THE REGULATION OF HAZARDOUS SUBSTANCES IN MEXICAN LAW

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INTRODUCTION

Unlike U.S. environmental legislation, which governs different environmental media and was instituted through various congressional Acts,1 the current Mexican environmental legislation, implemented in 1988, covers the principal environmental media in one law.2 This one law contains most of the implementation and enforcement mechanisms including the regulation of hazardous substances. There has been much debate and concern on both sides of the United States-Mexican border regarding Mexico's ability to strictly enforce its hazardous substance regulations. Furthermore, the North American Free Trade Agreement, which established an international Commission on Environmental Quality, will influence future use of trade laws to uphold environmental standards. Because of the considerable international attention focused on Mexico's environmental policy and its enforcement, this Note presents an overview of Mexico's regulation of hazardous substances as well as the legal mechanisms generally available to deal with problems arising from the use or possession of hazardous substances. Where possible, relevant insights will be offered regarding similar U.S. laws, as will discussion of the limits or potential flaws in the Mexican regulations.

Part I provides an overview of Mexico's environmental policy and the legal instruments available to implement its regulations. Part II outlines the specific provisions in Mexican law that regulate hazardous substances. Part III discusses the available enforcement mechanisms,

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and Part IV analyzes the prospects for the use of toxic torts litigation in Mexico.

I. OVERVIEW OF THE MEXICAN ENVIRONMENTAL LEGAL FRAMEWORK

Environmental law in Mexico has been characterized as health-based, standard-setting law and follows a statutory scheme frequently used in the regulation of highly technical subject matter: the enabling statute establishes broad minimum standards for achieving a statutory purpose and simultaneously charges the executive branch, either directly through the President or indirectly through administrative agencies, with the duty to issue more specific regulations and standards to achieve that purpose. Thus, while the Mexican Congress issued the General Law for Ecological Balance and Environmental Protection in 1988 with the purpose of establishing a strong preventive environmental policy, MGEL actually outlines the regulated subject matter and empowers the executive branch to set a final, more specific, regulatory system. In particular, MGEL establishes its policy by defining which environmental problems must be regulated (i.e., air pollution, water pollution, ground pollution), the general rules and minimum standards governing each regulated area, the means by which these standards may be attained, and the mechanisms available to enforce compliance. Additionally, administrative agencies are also empowered to issue specific standards governing certain products, processes or substances. Since MGEL's enactment, the President has issued one or more executive regulations on each of these regulated areas.


4. Article 89(I) of the Mexican Constitution authorizes the President to issue regulations with the objective of executing the laws enacted by the Congress and providing for their exact enforcement in the administrative sphere. Constitución Política de los Estados Unidos Mexicanos (Constr.) ch. III, art. 89, pt.I. In spite of their general and abstract nature, executive regulations are "subordinate rule[s] which find . . . justification and limits in the statute [they] regulate[d]." 2 S.J.F. (App. 1917-1988) at 2559, quoted in Jorge R. Tayabas, Derecho Constitucional Aplicado a la Especialización en Amparo 125 (1993). Note, however, that the President may not use his regulatory authority to expand the scope of the law or to modify the statute. Id. at 2555, quoted in Tayabas, supra, at 125.

5. See generally MGEL.

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Under Mexican environmental policy, federal, state and municipal governments may have concurrent jurisdiction in some subject matter areas. However, federal authorities have jurisdiction over all subject matter that has a national impact or is of national interest. Furthermore, MGEL expressly places hazardous substance regulation under the federal government's jurisdiction.

The application and enforcement of MGEL is principally the jurisdiction of the Ministry of Environment, Natural Resources and Fishing (MENRF). MGEL provides to MENRF a diverse set of tools, described infra, through which environmental policy may be implemented and enforced, including both preventive and corrective measures.

While the goals of general preventive environmental policy must be established every six years by each incoming presidential administration, the specific instruments through which these goals may be attained are established by MGEL itself and are therefore permanent. The most important of these instruments are environmental planning, approval of environmental impact statements, establishment of environmental technical norms, and conservation and protection of natural areas.

In contrast, corrective environmental policy is implemented with other tools established by MGEL to enforce environmental law. These tools include inspections of facilities and business records, emergency measures, administrative sanctions, and criminal penalties. Note that civil liability is not considered a tool of corrective policy, although civil remedies may be available.

These tools for establishing preventive environmental law and policy constitute the core of MGEL. A brief description of each of these tools follows.

