

Mexico City, 31 January 2017

**CONTRIBUTION OF MEXICO TO THE WORK OF THE INTERNATIONAL LAW  
COMMISSION ON THE TOPIC “PROTECTION OF THE ATMOSPHERE”**

**The Commission requests States to provide relevant information on national legislation and  
judicial decisions of national courts**

**a) Relevant information on national legislation**

In Mexico, the current legal regime concerning protection of the atmosphere emphasizes prevention and control of atmospheric pollution in order to protect the right of all persons to a healthy environment for their development and well-being.

The protection of the environment and preservation and restoration of ecological equilibrium are regulated concurrently in our country by the three levels of government. Areas of competence are established by general legislation but specific terms of reference and efficiency guidelines are contained in the Constitution itself and are the basis for the action of the legislative and executive organs at the various levels of government.

**I. Political Constitution of the United Mexican States**

Article 4, paragraph 5, establishes the right of all persons to a healthy environment for their development and well-being.

“All persons have the right to a healthy environment for their development and well-being. The State shall guarantee respect for that right. Persons causing environmental damage and degradation shall be held accountable under the law.”

Article 27, paragraph 4, of the Constitution states:

“The Nation has direct ownership of all the natural resources of the continental shelf and of the submerged shelf of the islands, of all minerals or substances in seams, layers or deposits that are different from the components of the soil, such as minerals from which metals and metalloids for

industrial use are extracted; deposits of gem stones or salt deposits formed directly by seawater; products derived from rock decomposition requiring underground mining; mineral or organic deposits of substances that can be used as fertilizer; solid mineral fuels; petroleum and all solid, liquid or gaseous hydrocarbons; and **the area situated in the national territory to the extent and in the terms established by international law.”**

## II. General Act on Ecological Equilibrium and Environmental Protection (LGEEPA)

The General Act on Ecological Equilibrium and Environmental Protection is designed to promote sustainable development and to lay the foundations for joint action by the three levels of government to preserve and restore ecological equilibrium and to protect the environment in the territory of Mexico.

This Act has a separate chapter on protection of the atmosphere:

### **CHAPTER II**

#### **Prevention and control of atmospheric pollution**

Revised title, *Official Gazette*, 13 December 1996 (formerly chapter I)

Article 110. The following conditions are to be met for protection of the atmosphere:

- I. Air quality must be satisfactory in all human settlements and regions of the country; and
- II. Emissions of atmospheric pollutants, whether from artificial or natural sources, stationary or mobile, shall be reduced and controlled to ensure that air quality is satisfactory for the well-being of the population and ecological equilibrium.

Article 111. In order to control, reduce or prevent atmospheric pollution, the Secretariat [for the Environment and Natural Resources] shall have the following responsibilities:

- I. To issue official Mexican norms for environmental quality in the various areas, zones or regions of the national territory, based on the maximum allowable concentration of pollutants in the environment compatible with public health, as determined by the Secretariat for Health;

II. To compile and update the inventory of sources under federal jurisdiction emitting pollutants into the atmosphere and to coordinate with local governments to align the national inventory with the corresponding regional inventories.

III. To issue official Mexican norms specifying for each pollutant and each source of pollution the maximum allowable limits for emissions of odours, gases and solid and liquid particles into the atmosphere from stationary and mobile sources;

IV. To design and implement programmes to reduce the release of pollutants into the atmosphere, with air quality determined for each area, zone or region of the national territory. Such programmes should set goals and deadlines and specify implementation mechanisms;

V. To assist and provide technical support to local governments that are designing and implementing air quality management programmes in order to comply with the applicable regulations;

VI. To require those responsible for the operation of stationary sources under federal jurisdiction to comply with maximum allowable limits for release of pollutants, specified in article 37 of this Act, its regulations and the relevant official Mexican norms;

VII. To issue official Mexican norms for the establishment and operation of air quality monitoring systems;

VIII. To issue official Mexican norms for certification by the relevant authority of levels for release of pollutants into the atmosphere from specific sources;

IX. To issue, in coordination with the Secretariat for the Economy, official Mexican norms establishing maximum allowable levels for release of pollutants into the atmosphere from new automobiles in the factory and from automobiles on the road, in the light of the maximum allowable concentration for humans of pollutants in the environment, as determined by the Secretariat for Health.

Amended segment, *Official Gazette*, 9 April 2012

X. To set maximum allowable levels for release of pollutants into the atmosphere by sources, areas, zones or regions, not to exceed the assimilation capacities of air basins and in compliance with official Mexican air quality norms.

XI. To promote systems for transferring atmospheric pollution rights, in coordination with the competent authorities and in compliance with any relevant provisions;

XII. To approve air quality management programmes prepared by local governments in order to comply with the relevant official Mexican norms;

XIII. To encourage those responsible for the operation of polluting sources to adopt new technologies in order to reduce their atmospheric emissions; and

XIV. To issue official Mexican norms establishing precautions applicable to the operation of stationary sources releasing pollutants into the atmosphere, in the event of environmental problems and emergencies.

