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# The New Voice of Mexican Environmental Regulation: Official Mexican Environmental Standards: A Tool Required in the Field

by Sergio B. Bustamante<sup>1</sup>

Arieh M. Flemenbaum<sup>2</sup>

## I. Introduction to the Current State in Mexican Environmental Protection

Mexico has had environmental legislation within its body of law since 1971, starting with the Federal Law to Prevent and Control Environmental Pollution. Upon its inception it was hailed by many as a progressive and comprehensive regime for environmental protection and Mexico was viewed as the leader in the field. Since then Mexico has not always had a sterling reputation, many critics were not content with the mere passage of legislation, the critics called for tough regulation and enforcement in order to make the law meaningful. The criticism was heightened when the Maquiladora program was initiated. Many alleged that the only reason a Maquiladora program would flourish in Mexico is because of its absence of a meaningful legal framework and ineffective enforcement of what little did exist; allowing companies to execute their goals without regard to environmental nor worker safety. The attitude towards environmental protection from the government on through the companies locating there was one of complete indifference.

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What the critics claimed was that Mexico's environmental law could be made more effective by making it more complete and comprehensive. The Mexican environmental laws were missing the rules, procedures, regulations and intensive enforcement necessary to make the law effective.

The attitude towards Mexico has changed significantly since the political climate has made an aboutface and has put environmental protection at the top of its priority list. The Mexican government realized it had to make radical changes in its outlook because of the pressures exerted by the growing social needs, the explosion of migration of people to metropolitan areas, population growth and increased economic development with extensive industrialization. Thus, environmental issues have become an ever present issue in Mexican politics as the Mexican people demand not only better economic prosperity, but better living conditions, including health and environmental concerns. It became Mexico's goal to establish better laws and gave it the supporting structure to make it effective and build compliance throughout the Republic through tough enforcement.

In 1988, with the administration of Carlos Salinas de Gortari, such a change was made. Mexico established its priorities and created a plan 1989-1994 to build governmental and societal support for the protection of the environment. Environmental protection has been added to the Mexican constitution and was a top priority on its National Development Plan and it is still a top priority in the New National Development Plan 1995-2000 now in effect of President Ernesto Zedillo.<sup>3</sup> Thus, we can see a strong commitment towards ecological equilibrium and environmental protection has existed in Mexico for some time. However, with the passage of NAFTA, the Mexican environmental regulatory regime has undergone dramatic if not revolutionary changes.

NAFTA has spawned a rapidly evolving environmental regulatory regime. With NAFTA looming in the background, Mexico has restructured its environmental administration and has shifted responsibilities to competent agencies, and has shifted its use of its own regulatory instruments to the Mexican Official Standard in an effort to make the administration more effective, efficient and productive. As a result of these changes, the Mexican Official Standard (NOM) the referred form of environmental regulation, and there was an explosion of NOMs issued by environmental agencies, forever changing the landscape of Mexican environmental regulation.

3. The National Development Plans states that environmental protection is among its highest priorities and, as such, is a requisite for the modernization of Mexico. The purpose of this plan is to harmonize the development process of the environment, preservation, restoration and protection of the environment, as well as the use of water, thus ensuring a coherent legal framework that offers rational regulation and promotes effective enforcement as well as to grant incentives. The Plan achieves its objectives by mandating all federal agencies to incorporate environmental principles into every aspect of all development-related activities, and by promoting a firmer and broader participation by all branches of government (be they on the federal, state or municipal level) and with the private and corporate sectors.

The purpose of this article is devoted to educate the reader on the basic framework of Mexican environmental protection and to explain how NAFTA affected it by exposing the two recent changes in the Mexican environmental regulatory field<sup>4</sup>. After our brief discussion on the legal framework of Mexican environmental protection, we will examine the changes made in the administration of environmental protection and the recent use of the Mexican Official Standard as a preferred method of environmental regulation in Mexico, resulting from the pressures exerted by NAFTA.

## II. The Current Legal Framework for Environmental Protection

### A. THE MEXICAN CONSTITUTION:

Mexico has incorporated environmental protection into its Constitution, with all the legal weight that this act implies, environmental protection is now a top priority of the Mexican government.<sup>5</sup> A reform of the Federal Constitution in Article 27 made environmental protection a top priority, when it added a paragraph stating the principles of preservation and restoration of the ecological equilibrium. In addition, Article 73 Section XXIX-G established the commitment of the Federal government to make environmental protection and ecological equilibrium a priority and mandates that the Federal government should coordinate its efforts with the state and municipal governments in environmental matters.

With environmental protection now a constitutional provision, Mexico has stepped up its progress on reforming its environmental regulatory framework and has made great strides to incorporate environmental protection into every of its legal framework, from its approach at the negotiating table when constructing international agreements to its own legal structures.

### B. MEXICO'S ENVIRONMENTAL LEGISLATION:

Mexican environmental legislation consists of the General Law on Ecological Equilibrium and Environmental Protection (which abrogated the Federal Law of Environmental Protection on March 1, 1988), the Law of National Waters and their accompanying Regulations, Decrees and Mexican Official Standards. In the next few paragraphs we will expose in more depth what these laws are and how they affect doing business in Mexico.

#### 1. The General Law on Ecological Equilibrium and Environmental Protection

The cornerstone of the federal environmental protection in Mexico is the General Law on Ecological Equilibrium and Environmental Protection (LGEEPA).<sup>6</sup> LGEEPA serves to regulate the activities that pose/ create environmental risks as well as the requirement for

4. This paper focuses on Mexican environmental regulation from the federal perspective. However it is necessary to note that although the federal and state legislative processes and laws are very similar in procedure and ultimate content, one must still be cognizant of the applicable state and municipal law and procedure and comply.
5. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS, art. 27, XXIX-15.
6. La Ley General del Equilibrio Ecológico y la Protección al Ambiente [the General Law on Ecological Equilibrium and Environmental Protection] D.O. June 27, 1988 (hereinafter "LGEEPA").

the evaluation of said risk. Therefore, it is necessary to create a structure of ecological criteria that serves as the instrument to advance policy, planning, and serves as the basis for one's decision on the assessment of the environmental risk. Objective is to systemize the application of the environmental impact studies, establish a firm procedure for evaluation and decision-making, and a firm procedure for the evaluation of environmental risks.