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7. MGEL arts. 4(I), 5(X), 5(XIX).
8. Id. arts. 143, 150-53; but see R-MGEL art. 2.
12. Id.
13. Id.
A. Planning

As noted above, environmental policy begins with environmental planning. Overall administrative planning is done every six years; each incoming President must present to Congress a "national development plan" within the first six months of taking office. This Plan is integrated with the "sectorial programs" which are formed under the joint participation of administrative ministries, called Secretarías, members, and public interest groups. While a generic procedural law regulates the mechanisms for developing the National Plan of Development in general terms for all areas, MGEL explicitly makes environmental planning a policy of Mexico and prescribes its objectives.

B. Environmental Impact

Another important tool of preventive environmental policy is the environmental impact statement. First utilized by the United States, the environmental impact assessment has existed in Mexican law since 1982 and is currently a fundamental part of preventive environmental law and regulation. MGEL requires that when either public entities or private parties conduct an environmental impact assessment, they must first express to MENRF their intent to initiate a regulated activity and to ensure that the proposed activity is in compliance with applicable regulations. After the interested party completes these steps, MENRF must either authorize or deny permission for the proposed activity.

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15. NPL arts. 12, 20-23; see also MGEL arts. 157-59; CONST. art. 26.
17. MGEL arts. 17-18, 157-58; see BRAÑES, supra note 11, at 174.
18. Section 102(c) of the National Environmental Policy Act (NEPA) requires all federal agencies to include in each proposal for governmental action an evaluation of its environmental impact. Pub. L. No. 91-190, § 102(c), 83 Stat. 853 (1970); see BRAÑES, supra note 11, at 178.
19. MGEL arts. 28-35; see also R-MGEL art. 11 (establishing specific requirements for submitting an environmental impact statement for approval).
20. MGEL art. 32. Article 33 of MGEL also provides that the confidentiality of trade secrets will be maintained while in the possession of an agency if requested.
21. MGEL arts. 28, 34.
C. Environmental Norms

As stated above, Mexico's present policy, not only in environmental law but in most areas of highly technical subject matter, is for the executive branch to issue, implement, and enforce specific regulations to achieve the legislative purpose. While FLMN prescribes the framework for issuing such specific standards (Official Norms), MGEL expressly regulates the substantive content of environmental Official Norms.

The Ministry of Commerce and Industrial Promotion (SECOFI) is charged with execution of the general aspects of FLMN. Articles 38-56 of FLMN establish the process SECOFI must use for developing minimum quality standards for domestic and imported goods, services, and manufacturing processes. SECOFI has the additional duty of managing national and international inventories of such regulations. Given the breadth of this scheme, each Ministry is forced to intervene in standard development processes affecting goods or services within its jurisdiction; therefore, MENRF will participate in the development of environmental Official Norms.

FLMN article 40(I), which is applicable to hazardous substances, states that the purpose of an Official Norm is to "establish the characteristics and/or specifications that products [and] processes must meet when these may constitute a risk to the safety of individuals or to human, animal, plant health, or to working conditions, the general environment or the preservation of natural resources," as well as to verify compliance with the Norm. FLMN also provides that an Official Norm must effectively identify the product, service, or process that it regulates; provide methods to verify compliance; regulate minimum labeling requirements; and, list any parallel international norms.

22. Norms also regulate workplace standards, car emission standards, building and construction standards, and product labeling standards. See generally LEY FEDERAL SOBRE METROLOGÍA Y NORMALIZACIÓN (FLMN) art. 40; D.O., July 1, 1992.
23. MGEL arts. 36-37; FLMN art. 41. MGEL, which was issued prior to FLMN, refers to these norms as "Technical Ecological Standards." FLMN requires re-publication of these norms under the name of "Official Mexican Norms."
24. FLMN arts. 38-56.
25. FLMN art. 39(II).
26. FLMN arts. 38(II), 43.
27. FLMN art. 40(VI).
regulations and research sources required to develop and issue the Norm. 28

The procedure for issuing Official Norms has three stages. In the first stage, a technical commission must be created to develop the project of the proposed Norm or Norms. 29 This technical commission is comprised of technicians appointed by representatives of various groups, including the governing Ministry, the interested industries and the independent researchers. 30 Once this project is ready, it is published in Diario Oficial de la Federación, after which, for a period of 90 days, any interested parties may present their comments and observations to SECOFI. 31 These comments must be reviewed by the technical commission and responses thereto published in the Diario Oficial de la Federación prior to promulgation of the final version of the Official Norm. The final version of the Official Norm must be approved within 45 days of the end of the initial 90 day public comment period. 32