Amended article, *Official Gazette*, 13 December 1996

**ARTICLE 111 bis.** Secretariat authorization shall be required for the operation and functioning of stationary sources under federal jurisdiction that release or may release odours, gases or solid or liquid particles into the atmosphere.

For the purposes of this Act, stationary sources under federal jurisdiction are industries processing chemicals, petroleum and petrochemicals, paint and dyes, the automotive, pulp and paper industries, the metalworking and glass industries, the electricity industry, asbestos, cement and limestone industries and industries processing hazardous waste.

Any regulations enacted on this subject shall list the specific subsectors within each of the above-mentioned industrial sectors where there are establishments subject to the provisions of federal legislation concerning the release of pollutants into the atmosphere.

Added article, *Official Gazette*, 13 December 1996

**ARTICLE 112.** In order to prevent and control atmospheric pollution, the governments of the States, of the Federal District and of the Municipalities shall, in accordance with the allocation of duties established in articles 7, 8 and 9 of this Act and with local legislation on the subject:

Amended paragraph, *Official Gazette*, 13 December 1996

- I. Control atmospheric pollution in property and zones under local jurisdiction, as well as in stationary sources operating as industrial, commercial and service facilities, other than those covered by article 111 bis of this Act.

Amended subparagraph, *Official Gazette*, 13 December 1996

- II. Apply the general criteria for protection of the atmosphere to urban development plans within their competence, defining the zones in which polluting industries may be situated;

Amended subparagraph, *Official Gazette*, 13 December 1996

- III. Require persons responsible for the operation of stationary sources under local jurisdiction to comply with maximum allowable limits for release of pollutants, as specified in the regulations implementing this Act and in the relevant official Mexican norms;

Amended subparagraph, *Official Gazette*, 13 December 1996

- IV. Compile and update the inventory of pollution sources.

Amended subparagraph, *Official Gazette*, 13 December 1996

- V. Establish and operate emission verification systems for automobiles on the road.

VI. Establish and operate air quality monitoring systems, with technical support as required from the Secretariat [for the Environment and Natural Resources]. Local governments shall transmit local air monitoring reports to the Secretariat [for the Environment and Natural Resources] for incorporation in the National Environment Information System.

Amended subparagraph, *Official Gazette*, 13 December 1996

- VII. Establish requirements and procedures to regulate emissions from public transport, except federal transport, and vehicles and, if necessary, ban traffic in serious cases of pollution;

- VIII. Adopt the necessary preventive measures to prevent environmental problems caused by atmospheric pollution;

IX. Prepare reports on the state of the environment in the relevant entity or municipality, as agreed with the Secretariat [for the Environment and Natural Resources] under any coordination agreements concluded;

X. Impose penalties and other measures for violation of the laws on the subject enacted by local legislatures or of any policing and good governance rules issued by local councils in accordance with this Act;

XI. Formulate and implement air quality management programmes based on official Mexican norms to be issued by the federal authorities in order to improve the quality of the environment in the national territory; and

Amended subparagraph, *Official Gazette*, 13 December 1996

XII. Perform any other duties entrusted to them under the applicable legal and statutory provisions.

Added subparagraph, *Official Gazette*, 13 December 1996

**ARTICLE 113.** No pollutants may be released into the atmosphere that cause or may cause ecological imbalances or harm to the environment. All releases into the atmosphere shall comply with the provisions of this Act and of the statutory arrangements resulting therefrom, as well as with the official Mexican norms issued by the Secretariat.

Amended article, *Official Gazette*, 13 December 1996

**ARTICLE 114.** In zones identified as being suitable for industrial use that are near inhabited areas, the competent authorities shall promote the establishment of industries using cleaner technologies and fuels.

**ARTICLE 115.** In the determination of soil uses specified in the relevant urban development programmes, the Secretariat [for the Environment and Natural Resources] shall urge consideration of topographical, climatological and meteorological conditions in order to ensure proper dispersion of pollutants.

**ARTICLE 116.** In granting tax incentives, the competent authorities shall favour persons who:

- I. Purchase, install or operate equipment to control polluting emissions into the atmosphere;

- II. Manufacture, install or maintain equipment for filtering, burning, controlling and, in general, treating emissions polluting the atmosphere;
- III. Engage in scientific and technological research and innovation to reduce polluting emissions, and

Amended subparagraph, *Official Gazette*, 29 May 2012

- IV. Locate or relocate their facilities so as to avoid polluting emissions in urban areas.

III. 2013-2018 National Development Plan (NDP) and 2013-2018 Sectoral Plan for the Environment and Natural Resources (PROMARNAT)

A healthy environment is a constitutional right in Mexico. However, some inhabitants are exposed to poor air and water quality or to soil degradation affecting their health and well-being. Improving the quality of the environment is a big challenge but one that provides a great opportunity to create employment and value added and to jump start economic growth which helps to reduce poverty.