LGEEPA establishes the jurisdiction, responsibilities/roles and regulatory authority for the federal government, the creation and regulation of protected natural areas; the rational use and exploitation of Mexico's natural resources; environmental protection, which is divided into seven categories: protection for air, water, and soil, Regulation of hazardous materials and wastes, and pollution from noise, light, and odors; the promotion of public participation, where private and corporate participation is sought; and a section of the procedures for control and the sanction available, where the procedures for inspections, monitoring, appeals are established along with all the available fines and penalties; regulations on environmental impact assessments; and ecological zoning and sanctions.

LGEEPA clearly expresses the scope of federal jurisdiction in the areas addressed above, as we will see below. In these areas defined as federal jurisdiction, generally speaking, the jurisdiction is concurrent, allowing state and municipal regulation to meet or exceed that established by federal standards. However, in the cases of "high risk" and hazardous wastes the federal jurisdiction is exclusive.

LGEEPA delegates the authority to the Ministry of Environment, Natural Resources and Fisheries (SEMARNAP)<sup>7</sup> to allow it to implement and enforce the provisions of LGEEPA.<sup>8</sup>

## 2. The Law of National Waters

The cornerstone for the protection of waters is the Law of National Waters<sup>9</sup>, much as LGEEPA is to the protection of the environment. Protection of federal waters and other matters concerning waters was elevated to a constitutional level under the provisions of Article 27 of the Constitution. The main goal emphasized by the law is to regulate the exploitation, use, distribution, and control of the national waters in order to maintain a sustainable development in balance with the necessary water need of Mexico. The Law of National Waters [La Ley de Aguas Nacionales] gives the environmental administrative agency, the National Water Commission (CNA), who was delegated such authority by SEMARNAP, jurisdiction over use and exploitation of all federal waters, the regulation of municipal sewage and water treatment, and discharges of wastes into water.

Under the new authority of SEMARNAP, the previously independent National Water Commission (CNA) has now been incorporated into the jurisdiction of SEMARNAP. The role of the CNA is to administer and implement the National Waters Law of 1992 and all the Regulations and NOMs supplementing it.

7. LGEEPA actually delegates authority to SEDUE, who in turn transferred its environmental responsibilities to SEDESOL. SEDESOL now has transferred its environmental responsibilities to La Secretario de Medio Ambiente, Recursos Naturales y Pesca [Secretariat for Environmental Protection, Natural Resources and Fisheries](hereinafter "SEMARNAP"), the current primary agency in charge of environmental issues.
8. LGEEPA, *supra* note 6, tit. I, ch. II, arts. 8, 9 (A) & (C).
9. Ley de Aguas Nacionales [The Law of National Waters], D.O. Dec. 1, 1992 (Mex.).

### C. ENVIRONMENTAL REGULATIONS:

Regulations (Reglamentos) are the foundation for environmental law, defining areas needing protection against air, water, noise and light pollution, against hazardous waste, also the requirement for and procedures of the environmental Impact Assessment. There are many more Regulations that may affect one's particular situation, but these are the ones that have the most significant impact on business in general.

The following is a list of the most important Regulations related to the protection of the environment:

- \*1) Regulations of the LGEEPA regarding the requirements, specifications and obligations of the Environmental Impact Assessment.
- \*2) Regulations of the LGEEPA regarding the Prevention and Control of Air Pollution.
- \*3) Regulations of the LGEEPA regarding the Prevention and Control of the Pollution Generated by Automotive Vehicles that circulate in the Federal District and Municipalities of the Metropolitan Area (zonas conurbadas).
- \*4) Regulations of the LGEEPA regarding the Prevention and Control of Noise Pollution.
- \*5) Regulations of the LGEEPA regarding Hazardous Wastes.
- \*6) Decree relating to the Import or Export of Hazardous Materials or residues that by their Nature may Cause Damage to the Environment or to Property or Constitute a Risk to Public Health or Welfare (this Decree was derogated by the Regulations regarding Hazardous Wastes, with respect to Hazardous Waste).
- \*7) Regulations to the Law of National Waters (administered by the National Water Commission - of SEMARNAP).
- 8) Regulations for Land Transportation of Hazardous Materials and Wastes (administered by the Secretary of Communication and Transportation).
- 9) Regulations to Prevent and Control the Sea Pollution from shedding wastes and other materials (administered by the Secretary of Marine).
- 10) Related Regulations in the areas of Health, and Safety in the Work Place, (administered by various Secretaries, including but not limited to the Secretary of Health, the Secretary of Labor and Social Prevision).

\* (Those areas regulated by the Secretary for Environmental Protection, Natural Resources and Fisheries).

Other important legislation that affects Environmental Regulation:

- 1) The Federal Law of Standards and Measures, (administered by the Secretary of Commerce and Industrial Development, it regulates all Mexican Official Standards issued by every competent authority).
- 2) State and Municipal Legislation and Regulations.
- 3) International Treaties, (Environmental side agreements of NAFTA; La Paz Agreement; the Montreal Protocol, etc., in which Mexico is a signatory). There is other legislation that also applies.

#### D. MEXICAN OFFICIAL STANDARDS (NOMs):

LGEEPA established the legal jurisdiction, but it was also necessary to create a structure of ecological criteria to serve as an instrument by which the competent authorities can advance and enforce the policy and regulations and by which they can make their determinations of environmental risk.

Definition and purpose of a NOM: Under the Mexican regulatory framework, delegated to the Instituto Nacional de Ecología (INE) through its National Consultative Committee on Normalization for the Protection of the Environment by its Subcommittee on Risks to the Environment, promulgates the Normas Oficiales Mexicanas (NOM). A NOM (once referred to as a Ecological Technical Standard) is set of guidelines that determine the maximum permissible levels for certain emissions and discharges into the environment of a specified substance, or a limitation put on a specific activity. NOMs serve as the standard by which one can evaluate whether an environmental risk exists. NOMs are published in the *Official Daily Gazette (Diario Oficial de la Federación)* and in the *Ecological Gazette (La Gaceta Ecológica)*,<sup>10</sup> published by the INE.

