Urban Wastes.

With the purpose of determining in a more specific way which wastes must be considered of special management, article 19 of the LGPGIR lists certain wastes; however, at the end of this list it is mentioned the following: "Others that are determined by the Ministry in agreement with Local and Municipal Authorities." This last Subsection allows environmental authorities to use their discretionary faculties in order to classify new Special Management Wastes, leaving the private individuals with total uncertainty about their obligations.

In this sense, the industrial sector has proposed to define Special

Management Wastes with objective and measurable criteria.

The purpose of this newsletter is to present you a brief idea of the ideas of the competent authority for the issuance of the Regulations of the LGPGIR. Nevertheless, it would be impossible to exhaustively analyze and describe in this document all the concepts and responsibilities established in this Project. Therefore, this newsletter intends to inform how the activities content at the LGPGIR will be implemented.

Finally, should you require any further information regarding the above, our Firm has a broad experience in matters of wastes management and will gladly provide you with legal assistance on this or any other matter related.

The referred newsletter does not try to resolve a specific problem, it is just a personal consideration of the author with respect of the project mentioned on this document.

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