For this reason, the NDP and PROMARNAT are involved in planning and evaluation of policies, targets, goals, strategies and actions designed to improve the quality of the environment.

One of the NDP targets is “Prosperous Mexico”. Goal 4.4 is to encourage and organize inclusive and facilitating green growth to preserve our natural heritage while creating wealth, competitiveness and employment.

As a strategy for achieving this goal, it is planned to strengthen national policy on climate change and care of the environment, transitioning to a competitive, sustainable, resilient and low-carbon economy.

In line with the NDP, the goals of PROMARNAT include:

**Goal 1.** To promote and facilitate sustained and sustainable low-carbon growth that is equitable and socially inclusive.

**Goal 2.** To boost resilience to the effects of climate change and decrease emissions of greenhouse compounds and gases.

**Goal 5.** To halt and reverse the loss of natural capital and water, air and soil pollution.

In this connection, Mexico has concluded 92 international agreements and protocols on substantive subjects such as climate change, biodiversity, water, air, chemicals, residues and the environment and trade. This fact, as well as its strategic geographical location, its economic development and its access to various international forums make it uniquely suited to promote dialogue and cooperation between developed and developing countries, as well as to obtain greater benefits from the transition to green growth.

Considerable international resources have recently become available to support environmental activities, particularly those related to climate change. Between 2006 and 2013, \$7.63 billion were provided (85 percent in the form of loans) and were used for projects including forests, water, biodiversity, climate change and transport of hazardous substances.

Mexico is leading international efforts to combat climate change and is committed to consensus-building and decisions on action. As a Non-Annex I Party to the Kyoto Protocol (100), it has no binding emission reduction targets but has nevertheless made voluntary commitments to reduce emissions by 2012, 2020 and 2050 and was the only Non-Annex I Party to submit five national communications to the United Nations Framework Convention on Climate Change (UNFCCC).

In addition, it is noteworthy that Mexico currently has 181 Protected National Areas, covering a total of about 91 million hectares (70 million hectares of marine areas and 21 million hectares of land areas).

Mexico is one of a few countries which have attained the Aichi Target for marine protected areas (10 percent) and actually has reached more than double the target (23 percent), with activities to protect and improve the environment.

#### IV. General Act on Climate Change

- Article 2, section II, states that one of its goals is:

“To regulate emissions of greenhouse gases and compounds in order to stabilize their concentrations in the atmosphere at a level that prevents dangerous human interference in the climate system, in view of the provisions of article 2 of the United Nations Framework Convention on Climate Change and other provisions derived therefrom;”

- Article 3 defines climate change as “climate variation directly or indirectly attributable to human activity, which alters the composition of the global atmosphere and intensifies the natural climate variability observed during comparable periods”.
- Article 33 includes among the goals of public mitigation policies the promotion of efficient cogeneration to avoid emissions into the atmosphere.
- It establishes that by 2018, as part of the Subprogramme for the Protection and Sustainable Management of Biodiversity in the light of climate change, municipalities will, in coordination with federal entities and other administrative and financial bodies and with technical support from the Secretariat for Social Development, design and construct infrastructure for the management of solid residues that do not release methane into the atmosphere in urban centres with over 50,000 inhabitants and will, when possible, develop the technology for generating electricity using methane gas emissions.

## V. Instruments

The actions required under Mexican legislation for the prevention and control of atmospheric pollution are implemented by means of instruments providing direct and indirect regulation.

### **Instruments providing direct regulation:**

**a) Official Mexican Norms (NOMs)** are divided into those applicable to:

- (i) Measurement of concentrations
- (ii) Emissions from stationary sources
- (iii) Emissions from mobile sources

**Norms concerning concentrations****Title**

<i>ANALITICA 2012</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Mexican Norm</i>	
<i>Official Gazette 2892</i>	
<i>NOM-156-SEMARNAT-2012</i>	
<i>Establishment and operation of air quality monitoring systems. [Electronic resource]</i>	

<i>ANALITICA 1993</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Mexican Norm</i>	
<i>NOM-036-SEMARNAT-1993</i>	
<i>Establishes methods for measuring the concentration of ozone in ambient air and procedures for calibration of measuring equipment. [Electronic resource]</i>	

<i>ANALITICA 1993</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Mexican Norm</i>	

<b><i>Nom-034-SEMARNAT-1993</i></b>	
<b><i>Establishes methods for measuring the concentration of carbon monoxide in ambient air and procedures for calibration of measuring equipment. [Electronic resource]</i></b>	

<b><i>ANALITICA 1993</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Mexican Norm</i></b>	
<b><i>Nom-038-SEMARNAT-1993,</i></b>	
<b><i>Establishes methods for measuring the concentration of sulphur dioxide in ambient air and procedures for calibration of measuring equipment. [Electronic resource]</i></b>	