We would like to define what is a Mexican Official Standard. A Mexican Official Standard is defined by the Federal Law of Measures and Standards as the one issued by the competent authorities which is obligatory to dispositions on the law of this subject and complies with the objective of Article 40 of said law, which in general terms establishes, among others, the characteristics and specifications that a product needs to fulfill if it damages or constitutes a risk for the security of individuals, health, animals, vegetation, the general environment, labor environment, or the preservation of national resources.<sup>11</sup>

Regarding the NOMs on environmental matters, the Secretariat of the Environment, Natural Resources and Fisheries (SEMARNAP)<sup>12</sup> through the National Institute of Ecology is empowered to issue the respective NOMs.<sup>13</sup> The General Law of Ecological Equilibrium and Environmental Protection, defines Ecological Technical Standards, which now have been renamed as NOMs. The definition of an Ecological Technical Standard is the following:

10. LGEEPA. *supra* note 6, at art. 43.
11. La Ley Federal de Metrología y Normalización [The Federal Law of Measures and Standards], D.O. Feb 9, 1988 (Mex.)replaced by new version on Jul.1, 1992.
12. By the Executive Order of December 28, 1994, SEDESOL transferred its environmental responsibilities to SEMARNAP, which will have the same institutional structure as SEDESOL until it is reorganized, as established under Article 43 of said Order. All of SEDESOL's environmental responsibilities, and some new responsibilities, have been transferred to SEMARNAP.
13. The National Ecological Institute and the Attorney General for the Protection of the Environment were created soon after SEDESOL was by the Agreement Governing the Internal Organization and Functions of the National Institute of Ecology and the Attorney General for the Protection of the Environment, D.O. Jul. 17, 1992 (Mex.)[*hereinafter* "Agreement"]

[T]he body of scientific or technical rules issued by SEMARNAP that establish the requirements, specifications, conditions, procedures, parameters and permissible limits that must be observed in development of activities or use and benefit of products, which cause, or might cause ecological imbalance or damage to the environment, and further, that integrate principles, criteria, policy and strategy in the subject.

Ecological Technical Standards (now NOMs) will determine the parameters within which are guaranteed the conditions necessary for the public welfare and to assure preservation and restoration of ecological equilibrium and environmental protection.

Activities and services which cause emanations, emissions, discharges or deposits that cause or might cause ecological imbalance or produce damage to the environment or affect natural resources, health, public welfare or goods owned by the State or by individuals, must observe the limits and procedures established in the applicable Ecological Technical Standards.<sup>14</sup>

The significance of the definition indicates a dual function of establishing the requirements, limits and criteria that form the foundation of everyday regulation and secondly, the NOMs serve as the guideline by which environmental policies and principles are evaluated.

Understanding the dual purpose of the NOM is important since the promulgation of NOMs can only be done by the authorities given that jurisdiction. Derived from above, we can weigh the importance of the NOMs with respect to environmental matters.

## 1. International Agreements and Mexican Environmental Law and Regulations

We are compelled to discuss the impact of the North American Free Trade Agreement (NAFTA) and its supplemental Agreement on Environmental Cooperation (NAAEC).

### a. The North American Free Trade Agreement

NAFTA's principal objective is to remove the significant barriers to free trade among the three partners, Canada, Mexico and the United States, thus creating the largest and richest single market in the world. Traditionally, trade agreements have been uncomfortable and unwilling to include environmental issues in their bargains, even those environmental standards affecting processes and products that may interfere with international trade. However, the North American Free Trade Agreement (NAFTA)<sup>15</sup> aggressively attaches trade liberalization to environmental issues, providing for many environmental obligation among the trading partners; international trade has become enmeshed with environmental issues. NAFTA in its preamble and scattered throughout its articles (in particular in Chapters 7B and 9) sounds the resolution to "strengthen the development and enforcement of environmental law and regulations".<sup>16</sup> What is quite curious is that one does not find any mention of envi-

14. LGEEPA, *supra* note 6, at arts. 36, 37.

15. North American Free Trade Agreement, drafted Aug. 12, 1992, revised Sept. 6, 1992, U.S.-Can.-Mex., 32 I.L.M. 605 (entered in force Jan. 1, 1994) [*hereinafter* "NAFTA"].

16. NAFTA, prmb1.



ronmental protection anywhere throughout the objectives defined in Art 1 since overall, there is much concern about environmental issues throughout the NAFTA with sometimes every strong language and tone, as we will develop further below.

The practical implications for Mexico of the obligations imposed by NAFTA were apparent. The process for standardization of the Mexican standards already had begun before the passage of NAFTA. However, because of the NAFTA obligations, Mexico began to accelerate this program and firmed up the promulgation of NOMs and standards in the environmental field to begin the process of standardizing its norms to more closely match those of its northern neighbors. NAFTA, through Chapter Nine and Seven B, changes the outlook of NOMs in Mexico and causes them to be more standardized with their counterparts in the United States and Canada, so that they are not unnecessary obstacle to commerce between the parties. As a result much change has occurred in the administration of standards, from the procedures to develop and adopt and content of such NOMs to the administrative framework to assure the future successful standardization of the NOMS to their United States and Canadian counterparts.

Chapter Nine of the NAFTA deals with the harmonization of standards and measures that affect products, goods or services, between the parties. The most significant provisions of this chapter are section 904 and 906. A summary of said provisions are in order to understand the reactions in Mexico. Chapter Seven B deals with the harmonization of standards in both the sanitary and phytosanitary area. The driving principle behind the harmonization requirements are to promote the raising of environmental standards and force a one-way ratchet up, in other words an upward harmonization among the parties.

There are four prongs to the process of promoting upward harmonization. The first prong is found in the obligation to enforce the laws that each party has on its books,<sup>17</sup> which forces the parties to observe and comply with the laws in effect, setting a hard floor for the standards in each country. Second, NAFTA not establishes the floor for regulation, but prohibits any of the parties from dipping below the floor that they have already set for themselves. NAFTA takes a very tough stand on setting the floor of environmental regulation, prohibiting the lowering of standards or enforcement even in the attempt to attract needed foreign investment.<sup>18</sup> This forecloses the ability of any of the parties to utilize lax enforcement of its own laws to become a "pollution haven" to attract investment. Third, NAFTA encourages the improvement of the environmental protection by each of the parties,<sup>19</sup> although not a compelling obligation, it creates pressure on each party to strive to improve their environmental regime and not be satisfied with the floor it has established for itself in its laws. Lastly, the most significant prong in the encouragement of upwards harmonization is the obligation to harmonize,<sup>20</sup> which we will discuss first.

The principal source of pressure on the Mexican government to harmonize its official standards and norms comes from Art. 906.4 of the NAFTA which provides for standardization of the standards and norms of each of the parties. Article 906.4 of the NAFTA states that importing parties must treat technical regulations of others as equivalent where the other party demonstrates to the satisfaction of the importing party its technical regula-

17. *Id.* at art. 902.2.

18. *Id.* at art. 1114.

19. *Id.* at art. 903.

