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REMEDICATION OF CONTAMINATED SITES: REQUIREMENTS OF MEXICO'S 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). Our December 2006 newsletter presented an overview of the major sections of the new regulations (Waste Regulations), focusing on the management plans and hazardous waste provisions. It can be accessed through the Pulse Point archives (see below). This article is the second of a series outlining the sections on remediation of contaminated sites.

Contaminated Sites

According to Articles 75 and 76 of the Waste Law, SEMARNAT and local agencies are responsible for identifying, inventorying, registering, and categorizing sites contaminated with hazardous waste, which the local agencies must register in the Public Properties Register in their jurisdiction. Article 3 of the Waste Regulations states that the registration shall describe the type and degree of contamination, and the cost of remediating the property.

Authorizations

Those interested in providing treatment services for contaminated sites must apply to SEMARNAT according to Articles 48, 49, and 51, including information on the proposed treatment or remediation methodologies, the technical aspects of the technology, its range of application, applicable contaminants, treatment capacity in tons per year, and the technical and material resources needed for implementation, along with the name and signature of the technical responsible party.

Remediation operations in contaminated sites must keep a log stating the type of remedial technology, starting and ending dates, treatment volume, sampling locations and dates, analytical results, names, amounts, and dates of application of treatment inputs, soil mixing dates, if applicable, and the name of the technical responsible party (Article 71). The remediation control log must be kept for two years following the date of closure of the site.

Site Remediation

Title Sixth, Chapter I, of the Waste Regulations, which encompasses Articles 126 to 131 addresses the requirements for property transfers of hazardous waste contaminated sites.

One important provision in Article 126 of the Regulations 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. They must have prior expressed authorization from SEMARNAT according to Article 127. To that effect, they must present an application to SEMARNAT containing the names or company of the seller and buyer, information on the site's location and existing buildings and infrastructure, and the designation of the party responsible for the remediation. The application must also include a letter from the buyer acknowledging receipt of information on the site's contamination. The purpose of the authorization is to define who is responsible for the remedial actions on the transferred site, and is not intended to impede commercial transactions or the free exercise of civil rights.

If the transaction takes place before a remediation or at its conclusion without an expressed pact as to who is responsible for completing such remediation, the Regulations consider the seller to be responsible for executing and completing it, without prejudice to any agreement of responsibility for remediation which may be reached.

Articles 129 and 130 address contingencies, which result in spills, infiltrations, discharges or accidental releases of hazardous materials or waste, with the exception of transportation-related releases. In the applicable contingencies that do not exceed one cubic meter of material, the generator or responsible party must implement immediate actions to minimize or limit the dispersal of contaminants, or collect them and conduct clean up activities on the site, and to keep a log. These actions must be included in the corresponding Accident Prevention Plans and Contingency or Emergency Response Plans.

In the event the release exceeds one cubic meter, the generator or responsible party must also make immediate notification to the Federal Attorney General for Environmental Protection (PROFEPA), and the applicable local authorities of the release, implement the measures imposed by such agencies, and if applicable, begin site characterization activities, and conduct the corresponding remediation actions.

Within three working days of the release, the immediate notice must be formalized through a report containing the following: the name and address of the person who made

the initial notification or the generator or response agent, and their SEMARNAT registration or authorization number; the location and characteristics of the accident site; the cause of the release; a description of the physical, chemical and toxicological properties, and amounts of the hazardous material or waste released, and the measures taken to contain it.

The new regulations became effective on December 30, 2006 and repealed the previous Regulation of the General Law of Ecological Balance and Environmental Protection in the Matter of Hazardous Waste.

Environmental Site Assessments

The new regulations do not address the issue of "historical" contamination that may have existed at a site that is not a result of a particular release event. They also do not specifically require that a site assessment be conducted prior to transferring real property. However, the disclosure, registration and reporting requirements described above place a burden on both parties to investigate the conditions of the site and to negotiate the terms of any necessary remedial actions as part of the transfer agreement to avoid having the regulatory agencies make that determination.

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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