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Chapter 9

Environmental Law

Introduction

In Mexico, like in other countries, environmental regulations are constantly evolving in response to advances in technology and production which directly or indirectly impact the environment. Today, issues such as climate change, waste, biotechnology, and biodiversity are just some of the issues that environmental regulations govern transversally.

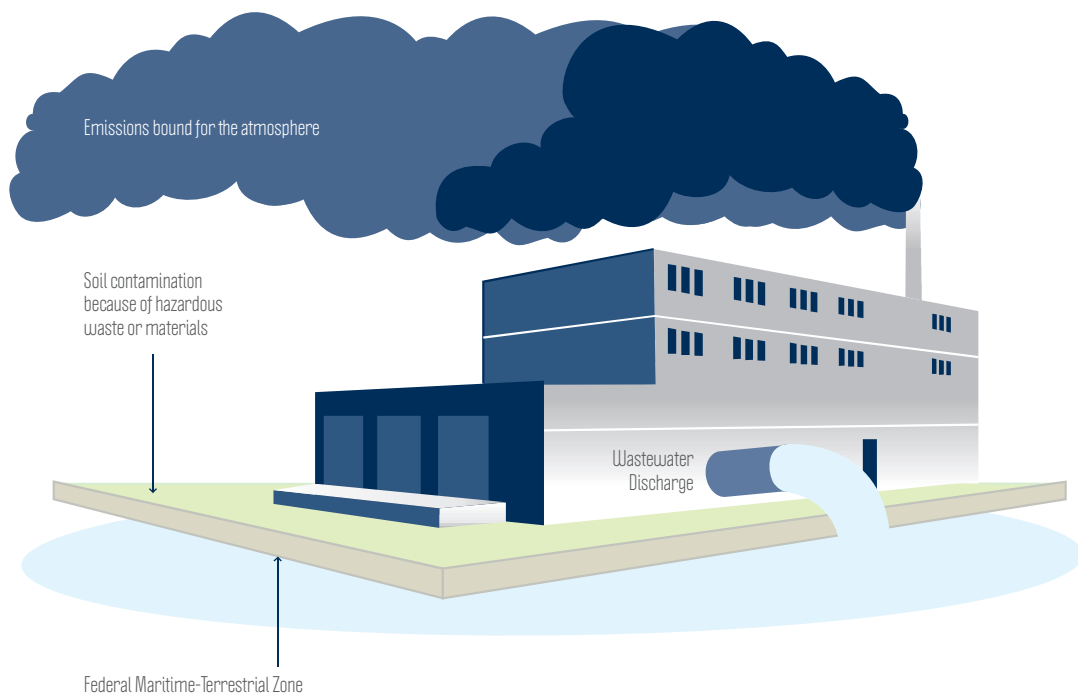
Mexican environmental regulations have been enacted to regulate everyday activities so that they do not compromise the needs of future generations. These laws are intended to regulate the impact that these activities have on the environment, as well as impose liability for those responsible for harming it.

Today, the fight against climate change has become a priority for the Mexican government. Deforestation and the increased use of fossil fuels to generate electricity, and in industry and transport, have contributed to an alarming increase in global warming as a result of greenhouse gas emissions (GHGs).



KEY POINTS

- Environmental issues are regulated concurrently on federal, state, and local levels, and in the Federal District. Each level of government issues its own environmental legal standards.
- Some environmental issues such as climate change, wildlife preservation, and water pollution require a multi-faceted approach, i.e. they must be analyzed from different points of view by businesses (corporate, tax, administrative, etc).
- There are three types of liability for environmental issues: administrative, civil, or criminal, as applicable.
- Reducing electricity consumption, using renewable energy, and switching to clean fuels are just a few ways to reduce greenhouse gas emissions.
- There are international, regional, and national mechanisms for reducing or capturing greenhouse gas emissions through, for example, cap and trade programs.



This graphic is an example of how an industry can impact the environment through the emission of air pollutants, wastewater discharge, soil contamination because of hazardous waste or materials, and in some cases, the exploitation or use of Federal Maritime-Terrestrial Zone (“Zofemat”) without government authorization or concession. The Federal Maritime-Terrestrial Zone is an area that extends to 20 meters from the mainland, surrounding the coastline, which includes beaches, coastal lagoons, and estuaries.