20. *Id.* at art. 906.4.

tion adequately fulfills the importing party's legitimate objectives. This provision is highly significant in the standardization of the technical regulation, it is one source of pressure on the parties to normalize their technical regulations and standards to each others. The provision allows a party to request that their own technical regulation be recognized as equivalent to the one in place in the importing party. It is true that there is the ability for the importing party to reject its equivalence if "to its satisfaction" the technical regulation fails to secure the legitimate objectives of the party as we have defined above. However, if we read the language closely, there is a lot of leeway to allow the exporting party to make a claim that its technical regulation should be considered equivalent as the language includes that the technical regulation "adequately fulfills" the legitimate objectives. The exporting party could make a case before the dispute settlement body that it has done just that.

Article 906.4 in particular caused Mexico to create a flurry of NOMs for two principle reasons. First, the Mexican government had to impose standards on the factories in Mexico to force them to bring the quality of their goods and their production processes up to the standards of their counterparts in the United States and Canada or else face the possibility that they may be rejected since there are no comparable standards in Mexico, or else Mexican goods would have the expense of bringing their goods within the compliance of the U.S. and Canada technical regulations. If Mexico had comparable technical regulations in place: a) It save the sovereignty of Mexico so that they would be in control of their own destiny and decide what to adopt, how to enforce their own technical regulations. Otherwise, if no technical regulations existed, the US and Canadian technical regulations would be used as references and would therefore be able to keep out goods that did not meet their technical regulations for justified reasons that the goods or production processes effected their environment or the health or life of human, animal or plants. If Mexico has issued its own technical regulations it has the ability to decide how it will word the technical regulation, what it will adopt and how it will enforce it. With its own technical regulation in place, it can make an argument that its technical regulation is comparable and request from the importing country to recognize its technical regulations as equivalent under 906.4 of the NAFTA. b) If Mexico has no technical regulation for that area and the partners do, they can request that there technical regulations be recognized since they are more comprehensive. Weak or absent laws and Regulations in Mexico may cause it to live by the technical regulations promulgated in other countries.

The last prong of the upwards harmonization is Article 1114.2. This article prohibits any of the parties to relax its environmental standards to attract foreign investment. The gist of the article is aimed at encouraging all of the parties to improve their environmental regimes by setting a hard floor that does not allow them to weaken their current level of environmental protection and enforcement.

Chapter Seven B of the NAFTA also provides for provisions on official standards, in particular the sanitary and phytosanitary standards. For the most part, this chapter imposes the same obligations as Chapter Nine. Article 712 again allows each country to set its own level of protection and standards and again there are the harmonization requirements so that all the parties' standards will match at a future date. It is again constructed to create a one way ratchet for harmonization upwards. Therefore, the NAFTA agreement was a significant source of indirect pressure upon Mexico to develop and improve one's environmental regulation, and in particular one's regulatory technical regulations.

Supplementing NAFTA, is the North American Agreement on Environmental

Cooperation (NAAEC).<sup>22</sup> The NAAEC was created to calm the critics of NAFTA who claimed that it left many environmental issues untouched.<sup>23</sup> In particular, the NAFTA only discussed the environmental standards affecting products and sanitary and phytosanitary issues, leaving standards on processes untouched and not addressing the issue of enforcement. Many critics of the Mexican environmental regime found that the laws in place were of excellent pedigree but Mexico lacked the environmental culture and history to effectively enforce the laws or even care to comply with them, so when NAFTA neglected this area many were angered.

For the most part, the obligations found in the Agreement are the similar to those found under NAFTA, with the significant differences being the articles on the creation and maintenance of the Commission for Environment.

#### **b. NAFTA's Affects on Mexican Environmental Protection:**

NAFTA affected Mexican Environmental Protection in two significant ways. First, there were substantial administrative changes in the authorities who have responsibilities in the environmental field. A new agency has been empowered with the responsibility of overseeing national environmental regulation and policy creation, who is also responsible to oversee the activities of all other agencies that have responsibilities in environmental issues. Second, an administrative revolution was initiated, affecting the internal administration of environmental protection. What resulted was the NOM as a regulatory instrument.

21. Article 904.2 of the NAFTA allows each party to refuse goods or services when they threaten "safety, the protection of human, animal or plant life or health, the environment, or consumers."
22. North American Agreement on Environmental Cooperation Between the Government of the United States of America, Canada, and the Government of the United Mexican States, Sept. 13, 1993, 32 I.L.M. 1480 (entered into force Jan. 1, 1994) [*hereinafter* "Environmental Side Agreement"].
23. The Environmental Side Agreement was probably also created to stem the anxiety of critics who feared the environmental impacts of the NAFTA trade liberalization. Examples of this fear are:
  - 1) The expenses imposed on Mexican firms by the greater competition would dry up investment pools that would have been used for environmental compliance, research and investment;
  - 2) The Mexican government would not enforce its environmental laws, improve them, nor exert regulatory pressure in order to give Mexican companies an opportunity to adjust to foreign competition, modernize and become more efficient;
  - 3) The Mexican government would not enforce its environmental laws, improve them, nor exert regulatory pressure in its effort to become more attractive to foreign investors;
  - 4) In an effort to protect domestic industries and producers, the fear was that Mexico would utilize its local environmental standards to establish trade barriers;
  - 5) The modernization and economic liberalization of Mexico would continue without the development of an environmental culture and heritage that would foster environmental among citizens, the government and the private sector.Therefore, the provisions in NAFTA and in the Agreement recognize that it is inappropriate to encourage economic liberalization through the relaxation of environmental protection. To combat these fears, there are provisions throughout the NAFTA and the Agreement which promote environmentalism and the enforcement of environmental protection measures in all the signatories.

Another area of change is with the Mexican Official Standards (NOMs). NOMs have been a part of the arsenal for Mexican environmental protection for numerous years, but until the passage of the North American Free Trade Agreement (NAFTA) and its supplementary North American Agreement on Environmental Cooperation (NAAEC) their regulatory powers lay dormant. The NAFTA and the NAAEC pressured the Mexican government to harmonize its standards and regulatory regime to that of its northern neighbors and obligated Mexico to the effective enforcement of its own environmental laws.

Another significant reason to discuss the NAFTA and other major international agreements affecting the environment that Mexico has entered into is due to the fact that, as with most civilian systems, the international treaties a country enters into has the legal force of a constitutional provision. Thus, the obligations undertaken by Mexico under NAFTA carry the weight and significance of provisions in the Constitution.

This leads to the question of whether obligations undertaken as a result of NAFTA or any other international treaty has the legal force to outweigh the Republic's own Laws, Regulations and Standards. This issue becomes even more relevant to the general theme of this paper, when we ask the question whether Mexican Official Standards that were enacted under the obligations of NAFTA and other International agreements can outweigh the requirements of national law and regulation?