<b><i>ANALITICA 1993</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-037-SEMARNAT-1993</i></b>	
<b><i>Establishes methods for measuring the concentration of nitrogen dioxide in</i></b>	

<i>ambient air and procedures for calibration of measuring equipment. [Electronic resource]</i>	
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<i>ANALITICA 1993</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Mexican Norm</i>	
<i>NOM-035-SEMARNAT-1993</i>	
<i>Establishes methods for measuring the concentration of total suspended particles in ambient air and procedures for calibration of measuring equipment. [Electronic resource]</i>	

**Norms concerning stationary sources**

**Title**

<i>ANALITICA 2014</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Gazette 3354</i>	
<i>Official Mexican Norm</i>	
<i>NOM-166-SEMARNAT-2014,</i>	
<i>Control of atmospheric emissions from secondary lead smelting. [Electronic resource]</i>	

<b><i>ANALITICA 2014</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Gazette 3239</i></b>	
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-137-SEMARNAT-2013,</i></b>	
<b><i>Atmospheric pollution.-Gas processing plants. Control of emissions of sulphur compounds. [Electronic resource]</i></b>	

<b><i>ANALITICA 2012</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Gazette 3098</i></b>	
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-085-SEMARNAT-2011,</i></b>	
<b><i>Atmospheric pollution- Maximum allowable levels for emissions from indirect fired heaters and their measurement. [Electronic resource]</i></b>	

<b><i>ANALITICA 2012</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Gazette 3513</i></b>	

<i>Agreement amending the Official Mexican Norm</i>	
<i>NOM-085-SEMARNAT-2011,</i>	
<i>Atmospheric pollution- Maximum allowable levels for emissions from indirect fired heaters and their measurement, [Electronic resource]</i>	

<i>ANALITICA 2007</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Mexican Norm</i>	
<i>NOM-148-SEMARNAT-2006</i>	
<i>Atmospheric pollution – recovery of sulphur from oil refining processes. [Electronic resource]</i>	

<i>ANALITICA 2006</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Gazette 2298</i>	
<i>Official Mexican Norm</i>	
<i>NOM-086-SEMARNAT-SENER-SCFI-2005,</i>	
<i>Fossil fuel specifications for environmental protection. [Electronic</i>	

<i>resource]</i>	
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<b><i>ANALITICA 2002</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Gazette 2239</i></b>	
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-040-SEMARNAT-2002</i></b>	
<b><i>Environmental protection – manufacture of hydraulic cement – maximum allowable levels for emissions into the atmosphere. [Electronic resource]</i></b>	

<b><i>ANALITICA 1999</i></b>	<b><i>Mexico. Secretariat for the Environment, Natural Resources and Fisheries.</i></b>
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-123-SEMARNAT-1998</i></b>	
<b><i>Establishes the maximum allowable content of volatile organic compounds (VOCs) for the manufacture of solvent-based air-drying paints for domestic use and procedures for determining VOC content in paints and coatings. [Electronic resource]</i></b>	

<b><i>ANALITICA 1998</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-105-SEMARNAT-1996</i></b>	
<b><i>Establishes maximum allowable levels for release into the atmosphere of total solid particles and total reduced sulphur compounds from chemical recovery processes at cellulose manufacturing plants. [Electronic resource]</i></b>	

<b><i>ANALITICA 1996</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-097-SEMARNAT-1995</i></b>	
<b><i>Establishes maximum allowable levels for release into the atmosphere of particulate material and nitrogen oxides in glass manufacturing processes in Mexico. [Electronic resource]</i></b>	

<b><i>ANALITICA 1993</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-043-SEMARNAT-1993</i></b>	

<p><i>Establishes maximum allowable levels for release into the atmosphere of solid particles from stationary sources. [Electronic resource]</i></p>	
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<p><i>ANALITICA 1993</i></p>	<p><i>Mexico. Secretariat for the Environment and Natural Resources.</i></p>
<p><i>Official Mexican Norm</i></p>	
<p><i>NOM-039-SEMARNAT-1993,</i></p>	
<p><i>Establishes maximum allowable levels for release into the atmosphere of sulphur dioxide and trioxide and sulphuric acid haze, at plants producing sulphuric acid. [Electronic resource]</i></p>	

<p><i>ANALITICA 1993</i></p>	<p><i>Mexico. Secretariat for the Environment and Natural Resources.</i></p>
<p><i>Official Mexican Norm</i></p>	
<p><i>NOM-046-SEMARNAT-1993,</i></p>	
<p><i>Establishes maximum allowable levels for release into the atmosphere of sulphur dioxide, sulphur trioxide haze and sulphuric acid from processes producing dodecylbenzenesulfonic acid from stationary sources. [Electronic resource]</i></p>	

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**Norms concerning emissions from mobile sources**