QUESTIONS AND ANSWERS

1. Must one obtain authorization before beginning any work or activity that may impact the environment?

Depending upon the type of work or activity planned, one may be required to obtain approval from either federal or state authorities, as appropriate. It is also important to consider whether the planned activity is going to be carried out on land which has land-use restrictions or is located in a protected natural area. Additionally, state and local licenses and permits must be obtained for projects involving environmental matters.

2. In the event that one intends to acquire property where activities involving hazardous waste or materials were carried out, is there a risk for the buyer or lessee of that property?

Yes, there is a risk. When the buyer or lessee acquires possession or ownership of a contaminated site they assume joint and several liability for remedying the contamination on site, in addition to other potential penalties. The purchaser of the contaminated site may have recourse to legal action against the polluter and seek a damages award. It is essential to ensure that the site being considered for purchase or lease is free from environmental liabilities. Moreover, it is prudent to include environmental clauses in contracts for lease or sale which establish responsibility or liability in case of contamination.

3. Is there a risk of losing a water concession awarded by the National Water Commission if it the concession is not exploited, utilized, or exploited in full?

National Water Commission regulations establish that if there is no exploitation of a water concession within a period of two consecutive years, the concession holder will lose the non-exploited volume of water because of an effective declaration of revocation. In the case of the water concession going unexploited for a technical, economic, or natural reason, the concession holder should inform the authorities as soon as possible in order to avoid a revocation of all or part of a concession.

4. What are the risks of developing a project in the Federal Maritime-Terrestrial Zone without authorization or in excess of the permitted limits?

Any work taking place in the Federal Maritime-Terrestrial Zone requires a concession which establishes the terms and conditions under which the work must take place. If an individual carries out a project in this zone without authorization, that individual may be subject to fines, and the project may be suspended and even demolished. In the event that a project causes environmental damage those responsible (i.e. directors, legal representatives) face liability for damages.

5. What are common mechanisms for financing programs for the reduction/capture of greenhouse gases in a country like Mexico where there is no obligation to reduce GHG emissions?

Carbon credits:

Carbon credits are bought by companies in countries where they have an obligation to reduce carbon emissions.

On the other hand, there are also voluntary carbon credit programs. Some companies participate in these carbon credit programs because of their commitment to helping solve climate change and to promote their image as a “green” company. Carbon credits are referred to by different names depending on the mechanism under which they arise. For example, under the Kyoto Protocol, these credits are referred to as certified emission reductions.

Government financing is also available for programs which promote energy efficiency, a switch to cleaner fuels, the acquisition of cleaner technologies, and reforestation.

CASE STUDY

“Company X” is interested in acquiring “Company Y” which produces organic food and products. As part of its production process, “Company Y” generates a large quantity of water, soil, and air pollutants.

Additionally, “Company Y” consumes a large amount of electricity, generates steam which is not reutilized in production, and also uses diesel fuel to power production - all of which release a large amount of greenhouse gases into the atmosphere.

What implications might there be for “Company X” if they acquire “Company Y” given the current condition of “Company Y”?

Acquiring “Company Y” under present conditions would result in “Company X” having sole responsibility for liabilities arising out of damages caused by environmental pollution. Assuming that responsibility means also assuming responsibility for both remedying the situation and for sanctions imposed by the environmental protection authorities. However, it may be possible to acquire “Company Y” while also stipulating in the acquisition that “Company Y” must rectify the situation in accordance with environmental law.

Could “Company X” obtain carbon credits by implementing the use of technology aimed at reducing greenhouse gas emissions?

“Company X” could obtain certified emission reductions in accordance with the regulations of Kyoto Protocol’s Clean Development Mechanism. Certificates would be issued for the reduction of greenhouse gas emissions resulting from the use of technology which reduces electricity consumption, reintegration of the steam generated through the production process, and the use of natural gas and renewable energy rather than diesel fuel.