There are two possible answers to this question. The first is to point out that NAFTA recognizes the sovereignty of each of the parties and recognizes each party's right to establish its own level of environmental protection. Section 904 gives each party the right to adopt standards and norms, but does not obligate them to do so. Section 904 only imposes obligations on the parties when they do adopt standards. As it provides when the party adopts a standards it is not to apply them arbitrarily or discriminate against enterprises from the other countries provided for treatment less favorable to like goods or in similar circumstances than those originating in the country.<sup>24</sup> Second, the country cannot adopt standards that present an obstacle to trade between the nations.<sup>25</sup>

As one can observe the statements under Section 904 really do not obligate any of the parties to the NAFTA to normalize their standards whatsoever, be it environmental or other. Likewise, under the North American Agreement on Environmental Cooperation recognizes the sovereignty of each party and imposes no obligations on the parties to create environmental laws.<sup>26</sup> The only obligations to be found under the Agreement are those that impose some obligation assuming that the party has some environmental projections in its laws. Such are Art. 4, which obligates each party to publicize its laws, regulations and procedures. Art. 5 which obligates the parties to enforce whatever laws they have and to ensure the enforcement, be it before a judicial, quasi-judicial or administrative body, be available to remedy or sanction all violations of the available law. Under Art. 6 of the Agreement, each party is obligated to assure that all interested persons can request investigations of any violation and furthermore that any legally recognized interest has access to the enforcement of the laws.

24. NAFTA, *supra* note 15, at ch. 9, art. 904.3.

25. *Id.* at art. 904.4.

26. Environmental Side Agreement, *supra* note 22, at art. 3. The level of environmental protection is to established by each individual party. The agreement does not impose a requirement/obligation whatsoever as evidenced by the language that each party "should strive to improve its own levels of protection".

Therefore, NAFTA and its supplementary agreement on the environment did not impose any direct obligations on Mexico to produce a technical standards for environmental protection, it simply called for the vigorous enforcement of the laws already promulgated and the effort by Mexico to improve its current legal environmental regime. Mexico was willing to do more than that, it began to seriously enforce what laws it had, but it also produced a plan to develop and improve the policy and administration of the environmental protection, thereby producing more stringent laws that were in more in line with its neighbors to the north.

NAFTA after all is a trade liberalization agreement and approaches its environmental provisions as such. The NAFTA heavily reinforces the concept that any of the environmental standards it obligates the parties to undertake are not to be a source of discrimination nor an unnecessary barrier to trade.<sup>27</sup> Environmental standards cannot be a front to favor domestic producers or block foreign goods from competing in the market, as referred to as technical non-tariff barriers to trade. However, the NAFTA concedes that there may be circumstances that provide for legitimate reasons for differing national product and sanitary and phytosanitary standards, and concedes that countries may deny products into a country due to these different environmental standards. NAFTA attempts to resolve the problem of differing standards as a barrier to trade by promoting harmonization of the standards, by forcing reconciliation to the maximum extent.

There is room for a second position that places particular NOMs issued under international auspices to outweigh the provisions of LGEEPA or the Regulations issued under it. Under NAFTA there is the upward harmonization pressure which does apply pressure to Mexico to improve its environmental protection and harmonize its standards with its northern neighbors. Additionally, Articles 713 and 905 allow the use of international standards and those issued by international organizations to be used as a basis of one's own standards, as long as they are not used in a discriminatory or unnecessary fashion. If Mexico has promulgated a NOM based on its obligations under an international agreement to accept its standards, or Mexico bases its standards one issued by an international organization, it would appear that particular NOM would garnish the legal weight and significance of a constitutional provision.

## 2. Changes in the Environmental Regulatory Regime:

The Mexican response to their international obligations demonstrates that they understand the significance of the obligations they undertook and have moved swiftly to fulfill their commitments. It is a fundamental principle of the Mexican government in the promulgation of Standards, NOMs included, to take into consideration the NOMs emitted by international organizations, those officially recognized by the Mexican government, in accordance with international law. The Mexican government has recognized its responsibility to industrialize only while protecting the ecological balance. In this vein, the Mexican government has made significant changes in the administrative authorities and have revolutionized the use of its technical standards and regulations issued by the Federal government. The Secretary of Commerce and Industrial Development commented on Mexico's obligations and summarized their obligations, particularly under NAFTA in five basic points for the framework of the formation of the standards:

27. NAFTA, *supra* note 15, at arts. 712, 904(3)-(4).

- a) The technical standards (NOMs) and their complementary methods of determination that will be proposed according to the obligations under any treaty, and thus such standards and methods should not be used for the discrimination of products originated from abroad.
- b) Mexico should use the international standards as references when creating their own.
- c) All necessary means should be adopted to assure the future success of the system for normalization and standardization.
- d) The necessary conformance assessment process to complement the standards should be created in every field where standards are promulgated by the federal government.
- e) Mexico should establish the specific means of cooperation, including mechanisms of consultation, exchange of information and notification of possible violators who may affect each others territory.

### 3. Changes in the Mexican Environmental Regulatory Regime:

#### a. Administrative Framework

SEMARNAP is now behind the law. A strong, enforceable environmental protection policy needs flexible laws with teeth to them and a well defined responsible agency to implement them. The written law and regulation is not worth much with a well, educated, disciplined and dedicated agency to implement and enforce them.

In an effort to streamline the administration of environmental matters and to make its protection more efficient, the Mexican government centralized the authority over the environment at the federal level. SEMARNAP is the new administrative agency that gobbles up many other diverse agencies and their environmental responsibilities. SEMARNAP took jurisdiction of all of the environmental responsibilities of the Ministry of Social Development (SEDESOL) on December 28, 1994.<sup>28</sup> SEMARNAP assumed jurisdiction over water usage and discharges, which were delegated to the National Water Commission,<sup>29</sup> an agency of the Secretary of Agriculture and Hydraulic Resources, which will act under SEMARNAP and will continue its works as before. SEMARNAP also embraced the former National Institute of Fisheries, which was charged with preparing a National Charter for Fisheries listing which species are protected, and for the implementation and coordinations of all the technical and scientific research regarding the protection, promulgation and regulation of all species and areas relating to fisheries. Now the Institute is under the Secretariat of SEMARNAP and will continue its work under its direction.