**Title**

<i>ANALITICA 2015</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Gazette 3656</i>	
<i>Agreement amending various paragraphs and transitional article1 of the Official Mexican Norm</i>	
<i>NOM-041-SEMARNAT-2015,</i>	
<i>Establishes maximum allowable limits for release of polluting gases from the exhaust of automobiles on the road using gasoline as a fuel. [Electronic resource]</i>	

<i>ANALITICA 2015</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Gazette 3607</i>	
<i>Official Mexican Norm</i>	
<i>NOM-041-SEMARNAT-2015,</i>	
<i>Establishes maximum allowable limits for release of polluting gases from the exhaust of automobiles on the road using gasoline as a fuel. [Electronic resource]</i>	

<i>ANALITICA 2012</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Gazette 2977</i>	
<i>Official Mexican Norm</i>	
<i>NOM-076-SEMARNAT-2012,</i>	
<i>Establishes maximum allowable levels for release of unburnt hydrocarbons, carbon monoxide and nitrogen oxides from exhaust, as well as of evaporative hydrocarbons from the fuel system that use gasoline, liquid petroleum gas, natural gas and other alternative fuels and that are used to drive automobiles with a gross factory weight of over 3,857 kilograms. [Electronic resource]</i>	

<i>ANALITICA 2007</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Mexican Norm</i>	
<i>NOM-045-SEMARNAT-2006,</i>	
<i>Environmental protection – vehicles on the road using diesel fuel – maximum allowable opacity, verification procedure and technical features of the measuring equipment. [Electronic resource]</i>	

<b><i>ANALITICA 2007</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-041-SEMARNAT-2006,</i></b>	
<b><i>Establishes maximum allowable release of polluting gases from the exhaust of automobiles on the road using gasoline as a fuel. [Electronic resource]</i></b>	

<b><i>ANALITICA 2006</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-044-SEMARNAT-1993,</i></b>	
<b><i>Establishes maximum allowable release of hydrocarbons, carbon monoxide, nitrogen oxides, total suspended particles and opacity of exhaust fumes of new engines using diesel fuel and used to drive automobiles with a gross weight of over 3,857 kilograms. [Electronic resource]</i></b>	

<b><i>ANALITICA 2005</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
<b><i>Official Mexican Norm</i></b>	

<b><i>NOM-042-SEMARNAT- 2003,</i></b>	
<b><i>Establishes maximum allowable release of total or non-methane hydrocarbons, carbon monoxide, nitrogen oxides and exhaust particles from new automobiles with a gross weight not exceeding 3,859 kilograms that use gasoline, liquid petroleum gas, natural gas and diesel fuel, as well as release of evaporative hydrocarbons from the fuel system of such vehicles. [Electronic resource]</i></b>	

<b><i>ANALITICA 1999</i></b>	<b><i>Mexico. Secretariat for the Environment, Natural Resources and Fisheries.</i></b>
<b><i>Official Gazette 2281</i></b>	
<b><i>Official Mexican Norm</i></b>	
<b><i>NOM-047-SEMARNAT-1999,</i></b>	
<b><i>Establishes the specifications of the measuring equipment and procedure for verification of release of pollutants from automobiles on the road that use gasoline, liquid petroleum gas, natural gas or other alternative fuels. [Electronic resource]</i></b>	

<b><i>ANALITICA 1998</i></b>	<b><i>Mexico. Secretariat for the Environment and Natural Resources.</i></b>
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<i>Official Mexican Norm</i>	
<i>NOM-121-SEMARNAT- 1997</i>	
<i>Establish the maximum allowable emissions into the atmosphere of volatile organic compounds (VOCs) from automobile body coating operations in the factory, multiple-use, passenger and utility vehicles, cargo and light-weight trucks, as well as the method for calculating their emissions. [Electronic resource]</i>	

<i>ANALITICA 1993</i>	<i>Mexico. Secretariat for Social Development.</i>
<i>Official Gazette 2274</i>	
<i>Official Mexican Norm</i>	
<i>NOM-048-SEMARNAT-1993,</i>	
<i>Establishes maximum allowable release of hydrocarbons, carbon monoxide and exhaust fumes from motorbikes on the road that use gasoline or a gasoline-oil mixture for fuel. [Electronic resource]</i>	

<i>ANALITICA 1993</i>	<i>Mexico. Secretariat for Social</i>
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	<i>Development.</i>
<i>Official Gazette 2279</i>	
<i>Official Mexican Norm</i>	
<i>NOM-050-SEMARNAT-1993,</i>	
<i>Establishes maximum allowable release of polluting exhaust gases from automobiles on the road which use liquid petroleum gas, natural gas or other alternative fuels. [Electronic resource]</i>	

<i>ANALITICA 1993</i>	<i>Mexico. Secretariat for the Environment and Natural Resources.</i>
<i>Official Gazette 2278</i>	
<i>Official Mexican Norm</i>	
<i>NOM-049-SEMARNAT-1993,</i>	
<i>Establishes specifications for the measuring equipment and procedure for verifying levels of emission of polluting gases from motorbikes on the road which use gasoline or a gasoline-oil mixture for fuel. [Electronic resource]</i>	

### **Instruments providing indirect regulation**

**a) Programmes of Action to Improve Air Quality (ProAire)** are among the main instruments used to reverse the deterioration of air quality in Mexico's principal cities. These programmes involve specific measures to reduce and control emissions of pollutants by comparing the emission of pollutants by the producing sources and their impact on air quality and on people's health.

