

# NATIONAL AFFAIRS

## Mexico

### Making its Environmental Laws Work

by Federico M. Ruanova\*

Since the enactment of its General Law of Ecological Balance and Environmental Protection in 1988, Mexico has made great strides in developing the required legal framework to protect its natural resources and the environment. From 1988 to the present, the government has

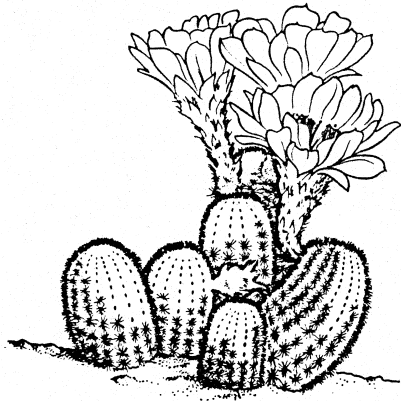
enacted federal regulations dealing with air pollution, water quality, environmental impact assessment and hazardous waste handling and disposal. During the same period, more than 100 technical standards on air and water quality, noise emission limits, soil pollution and hazardous substance management have also been enacted.

All of this puts Mexico at the forefront of developing countries that have, in a relatively short period of time, managed to put together the necessary legal system to ensure a future for generations to come.

---

\* Partner with Baker & McKenzie in Mexico. Currently coordinating the Environmental Practice Group in the firm's four offices in Mexico: Ciudad Juárez, Monterrey, Mexico City and Tijuana. The author's areas of expertise are environmental impact assessment, prevention and control of air, water and soil pollution, hazardous substance management and occupational safety and health. His email address is: federico.ruanova-guinea@bakernet.com

If enacting laws was all that was required to protect a country's natural resources and environment, Mexico would indeed be looking forward to a bright future. However, laws can only be effective if they are effectively enforced and the government does not have all of the



required financial and human resources to make its environmental laws work. This is an all too familiar problem affecting developing countries.

The will to develop and enact comprehensive laws to attack and resolve pollution problems is not enough to reverse years of neglect and uncontrolled industrial growth. Governments must be willing to take action to ensure that their laws are complied with. Mexico did take important steps in such direction when it created the Federal Bureau of Environmental Protection in 1992. Known by its acronym in Spanish of "PROFEPA", this agency is in charge of enforcing federal environmental laws. It is currently a decentralized agency of the Ministry of the Environment, Natural Resources and Fisheries which has an annual budget of US\$13,000,000.00.

PROFEPA has to carry out regulatory inspections all over Mexico to ensure that industry is complying with environmental laws. PROFEPA is particularly active in the northern border states, home to thousands of "maquiladoras" or foreign-owned industrial plants which export most of their finished products. Some environmental groups in Mexico argue that it is only since the North American Free Trade Agreement was signed by Mexico, the United States and Canada that PROFEPA has stepped up its enforcement activities. This is not the case. From its creation, PROFEPA concentrated much of its enforcement efforts on maquiladoras as well on Mexico's big polluters: the giant government-owned oil company, Petróleos Mexicanos ("PEMEX") and the Federal Electricity Commission. Many industrial plants have been temporarily closed down as a result of PROFEPA's efforts, and the agency has also ordered PEMEX to conduct clean up actions in several of its installations in Mexico. According to information provided by PRO-

FEPA's Internet website, in 1992 the agency conducted 2,455 regulatory inspections on industrial facilities. In 1997, PROFEPA carried out 11,761 inspections. Of these, approximately 2,300 found serious violations to environmental laws.

In an effort to improve the environmental performance of Mexican industry, in 1992 PROFEPA unveiled a voluntary environmental audit programme. This programme was designed to invite industry to evaluate its performance, detect the areas in which its environmental performance was deficient and thereafter correct such deficiencies. During the period between 1992 and 1997 there were more than 800 audits carried out all over the country and the programme appears to be growing in popularity. This is partly due to the fact that no administrative penalties are imposed on companies that conduct environmental audits, however serious their environmental violations may be.

All of this is certainly good news. However, budgetary constraints derived partly from the 1995 economic crisis and the drastic reduction in oil prices (oil exports being a key source of revenue for Mexico), have forced the government to reduce its budget and this has had an effect on the government's ability to fight Mexico's pollution problems effectively. There are simply not enough financial and human resources available to the government to verify whether industry complies with environmental regulations or to put an end to the indiscriminate depletion of Mexico's natural resources. Partly for this reason, the federal government has stepped up its efforts in effectively decentralizing much of its environmental policy. This means granting authority to the states and municipalities to regulate many areas and activities that were under federal jurisdiction. For example, federal authorities only have jurisdiction over pollutant air emissions generated by specific industrial sectors such as the oil, automotive, paper, chemical and cement industries. Other industrial activities are now regulated by the states. This is also the case in the area of water quality. Wastewater discharges into urban sewer systems fall under the jurisdiction of municipal governments. Discharges to other water bodies are federally regulated. All of this points to a much needed deregulation which will eventually make states and municipalities important players in Mexico's efforts to protect its environment. Currently however, Mexico's states and municipalities are also facing budgetary constraints that curtail their ability to enforce local environmental laws.

Mexico has indeed done much to create a comprehensive legal framework in the area of environmental protection. In the coming years the government will be facing the challenge of making sure that enough resources are allocated so that its environmental laws are complied with for the benefit of the country's future generations. □