What results from the streamlining,<sup>30</sup> besides the UnderSecretaries of Fisheries, Planning and of Natural Resources, are four autonomous agencies all of the above under

28. Executive Order, D.O. Dec. 28, 1994 (Mex.).

29. The National Water Commission (CNA) was responsible for the implementation of the 1992 Law of National Waters, its 1994 Regulation, and its accompanying NOMs. The CNA had been delegated the powers to set NOMs in the water area, to issue permits for the use and discharge into waterways, and the regulation of municipal sewers and water treatment.

30. It must be noted that other secretaries are affected by the streamlining process. Moreover, various secretaries have been given newly defined responsibilities. An example is the now defunct Secretary of Fisheries which was incorporated into SEMARNAP. Another example is the National Institute of Ecology and the Attorney General for Protection of the Environment which were incorporated into SEMARNAP, as well as the National Water Commission.

the direction of SEMARNAP: 1) the National Institute of Ecology, 2) the Attorney General for the Protection of the Environment, 3) the National Institute of Fisheries, and 4) the National Water Commission.

Although SEMARNAP is the central authority responsible for the protection of the environment, there are other authorities responsible for the administration and regulation of certain areas in protection of the environment. In our opinion, the most important authorities outside of SEMARNAP are the Secretary of Communications and Transportation (SCT), who administers the transportation of hazardous wastes and substances, the InterSecretarial Commission for the Control of the Process and use of Pesticides, Fertilizers and Toxic Substances (CICLOPAFEST) of the Secretary of Health (SH), who takes care of permitting importation into Mexico of hazardous materials, among others.

#### **b. Who is Behind the Environmental Policy and Promulgation of the Environmental NOMs**

Under SEMARNAP there are two main branches responsible for the general protection of the environment. In typical civilian fashion, Mexico has created an administration that handles both the promulgation of the law and its implementation and enforcement. Perhaps one reason for doing so is the theory that the lawmakers will keep the law current and practical if they are also responsible for its implementation and have to deal with real world situations too. Under this scheme, the overall Mexican authority responsible for environmental protection is SEMARNAP. First is the National Institute of Ecology (INE) who is also responsible for the formulation of the Republic's environmental policy. In addition to this responsibility, INE also must promulgate NOMs by which its own agents then utilize to make evaluations of the environmental impact statements and issue permits to the public at large. We will concentrate on INE, since it is responsible for the development of NOMs upon which this article expounds.

The National Institute of Ecology (INE) is the regulatory arm of SEMARNAP.<sup>31</sup> The INE's main responsibilities are to act as the center for the development of a national environmental policy, to promulgate the environmental standards, which are used to implement the policy which it creates, and to coordinate with state and municipal governments to ensure implementation of the national environmental policy. The responsibility in which we are most interested is the INE's power to promulgate the environmental technical standards (now NOM's) which it uses in its second responsibility. The NOMs are used by the INE to evaluate and decide on the environmental impact statements that are required by regulation of all projects and activities, be they public or private, that cause or may cause an ecological disequilibrium or exceed the permitted levels established by the regulations and NOMs. The INE is headed by a President who oversees the General Directors (G.D.) of the five offices and a few administrative units. First, is the General Direction of Environmental Relations, second General Direction of Impact and Planning, Third General Direction of Natural Resources and High Risk, Fourth General Direction of Management and Environmental Information and fifth General Direction of Ecological Conservation and Development. They are responsible for the policies, standards conserva-

31. SEMARNAP delegated the regulatory powers to the INE in the Agreement.

tion and rational use of the natural resources of Mexico, formulation of the national environmental policy, for notifying the public of all "Projects" and NOMs through the publication of the Ecological Gazette and the (D.O.F.) Official Daily Gazette, to oversee that all NOMs meet certain standards and are being harmonized according to specifications and obligations undertaken in international treaties, and for the regulation of the public, and one of its principal responsibilities is the promulgation of the NOMs,<sup>32</sup> among other functions. When SEMARNAP was transferred all the environmental responsibilities of SEDESOL, the internal structure was left in tact, however, a restructuring of SEMARNAP and in particular the INE is being carried out.

#### B. THE HARMONIZATION OF MEXICAN OFFICIAL STANDARDS, THE FEDERAL MEASURES THE STANDARDS LAW

An indirect result of the then upcoming NAFTA was the Federal Law of Standards and Measures.<sup>33</sup> The obligations to be imposed by the NAFTA were taken into consideration and Mexico began a National Normalization Program, culminating in the Law. NAFTA in Article 713 and again in article 905, allow for the use of the relevant international standards as a basis for their own standards if it does not reduce their level of protection. The articles further state that if the party does utilize the international standard, the standard will have the presumption that it complies with article 712 and 904(3) & (4) respectively.<sup>34</sup> The pressure was evident as demonstrated in Article 44 of the Standards Law which states, "For the promulgation of NOMs, it must be considered the Mexican standards and those established by international organizations, those recognized by the Mexican government in accordance with international law."<sup>35</sup>

32. Agreement governing the Internal organization and functions of the National Ecological Institute and the Attorney General for the Environment, D.O. Jul. 17, 1992 (Mex.) at arts. 11-14.
33. The Federal Law of Standards and Measurements, Article 40 provides, among others, for:
  - 1) The establishment of the characteristics and specifications that will assemble the products and processes which may contain a risk to the safety of persons, harm human, animal, plant health or the environment in general, or those that preserve the Nation's natural resources.
  - 2) The establishment of the characteristics and specifications for the products used as raw materials or materials or components in the manufacture or assembly of final products subject to NOMs subject to these specifications;
  - 3) The establishment of methods of proof or procedures to enforce the specifications established by the standards (NOMs) and the equipment and materials used to conduct such procedures and proofs;
  - 4) The establishment of a characteristics and procedures to allow the protection, preservation, promotion and improvement of the environment and the ecosystem, as well as the preservation of the natural resources.
34. Articles 713 and 905 of the NAFTA state that if the international standard is used, then the presumption of compliance with the non-discrimination and unnecessary obstacles to trade provisions are assured. Additionally, under this scheme, the standards are assured of compatibility and equivalence with the importing countries standards as discussed later.
35. Standards Law. tit. 3, ch. 2, art. 44, para. 4.