The LGEEPA specifies that authorities must implement coordinated programmes to reduce polluting emissions into the atmosphere from sources under federal jurisdiction: the Secretariat for the Environment and Natural Resources (SEMARNAT), in coordination with other federal government units, is responsible for implementing programmes to reduce emissions caused by industries under federal jurisdiction and by new automobiles in the factory. The LGEEPA is the focal point coordinating the formulation of ProAire programmes by the three levels of government. This is because, although each level of government has its clearly defined responsibilities, joint action is needed to formulate comprehensive programmes with joint and compatible goals.

The basic goal of a ProAire programme is to reduce emissions from the main pollution sources and to avoid future problems that may adversely affect the environment and the health of the population. SEMARNAT has addressed the problems of atmospheric pollution in urban areas through these ProAire programmes, in coordination with State and municipal authorities and with the participation of academic, private and nongovernmental sectors in each city.

There are currently 13 ProAire programmes benefiting 50.5 million inhabitants (41.3 per cent):

1. Michoacán
2. Tlaxcala
3. Oaxaca
4. Metropolitan Zone of Querétaro-San Juan del Río
5. Metropolitan Zone of San Luis Potosí-Soledad de Graciano Sánchez
6. Metropolitan Zone of León
7. Salamanca, Celaya and Irapuato

8. Metropolitan Zone of Valle de Toluca
9. Metropolitan Zone of Tijuana
10. Puebla
11. Metropolitan Zone of Valle de México
12. Mexicali
13. Jalisco

In addition, seven ProAire programmes are in the pipeline, which would potentially benefit 22.4 million inhabitants, in addition to the beneficiaries of existing ProAire programmes.

1. Colima
2. Hidalgo
3. Nuevo León
4. Veracruz
5. Nogal, Sonora
6. Durango
7. Chihuahua

[A map is included here.]

**b) The Register of Emissions and Pollutant Transfer** is a national database with information on polluting substances released into the environment (air, water, soil and subsoil) or transferred into residual water and/or hazardous residues.

It contains the following public information: the name of the establishment, the location and quantity emitted or transferred from a list of 200 substances, in addition to emissions of pollutants from stationary sources.

The Register is maintained in pursuance of article 109 bis of the LGEEPA and comprises information from the various emitting sources within the jurisdiction of the three levels of government. Because of its legal framework, the Register can be compiled by federal and municipal agencies, facilitating access to environmental information for the Register and thus allowing linkage of policies and strategies.

The Register is updated each year and has been available to the public since the second half of 2006. Data from the industrial sector under federal jurisdiction is entered by means of the Annual Certificate of Operation.

The information contained in the Register is used to design effective policies to preserve and protect the environment.

In addition, availability of information on polluting emissions throughout the national territory makes it easier to determine the environmental infrastructure needed by the country, encourages emitting sources to evaluate their performance and identifies areas where there is scope for reducing emissions.

### **c) Fiscal incentives and economic instruments**

- Fiscal incentives to protect the atmosphere are described in article 116 of the LGEEPA
- With regard to economic instruments, the LGEEPA states:

**ARTICLE 21.** The Federation, the States and the Federal District shall, within their respective areas of competence, formulate, develop and apply economic instruments to encourage compliance with environmental policy goals. Such instruments shall be designed to:

I. Promote a change in the behaviour of those engaged in industrial, commercial and service activities, so that they will align their interests with the collective interests of environmental protection and sustainable development;

II. Encourage the collection of reliable and adequate information about the environmental consequences, benefits and costs of the economy's pricing system;

III. Provide incentives to encourage activities for the protection, preservation or restoration of the ecological equilibrium;

Also ensure that those who harm the environment, make inappropriate use of natural resources or alter ecosystems are liable for the relevant costs;

IV. Promote greater social equity in the distribution of costs and benefits relating to environmental policy goals; and

V. Coordinate with other environmental policy instruments, especially as regards thresholds or limits on the use of ecosystems, so as to guarantee their integrity and equilibrium and protect the health and well-being of the population.

Amended article, *Official Gazette*, 13 December 1996

**ARTICLE 22.** Economic instruments are the statutory and administrative mechanisms of a fiscal, financial or marketing character whereby individuals assume the environmental benefits and costs of their economic activities and are encouraged to engage in activities that benefit the environment.

