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MEXICO ISSUES THE REGULATIONS OF THE GENERAL LAW FOR THE PREVENTION AND INTEGRAL MANAGEMENT OF WASTE

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Mexico's Ministry of Environment and Natural Resources (SEMARNAT) published in the November 30, 2006 issue of the Official Journal of the Federation the new regulations of the General Law for the Prevention and Integral Management of Waste (Waste Law), which became effective on January 8, 2004. This article is the first of a series outlining the major sections of the new regulations, beginning with an overview of its major provisions.

An overview of the Waste Law can be found in the April 15, 2004 issue of Pulse Point located in archives section in our website (See below for link). The Waste Law addressed all types of waste, including mining, solid, hazardous, and the new category of special waste. It also contained provisions regarding site contamination and remediation. The Waste Law's regulations (Waste Regulations) replace the Regulations of the General Law of Ecological Equilibrium and Environmental Protection in the Matter of Hazardous Waste.

The Waste Regulations consists of seven titles, each with a number of chapters and a total of 163 articles. The titles are:

- Title I. Preliminary Provisions
- Title II. Management Plans
- Title III. Waste from the Mining and Metallurgical Industry
- Title IV. Hazardous Waste
- Title V. Import and Export of Hazardous Waste
- Title VI. Remediation of Contaminated Sites
- Title VII. Control and Safety Measures, Infractions and Penalties

This article will focus on the management plans and hazardous waste provisions.

Special Waste

A new category of special waste was introduced in the law for waste that is not classified either as hazardous or as urban solid waste, or that is produced by large urban solid waste generators. The regulations state that the criteria for characterizing special waste will be established by future Official Mexican Standards to be issued by SEMARNAT. The standards or NOMs (for their Spanish-language acronym), will contain a list of special wastes that will be subject to management plans.

Management Plans

Waste management plans are a new feature of the law and its regulations. The management plans' objectives are to promote waste minimization and maximize the value of waste. Management plans may be privately developed by particular generators, or established by the generator with the participation of the corresponding regulatory agency. They may also be individual by generator, or collective, for groups of generators of a particular waste stream, and they may be specific to a particular waste stream or encompass several types. The management plans may apply locally, regionally or nationally. Municipalities are responsible for developing management plans for household hazardous waste and microgenerator hazardous waste. These waste streams must be managed according to the federal hazardous waste rules. The management plans may include provisions for transferring ownership of waste to third parties for use as raw materials in other production processes.

Articles 24 through 27 describe the registration requirements for hazardous waste management plans. Generators will have the option of registering online at the agency's website. Some hazardous wastes may be subject to specific management conditions, which may be proposed by the generator or the regulatory agency. Large hazardous waste generators are required submit management plans for agency approval. The agency will have 30 working days to review and rule on the specific conditions proposed.

Hazardous Waste

While the regulations contain some new concepts, they also maintain in large measure the waste characterization provisions of the original hazardous waste regulations and corresponding standards. However, it should be noted that NOM-052-SEMARNAT-2005, a key standard establishing the listing and characterization of hazardous waste was also recently revised and became effective on September 21, 2006. (See Pulse Point's August 2006 issue for a review of this rule). One classification that is added in Article 35 is that equipment and structures that come in contact with hazardous waste are considered hazardous when discarded. Article 37 clarifies the generator's own characterization of waste as hazardous based on process knowledge. And Article 40 clearly states that soil mixed with hazardous waste is considered hazardous. In addition, hazardous waste that is mixed with sludge from wastewater treatment systems must be characterized, and the waste stream must comply with the specific discharge conditions assigned. This closes a loophole in the previous wastewater standards, which regulated liquid wastes by specific

discharge standards often inconsistent with hazardous waste characterization threshold concentrations.

Among the new changes, Article 42 of the Waste regulations establish three classes of waste generators, based on the volume of waste generated:

- Large generators generate 10 tons (22,000 lbs.) or more (gross weight) of total hazardous waste per year, or its equivalent.
- Small generators produce between 400 kilograms (880 lbs.) and 10 tons of total 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.