The Federal Law of Measures and Standards (the Standards Law) was enacted as result of the imminent passage of NAFTA. Mexico was under tremendous pressure to comply with the technical standard provisions of the NAFTA. Under the administration of the Secretary of Commerce and Industrial Promotion (SECOFI), rules, procedures and standards for the normalization of all standards issued by all competent authorities to issue NOMs are regulated. SECOFI assures that the NOMs meet the standards established under the Standards Law and that the NOMs are issued after the proper public discussion has been conducted. The INE promulgates environmental NOMs under the Standards Law and promulgates such NOMs as to bring them within the national environmental policies. The interrelation of the Standards Law and SECOFI with the INE and its promulgation of environmental NOMs is that SECOFI regulates the INE and assures its issuance of environmental NOMs meet with Standards Law requirements. The Mexican authorities created, among others, standards relating to product and waste management, regulation on the performance of said activities, and on the testing of chemical substances. Under the law, a National Advisory Council on Standards [Comité Consultativo Nacional de Normalización] was created to oversee the making of all NOMs by the competent authorities allowed to promulgate NOMs, to ensure of their quality and consistency.

The Council that is of particular relevance to the environmental regulatory field is the Advisory Committee on Standards for the Protection of the Environment [Comité Consultativo de Normalización para la Protección Ambiental] through the Environmental Risks Subcommittee [Subcomité de Riesgo Ambiental] is responsible for advising the National Institute of Ecology on the development of NOMs according to a uniform procedure. The Advisory Committee is composed of technical personnel from industrial sector, service sector, forestry authorities, fishing industry, from scientific and technological research center, professional environmental associations and representatives of the consumer, in order to guarantee that the NOMs promulgated are not or do not become a barrier to national or international commerce without the proper justifications and reasoning.

The Federal Law of Standards and Measures has had a significant impact on the environmental regulatory field. Under its provisions the regulatory bodies that promulgate NOMs and standards assume a number of obligations ranging from keeping the process of the adoption of NOMs transparent to the requirement that the agency sees the observance and enforcement of the NOMs that they promulgate carried out. Below are the most significant provisions of the Standards Law that impose obligations on all agencies responsible for the promulgation of NOMs and standards.

An important provision of the Standards Law compels the agency promulgating the NOM to assure of its observance and enforcement.<sup>36</sup> Once a NOM has been published in the Official Daily Gazette (D.O.F.), and the statute of limitations has passed on challenges to its compliance with the Standards law, the agency has the obligation to seek compliance with the NOM by all those affected. The agency must take all steps necessary to enforce the laws it promulgates. Furthermore, under Article 57, when products do not fulfill the established criteria, live up to the specifications or do not follow the procedures instituted by the NOM, the competent authority must choose one of the following options: in the case of products or services, to remove the product or service from the stream of commerce

36. *Id.* at art. 52.

until they comply, change their process or offer a substitute. In the case of a production process that does not fulfill a NOM, it can be shutdown or forced to sign a compliance agreement. In addition, all persons who deal with the violator are notified in the Official Daily Gazette (D.O.F.) that they are compelled not to sell, buy, distribute any of the products of the violator. Once they become aware of the ban on the violator, they become responsible to recover all the products they have purchased, manufactures, imported or distributed, paying for the cost of recovery until the violator is determined to be in compliance by a group of experts. These third parties can even be hit with fines and penalties if they do not comply.

The provision that is extremely important to the field of international trade is Article 53. This provision sets the standards for the use of NOMs in the context of international trade. Under the provision, while using the NOMs, the competent agency cannot utilize nonexistent NOMs or construct ambiguous NOMS or excessively abuse the NOMS to effectively deny access to the Mexican market, but must only employ the NOMs as guidelines to keep out inferior products and services that threaten the environment, safety, life or health of people, animals or plants.

One of the effects of NAFTA and its pressures on Mexican environmental regulation was to create a new process for the promulgation of a NOM. The specifications as issued by the Standards Law, Mexico established procedures for the issuance of NOMs are as follows. First a NOM begins as a proposal from the National Institute of Ecology or from an interested party.<sup>37</sup> At this point the proposal is called a "Pre-project NOM" ("pre-project") and is sent to the National Advisory Committee for Standardization of the Protection of the Environment (NACSPE). The NACSPE then has 75 days to examine the "pre-project" and evaluates the quality of the "pre-project", considering all the technical specifications required of a NOM. During this time, all interested parties have the opportunity to submit their suggestions and observations to the NACSPE so it can make the necessary modifications to the "pre-project". If the National Institute of Ecology (INE) feels any of the modifications are unjustified, INE has 30 days after the modifications are made to claim one was unjustified made, then INE can request from the President of the NACSPE that the "pre-project" be published in the Daily Official Gazette (D.O.F.) without the modifications.<sup>38</sup>

Once the "pre-project" has been approved or has undergone its modifications, it is published in the Daily Official Gazette (D.O.F.) as a "Project of a NOM" ("project"), where the INE explains its reasoning for the need for such a NOM and explains the provisions of the NOM and how it is expected to affect the industry it regulates. The purpose of the publication of the "Project" is to allow all interested parties, those ranging from private individuals, to commercial enterprises to be affected, to other government agencies to acknowledge the "project" and make their own suggestions and comments to the proposed NOM.<sup>39</sup> This period runs for 90 days from the date of publication. After which INE has 45

37. *Id.* at art. 43. Article 43 grants the right to the competent authority responsible for the control and/or regulation of the product, service, method, process, facility, activity or material to participate in the promulgation of the NOM. The task left up the NACSPEN is to assure that NOMs are promulgated when needed and secondly to verify that the competent agency complies with the STANDARDS Law. The task of the INE (or of the competent authority in other subject matters) is to verify that the NOM promulgated is shaped by and meshed with the current environmental policy and regulation.

38. *Id.* at art. 46.

39. *Id.* at art.47, § I.

days to evaluate all the comments and suggestions and draft a final version of the NOM, incorporating some of the suggestions and omitting parts of the "Project".<sup>40</sup> Until finally it is NOM. The NOMs are then published in the Daily Official Gazette (D.O.F.). The NOM becomes effective the following day after its publication in the Daily Official Gazette (D.O.F.).<sup>41</sup> The NOMs are also published once a month in the Ecological Gazette.

In the event of an emergency,<sup>42</sup> Article 48 of the Standards Law governs. A NOM may go directly (without following the above procedure) into publication in the Daily Official Gazette (D.O.F.) and be effective the following day. The term of this emergency NOM is to last only a maximum of six months, after which it would be necessary to follow the normal process outlined above.<sup>43</sup>

### C. THE USE OF NOMs AS THE PRINCIPAL REGULATORY INSTRUMENT

The Standards Law offered specific obligations applicable to the environmental regulatory field, and in particular to the National Institute of Ecology in its promulgation of NOMs which are:

- 1) To establish the criteria in the ecological areas to limit environmental risks;
- 2) To establish criteria, limits and mechanisms to coordinate the formulation of NOMs;
- 3) To publish the NOMs in the Daily Official Gazette (D.O.F.) and in the Ecological Gazette;
- 4) To explain what are the ecological technical criteria so that the public may understand their obligations; and
- 5) To establish procedures and criteria by which the NOMs are used to evaluate the environmental impact and risk assessments.