Economic instruments of a fiscal character are fiscal incentives for compliance with environmental policy goals. Such instruments shall never be utilized solely to increase tax revenue. Financial instruments are loans, guarantees, civil liability insurance, funds and trust funds designed to promote the preservation, protection, restoration or sustainable use of natural resources and the environment and to finance programmes, projects, studies, scientific research, technological development and innovation for the preservation of the ecological equilibrium and protection of the environment.

Amended paragraph, *Official Gazette*, 29 May 2012

Marketing instruments are concessions, authorizations, licences and permits allowing pre-established volumes of emissions of pollutants into the air, water or soil or limiting exploitation of natural resources or construction in protected natural areas or in areas that should be preserved and protected for environmental reasons,

The prerogatives derived from economic marketing instruments shall be transferable without charge and shall be subject to the public interest and to the sustainable exploitation of natural resources.

Amended article, *Official Gazette*, 13 December 1996

**ARTICLE 22 BIS.** For the purpose of granting the fiscal incentives established in accordance with the Act on Revenue of the Federation, priority shall be given to activities relating to:

I. Scientific and technological research, incorporation, innovation or use of mechanisms, equipment and technologies designed to avoid, reduce or control pollution or environmental deterioration, as well as efficient use of natural resources and energy.

Amended subparagraph, *Official Gazette*, 29 May 2012

II. Research into and adoption of systems for energy conservation and use of cleaner energy sources;

III. Water conservation and sustainable use, and prevention of water pollution;

IV. Location and relocation of industrial, commercial and service facilities in environmentally appropriate areas;

V. Creation, maintenance and supervision of protected natural areas;

VI. Processes, products and services that, in accordance with the applicable regulations, have received environmental certification; and

Added subparagraph, *Official Gazette*, 5 July, 2007

VII. In general, activities relating to the preservation and restoration of ecological equilibrium and protection of the environment.

Reviewed subparagraph, *Official Gazette*, 5 July 2007

Added article, *Official Gazette*, 13 December 1996

## **b) Judicial decisions of national courts**

SUPREME COURT

- The Supreme Court has described a healthy environment as a human right and noted that its protection is an issue of public order and social interest, as a task entrusted by the Constitution concurrently to the three levels of government.
- In this connection, protection of the atmosphere can be considered as part of protection of the environment.

Series: Tenth Series

Register: 2012126

Court: Collegiate Circuit Tribunals

Type of decision: Jurisprudence

Source: *Gaceta del Semanario Judicial de la Federación*

Book 32, July 2016, volume III

Topic(s): Common

Decision: I.7th.A. J/6 (10th)

Page: 1801

**ENVIRONMENTAL PROBLEMS IN MEXICO CITY. THE EMERGENCY ADMINISTRATIVE ARRANGEMENTS OF A GENERAL NATURE MADE IN ORDER TO MITIGATE THEIR EFFECTS ARE ISSUES OF PUBLIC ORDER AND SOCIAL INTEREST**

The emergency administrative arrangements of a general nature made by the public authorities in Mexico City in order to mitigate the harmful effects of environmental problems reflect the obligation of the State to guarantee enjoyment of the highest possible standards of health and hence of personal life. This makes it incumbent on the public authorities to take legislative and/or administrative action to ensure the full exercise of these fundamental rights as well as a healthy environment, demonstrating that such measures are issues of public order and social interest.

**SEVENTH COLLEGIATE COURT ON ADMINISTRATIVE MATTERS (FIRST CIRCUIT)**

Complaint 95/2016. Secretariat for the Environment, Mexico City, 18 April 2016. Unanimous vote. Reporting judge: Alejandro Sergio González Bernabé. Secretary: Alejandro Lucero de la Rosa.

Complaint 98/2016. Israel Mercado García. 20 April 2016. Unanimous vote. Reporting judge: Ricardo Olvera García. Secretary: Carlos Ferreira Herrera.

Complaint 99/2016. Isabel Isela Marín Pérez. 20 April 2016. Unanimous vote.

Reporting judge: Francisco García Sandoval. Secretary: Ismael Hinojosa Cuevas.

Complaint 105/2016. Ricardo Moreno García. 27 April 2016. Unanimous vote. Reporting judge: Alejandro Sergio González Bernabé. Secretary: Gustavo Naranjo Espinosa.

Complaint 108/2016. Jorge Alejandro Bayona Sánchez. 2 May 2016. Unanimous vote. Reporting judge: Ricardo Olvera García. Secretary: Martha Izalia Miranda Arbona.

This decision was published on 15 July 2016 at 10.15 a.m. in the *Semanario Judicial de la Federación* and is therefore considered to be binding as of Monday, 1 August 2016 for the purposes mentioned in the seventh paragraph of Plenary General Agreement 19/2013.

