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MEXICO'S NEW GENERAL LAW FOR THE PREVENTION AND INTEGRAL MANAGEMENT OF WASTE

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Mexico's new General Law for the Prevention and Integral Management of Waste (Waste Law) was published in the Official Journal of the Federation on October 8, 2003, and became law on January 8, 2004. This article highlights some of its major provisions.

Unlike previous waste legislation, the new statute addresses all types of waste, including mining, solid, hazardous, and the new special waste category. It also contains provisions regarding site contamination and remediation. The new Law replaces the hazardous waste elements in the General Law of Ecological Equilibrium and Environmental Protection, and the accompanying regulations.

The Waste Law consists of seven titles, each with a number of chapters and a total of 125 articles. The titles are:

- Title I. General Provisions
- Title II. Jurisdictional Attributions and Coordination
- Title III. Classification of Waste
- Title IV. Instruments of the Policy of Prevention and Integral Waste Management
- Title V. Integral Management of Hazardous Waste
- Title VI. Prevention and Integral Management of Solid, Urban and Special Wastes
- Title VII. Control and Safety Measures, and Penalties

The Waste Law contains significant changes to existing statute and regulation. In the area of hazardous waste management, these include the designations of generator categories, and definitions for special waste.

For the first time in Mexico, this Law establishes three classes of waste generators, based on the volume of waste generated, according to the following levels:

- Large generators generate 10 tons (22,000 lbs.) or more (gross weight) of hazardous waste per year, or its equivalent.
- Small generators produce between 400 kilograms (880 lbs.) and 10 tons of hazardous waste per year, or its equivalent.
- Microgenerators are industrial, commercial or service establishments that generate up to 400 kilograms of total hazardous waste per year or its equivalent.

The Waste Law introduces the concept of Management Plans for certain types of waste and generators. Article 27 defines the objectives of management plans, which are to promote waste minimization, valuation of waste, shared responsibility for waste, and technological or process innovations to develop economically viable waste management.

Those subject to management plans include manufacturers, importers, exporters and distributors whose products become hazardous waste when discarded, including used oils, solvents, car batteries, fluorescent lamps, devices containing mercury, cadmium or lead, pharmaceuticals, pesticides, PCBs, and persistent or bio-accumulative organics; as well as generators of bio-hazardous waste; and large generators, producers, importers, exporters and distributors of products that become urban solid waste or special waste when discarded.

Management plans must contain procedures for managing the waste from generation to final disposal, and for informing consumers about safe handling, recycling and return procedures. Generators are required to register and submit their management plans to the Ministry of Environment and Natural Resources (SEMARNAT).

Special Waste is defined as "waste generated in production processes, which does not meet the characteristics to be considered as hazardous or as urban solid waste, or that is produced by large generators of urban solid waste". The following are examples of special waste listed in Article 19 of the Waste Law, excluding those that are classified as hazardous:

- Waste from rocks or their decomposition products that can only be used for manufacturing of construction materials.
- Waste from health services generated by establishments that conduct medical assistance activities in human or animal populations, research centers, except for biohazardous waste.
- Waste from rural activities generated in agricultural, forestry, grazing, including waste from inputs utilized in such activities.
- Waste from transportation services generated from activities conducted in ports, airports, railway and port terminals, including customs.
- Waste from wastewater treatment.
- Waste from department stores, markets, shopping centers, and service businesses, which is generated in large volume.
- Waste from demolition, maintenance and construction in general
- Technological waste from industries and information management, manufacturers of electronic products, or motor vehicles, and others, which after its useful life requires a specific management due to its characteristics.

- Others established by state and municipal ordinances.

States are assigned jurisdiction for special waste management including developing policies, reviewing and approving management plans, and issuing permits, as well as the control of hazardous waste produced by microgenerators.

Large hazardous waste generators must register with Ministry of Environment and Natural Resources (SEMARNAT) and submit management plans for approval. They must keep a log and present annual reports to the agency, as well as maintain an environmental insurance policy. Small generators are also obligated to register with SEMARNAT and keep a log. In certain cases a management plan may be required. Microgenerators are to register with the local or state agencies and may transport their own hazardous waste to approved transfer stations, or contract with waste management companies.

Article 42 stipulates that the responsibility for management and disposal of hazardous waste corresponds to the generator. Responsibility for management of operations of authorized waste management companies contracted by generators belongs to the waste management company, independent of the generator's own responsibility.

Other features of the hazardous waste provisions include classifying empty hazardous materials containers as hazardous waste, unless they are treated for reuse, recycling or final disposal. The law states that hazardous waste must not be stored for more than six months from generation, unless an extension is approved to the federal agency. And there is a prohibition on land disposal of liquid or semi-liquid waste without treatment.

Prevention and control of site contamination and remediation is addressed in Chapter V of Title V. The new Waste Law adds requirements for plant closures. Article 45 states that "Hazardous waste generators must leave the installations free of hazardous waste and levels of contamination that may represent a hazard to health and the environment when they close or cease the hazardous waste generating activities conducted on the premises." The law further states that those responsible for site contamination must repair the damage caused, and undertake remediation actions, and may be subject to criminal and civil penalties.

One important provision of Article 71 states that transfers of property contaminated with hazardous waste is prohibited except with authorization from the Ministry, and declares the obligation of property owners responsible for site contamination to disclose such facts to those to whom they transfer ownership or possession of the property.

In an effort to regulate unauthorized transfers of contaminated property the new Waste Law requires local agencies to register in their Public Property Registries all the contaminated sites that exist in their jurisdiction. These registries are used for title searches in real estate transactions to establish legal ownership and boundaries.

Article 73 authorizes SEMARNAT in coordination with state and municipal governments to remediate abandoned hazardous waste sites to abate public health hazards and environmental damage, and to place conditions and restrictions on the use, and transfer of the sites.

The new Law creates an affirmative obligation to notify authorities prior to the sale or transfer of contaminated property. Property transfer agreements, such as purchase and sale or lease contracts, must clearly specify which party will be responsible for the remediation.

The new Law repeals all legal requirements related to the regulation and control of waste contained in the General Law of Ecological Balance and Environmental Protection. This repeal is suspended pending issuance of the Regulation to the new law, scheduled within six months of the law's publication, or April 8, 2004. To date the regulations have not been published.

If you have questions about how this article or other health, safety or environmental issues, please contact us at (619) 297-1469 or send us an email at emedina@pulse-point.com.
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