The pressures exerted by NAFTA did not stop at the promulgation of the Standards Law, it also affected the internal application and utilization of law within the environmental regulatory regime. In response to its obligations under the Standards Law as we have discussed above, SEMARNAP, through its regulatory arm, the INE, began issuing new NOMs at a very fast pace effecting a wide range of activities.

Normally, the Mexican environmental regulatory authorities utilized Regulations as their regulatory instrument. The administrative agencies preferred such practice since it allowed the regulatory and enforcement branches to create ambiguously worded regulations that could be applied at the discretion of the enforcement agencies. In other words, if the PROFEPA has a Regulation to implement and enforce whose language is highly ambiguous and it is unclear as to what it is to enforce, the PROFEPA can determine on a case by case basis whether there is a violation of the Regulation. The obligation under the

40. *Id.* at art. 47, § II.

41. *Id.* at art. 47, § IV.

42. "Emergency" is not defined in Art. 48, otherwise if it specified certain cases, only those situations outlined by the article could be considered emergencies, therefore it leaves it open to interpretation to give the agencies the necessary latitude to declare an emergency and issue the necessary NOM. Art.48 only states that in an "emergency" a competent agency can submit a NOM for immediate publication, as long as it has the participation of all the competent agencies with responsibility in the area.

43. *Id.* at art. 48.

Standards Law, forces the administrative agencies to shy away from the use only of Regulations and create highly technical, precisely worded NOMs that have their purpose and objectives clearly defined.

Based on the above, there exists a number of NOMs in the fields of air, hazardous waste, water, solid waste, etc., which have been published in the Daily Official Gazette (D.O.F.) and are Operative and must be taken into consideration. We will not deal with same in this paper for the obviousness of the extent of same. We recommend that they be looked up in the Daily Official Gazette (D.O.F.) or in the Ecological Gazette.

## **D. ENFORCEMENT AND PENALTIES FOR NON-COMPLIANCE**

### **1. Administrative Structure**

The Attorney General for Environmental Protection (PROFEPA) is the enforcement and prosecutorial arm of SEMARNAP, its main responsibility is to implement and enforce federal environmental legislation.<sup>44</sup> The internal structure of the Attorney General's office divides the duties to three Assistant Attorney Generals and General Directions.

First is the Assistant Attorney General for Natural Resources Verification, second the Assistant Attorney General for Environmental Audits, who are responsible to formulate the specifications for social participation in environmental matters and are required to hear complaints from the public about possible violations, environmental audit program, and the Assistant Attorney General for Industrial Urban Verification, who assures compliance with federal environmental legislation.

The Attorney General's office also has state delegates who perform the above functions on a state level. The central purpose behind these offices are to decentralize the regulatory activity and disperse the powers to state and municipal government.

### **2. The Task of Enforcing the Law**

The most distinctive aspect of Mexican environmental enforcement is its extensive use of permits, licenses, grants as an enforcement and prevention mechanism. Although the Mexican environmental regulatory system primarily depends on voluntary compliance, utilizing the method of permit and license issuance as an enforcement mechanism insures that the regulatory bodies are kept abreast of any activity that create or may create an environmental problem.

However, when voluntary compliance is not achieved, LGEEPA provides for administrative, civil and criminal penalties for violations of the Law, Regulations, Decrees and NOMs issued. Normally, a violation of environmental protection calls for one type of punishment or the other, but all three avenues of punishment may be pursued simultaneously or in any combination thereof depending on the gravity and nature of the ecological imbalance caused, the economic conditions and the concept of re-incident violator. It is

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44. PROFEPA has been delegated the authority to pursue these activities for SEMARNAP under the AGREEMENT.

important to note that LGEEPA does not offer express language or specifications as to which violations merit which penalties.<sup>45</sup> Therefore, the decision to proceed with which penalties is at the discretion of the competent Mexican officials, federal, state and municipal whether to press with administrative and/or criminal sanctions, and civil liability will be pursued at the discretion of those persons affected.

### Conclusion

Mexico has come a long way in environmental protection over the last seven years. The Mexican government, the people and Mexican industry have finally come to realize that environmental issues are a significant factor in its continued growth and industrialization and have appropriately changed their perspective and their goals toward the balancing of industrialization with its ecological health.

Mexico has committed itself to the protection of its environment and has assured the promotion of this goal by accepting international obligations such as those in NAFTA and other international treaties and has radically changed its own aims and goals.

While Mexico has established its environmental plan and has put firmly into place the legal framework, supplemented by the administrative support to implement and enforce the law, Mexico found that it had to implement the environmental standards comparable to those of its partners in the NAFTA to successfully achieve its goal of sustainable economic development while preserving the ecological balance and protection of the environment.

Mexico has been very busy indeed. Over eighty five new NOMs were swiftly pushed through within a three year period, with more projects still in the pipeline. Enforcement has significantly picked up also, in some areas of enforcement, one can observe a dramatic increase over the previous year.

The Environmental Protection Agency (EPA) of the United States examined the Mexican Official Standards system in late 1994, for its effectiveness in certain industries close to the border of the U.S.. It determined that in every case, the NOM obtained the same range of concentration established by the U.S. laws.

Notwithstanding the above, there still exists significant differences between Mexico, Canada and the U.S. However, Mexico has made significant headway in the last seven years, and is working on rectifying these oversights and expanding the available protection offered in other areas. Already Mexico has responded to several pressures calling for more environmental protection. It has switched from the traditional use of Regulations to utilizing Mexican Official Standards to achieve a higher level of environmental protection. Mexico has established its willingness to do whatever it needs to equalizing its environmental protection with that of its northern neighbors. We have already seen a dramatic change in the attitude towards enforcement by the government, which has created a significant change in the private industry towards compliance. Environmental protection in Mexico is a serious issue and businesses and their managers now realize that "compliance is cheaper and more effective than remediation".

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45. See LGEEPA at art. 170 et seq. No express language whatsoever indicates when to apply which penalties. This is characteristic of civil law systems since to establish specific guidelines in the articles, otherwise authorities would be firmly tied to those specifications and would not have the freedom necessary in determining by fact specific investigation to determine the penalty to be assessed.

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