Series: Tenth Series

Register: 2012127

Court: Collegiate Circuit Tribunals

Type of decision: Jurisprudence

Source: *Gaceta del Semanario Judicial de la Federación*

Book 32, July 2016, volume III

Topic(s): Constitutional

Decision: I.7th.A. J/6 (10th)

Page: 1802

**HUMAN RIGHT TO HEALTH AND TO A HEALTHY ENVIRONMENT. EFFECTIVE ENJOYMENT AT ITS HIGHEST LEVEL CREATES OBLIGATIONS FOR THE STATE AND DUTIES FOR ALL MEMBERS OF THE COMMUNITY**

Effective enjoyment of these rights at the highest level creates obligations for the State, to the extent that resources are available. However, this imposes duties not only on the authorities but also on individuals, since unilateral action by the State is not enough and must be accompanied by social behaviour that promotes the values underlying these rights, since their protection is a shared responsibility of the governing and the governed. Thus a healthy environment, being essential for the preservation of the human race and for the enjoyment of other fundamental rights, is a collective asset, because it is a public good and its enjoyment or damage to it affects not only one person but the population in general; the State must therefore pursue public policies to prevent and mitigate environmental degradation, meeting constitutional and conventional standards, and must have the support and participation of the community, since health implies a complete state of physical, mental and social well-being and not merely the absence of disease or

disability.

**SEVENTH COLLEGIATE COURT ON ADMINISTRATIVE MATTERS (FIRST CIRCUIT)**

Complaint 95/2016. Secretariat for the Environment, Mexico City, 18 April 2016. Unanimous vote. Reporting judge: Alejandro Sergio González Bernabé. Secretary: Alejandro Lucero de la Rosa.

Complaint 98/2016. Israel Mercado García. 20 April 2016. Unanimous vote. Reporting judge: Ricardo Olvera García. Secretary: Carlos Ferreira Herrera.

Complaint 99/2016. Isabel Isela Marín Pérez. 20 April 2016. Unanimous vote.

Reporting judge: Francisco García Sandoval. Secretary: Ismael Hinojosa Cuevas.

Complaint 105/2016. Ricardo Moreno García. 27 April 2016. Unanimous vote. Reporting judge: Alejandro Sergio González Bernabé. Secretary: Gustavo Naranjo Espinosa.

Complaint 108/2016. Jorge Alejandro Bayona Sánchez. 2 May 2016. Unanimous vote. Reporting judge: Ricardo Olvera García. Secretary: Martha Izalia Miranda Arbona.

Note: Regarding the scope of this decision, attention is drawn to section 1 XXIII/2013 (10th) under the heading: “BASIC RIGHT TO HEALTH. CREATES DUTIES BOTH FOR THE AUTHORITIES AND FOR INDIVIUAL HEALTH WORKERS”, published in the *Semanario Judicial de la Federación* and its *Gaceta*, Tenth Series, Book XVI, Volume 1, January 2013, page 626.

This decision was published on Friday, 15 July 2016 at 10.15 a.m. in the *Semanario Judicial de la Federación* and is therefore considered to be binding as of Monday, 1 August 2016 for the purposes mentioned in the seventh paragraph of Plenary General Agreement 19/2013.

Series: Tenth Series

Register: 160791

Court: Plenary

Type of decision: Jurisprudence

Source: *Gaceta del Semanario Judicial de la Federación* and its *Gaceta*

Book 1, October 2011, volume I

Topic(s): Constitutional

Decision: P./J. 36/2011 (9th)

Page: 297

## **PROTECTION OF THE ENVIRONMENT AND PRESERVATION AND RESTORATION OF ECOLOGICAL EQUILIBRIUM – A SHARED DUTY UNDER THE CONSTITUTION**

Following the addition to article 73 of the Political Constitution of the United Mexican States of subparagraph XXIX-G, by decree published in the *Diario Oficial de la Federación* of 10 August 1987, the protection of the environment and preservation and restoration of ecological equilibrium are regulated concurrently in our country by the three levels of government. Areas of competence are established by general legislation but specific terms of reference and efficiency guidelines are contained in the Constitution itself and are the basis for the action of the legislative and executive organs at the various levels of government. This law is the General Act on Ecological Equilibrium and Protection of the Environment, which is designed to promote sustainable development and to lay the foundation for joint action by the three levels of government to preserve and restore ecological equilibrium and to protect the environment in the territory of Mexico. Thus the task of protecting the environment was assumed partly by the federal authorities and partly by the regular legislator, who was instructed in the General Act to initiate joint action by the three levels of government, while maintaining the unified objectives specified directly in article 27 of the Constitution.

Constitutional controversy 31/2010. Municipality of Benito Juárez, State of Quintana Roo. 5 April 2011. Majority of eight votes. Absent: Margarita Beatriz Luna Ramos. Dissenting: Sergio Salvador Aguirre Anguiano and Luis María Aguilar Morales. Reporting judge: José Ramón Cossío Díaz. Secretaries: Laura Patricia Rojas Zamudio and Raúl Manuel Mejía Garza.

On 8 September this year, the Plenary Court adopted decision 36/2011 above. Mexico, Federal District, 8 September 2011.