Generators with multiple facilities, locations or affiliates where hazardous waste is generated within the country can take into account the total volume produced to determine their category.

Generators must register with SEMARNAT and indicate their category based on the total hazardous waste reported in their 2004 and 2005 annual reports. The category may be changed upwards or downwards based on generation results of two consecutive years. Existing registered generators are only required to self-declare their category and submit written notification to SEMARNAT within 20 working days after the effective date of the regulations (by January 29, 2007). The agency will have one year to review its files to verify the proposed category and either confirm or modify it. If SEMARNAT does not notify the generator of a change in their category within that time it may considered confirmed. No other registration requirements are necessary pursuant to this new regulation for existing generators.

The generator requirements in the new regulations are very similar to existing rules with some small but important clarifications. Most apply only to large and small generators, including those working under the temporary import regimen applicable to the “maquiladora” industry. Among the new or updated requirements are the following:

- Notify SEMARNAT of the closure of the facility or when the hazardous waste generation process ceases. The notification requirements include a closure plan with measures for cleaning and dismantling the facility, and, for large generators the history of accidents and releases and description of the response measures taken. (Article 68).
- SEMARNAT has one year to review the closure information and reserves the right to require a physical inspection of the facility to verify that the closure measures have been implemented. Any irregularities uncovered during the inspection may trigger an administrative procedure to be started against the owner or operator. (Article 70).
- Keep a detailed hazardous waste inventory log of individual entries and shipments to and from the temporary storage facility for each calendar year. (Article 71).
- Large generators must present an annual hazardous waste report as part of the Annual Operating Permit, or COA. (Article 72).

- Logs, analytical reports, and shipping manifests must be kept for five years. (Article 75).
- Temporary storage facilities used to store hazardous waste for small and large generators must meet specific conditions. (Article 82).
- Hazardous waste may not be stored in a temporary storage facility for longer than six months. (Article 84).
- Hazardous waste manifests signed by the final destination must be returned to the generator within 60 days of shipment or the generator must notify SEMARNAT (Article 86).

Chapter III of the Fourth Title describes the procedures for obtaining authorization for hazardous waste treatment, storage and disposal facilities (TSDF). The financial guarantees, insurance coverage, and performance bonds applicable to certain types of permits and authorizations, including transporters, TSDFs, and others are described in Articles 76 and 77. Chapter V contains the requirements for operation and integral management of hazardous waste including on-site temporary storage, off-site transfer stations, TSDFs, and recycling facilities. These sections are useful for generators conducting inspections or requesting permit and insurance information from their hazardous waste management service providers.

Title Five addresses the export and import of hazardous waste. Most provisions are similar to existing regulations. In the case of exportation of persistent and halogenated organic compounds such as PCBs, the generator must utilize only authorized waste management companies, and notify the agency three days prior to shipping the waste, as well as obtain a certificate of destruction signed by the final receiving facility and remit it to SEMARNAT within a specified time table.

Regulatory provisions applicable to the “maquiladora” industry and others with temporary import permits for raw materials and equipment are generally unchanged from current practice, with some exceptions. Article 121 requires hazardous waste generated from processes using such materials to be returned to the country of origin within 180 days of generation. There is also an explicit exception allowing such waste to remain in the country if it is amenable to recycling and there is adequate infrastructure in the country. The generator must still register and be subject to all applicable provisions of the waste regulations.

Site contamination and remediation provisions in Title VI of the waste regulations will be presented in the next installment of this series. One important provision in Article 126 states 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 the actual transfer agreement, with prior expressed authorization from SEMARNAT. The Waste Law requires local agencies to register in their Public Property Registries all the contaminated sites that exist in their jurisdiction.

The new regulations repeal the Regulation of the General Law of Ecological Balance and Environmental Protection in the Matter of Hazardous Waste, and will become effective 30 days after their publication, on December 30, 2006.

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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