Compliance with Official Norms is achieved by requiring the manufacturers or operators whose products, services, or processes are the object of the Official Norm to monitor quality control. 33 Reports of such monitoring must also be presented to the governing Ministry on a regular basis. 34 Furthermore, the governing Ministry must periodically inspect and verify the compliance of sites and products, and may do so at its discretion at any time. 35 Administrative sanctions, such as fines, plant closures, and administrative arrests, are also established. 36

FLMN's regulatory framework is complemented by MGEL's dispositions governing environmental Official Norms. These Norms, which MGEL labels Technical Ecological Standards, 37 must comply with FLMN and pursue two purposes. First, they must determine which activities are subject to environmental regulations, as well as

28. FLMN art. 41.

29. FLMN art. 44.

30. FLMN art. 62.

31. FLMN art. 47.

32. FLMN art. 47.

33. FLMN art. 56.

34. FLMN art. 88.

35. FLMN art. 91.

36. FLMN art. 112; see also LEY GENERAL DE SALUD (GHL) art. 416 (11th ed. Editorial Porrúa 1994); MGEL art. 171.

37. See supra note 23.
the appropriate compliance standards and procedures thereunder. Second, they must attain uniformity in environmental policy and regulation. In general terms, the standard is very broad indeed: "The technical ecological standards shall determine the parameters within which necessary conditions are guaranteed for the well-being of the population and to ensure conservation and restoration of ecological balance and protection of the environment."  

A similar rule in FLMN requires that Norms be issued with the purpose of protecting, preserving, and promoting the environment. MGEL article 37 appears to add some specificity to these mandates by establishing that activities and services releasing emissions that cause ecological unbalance or damage to the environment or the public must observe the limits and procedures established in technical ecological standards.

In addition to dealing with environmental Official Norms, MGEL also contains a specific provision for hazardous substance Official Norms:

Pesticides, fertilizers and toxic substances shall remain subject to the official Mexican standards issued jointly by [MENRF and other ministries], so as to avoid causing ecological imbalances. The executive regulation to this Law shall establish, in the same joint manner, the rules that must be complied with by activities relating to said substances or products, including the final disposal of their waste, empty packagings and containers; measures for avoiding adverse effects on the ecosystems, and the administrative procedures for granting the pertinent authorizations.

38. BRAÑES, supra note 11, at 196.  
39. MGEL art. 36.  
40. FLMN art. 40(X).  
41. Article 37 of MGEL is in fact redundant. It simply repeats the effects of all Official Norms regardless of the nature of the regulated activity; it does not expressly require Official Norms to regulate the listed activities. Hence, if article 37 is intended to require federal government regulation of the matters described, that intent should be explicit. A more effective provision could read as follows:

Technical Ecological Standards must be issued [within a certain time span] for those activities and services which cause effluents, emissions, discharges, or deposits which cause or may cause ecological imbalance or damage to the environment, natural resources, health, or welfare of the population, the property of public domain or private property, norms which must clearly establish the limits and procedures required to meet the standards set by the applicable norms.

Because even this provision would still allow substantial agency discretion, this type of rule should be complemented with institutions such as citizens suits, as a means of granting police-like powers to affected interest groups. For discussion of this issue, see Part IV, infra.

42. MGEL art. 143.
However, the practical reality is that such standards give Mexican authorities considerable discretion in establishing the required "parameters." Unless a clear violation of these standards or an abuse of discretion is proven, it is highly unlikely that Mexican courts would strike down the administrative regulation.

II. REGULATION OF HAZARDOUS SUBSTANCES UNDER MGEL

The Mexican legal system treats different types of hazardous substances differently. For example, toxic substances, pesticides and fertilizers, highly dangerous activities, and hazardous materials and wastes are all regulated separately. In this framework, industrial waste is legally considered Mexico's largest source of soil contamination, while toxic substances, pesticides and fertilizers, and hazardous materials and wastes, are together considered the greatest threat to ecological balance.

Toxic substances, pesticides, and fertilizers are governed by the LEY GENERAL DE SALUD of 1984 (GHL) and its complementary executive regulation of 1988 (R-GHL). MGEL refers to these materials only briefly. MGEL provisions instead regulate highly dangerous activities and govern hazardous materials and waste, and are characterized by showing a strong emphasis in regulating export-import operations of these substances. R-MGEL refers exclusively to

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In certain legislation, however, the U.S. Congress has enacted precise statutory language, thus restricting agency discretion. See, e.g., Toxic Substances Control Act (TSCA) § 201, 42 U.S.C. §§ 2642(3), (4) ("Asbestos Hazard Emergency Response" provisions). As discussed in section III, infra, such restrictions have yet to be established in Mexico.

44. MGEL refers only to "waste" (residuo). However, defined by MGEL, the term "industrial waste" is "any material generated in processes of extraction, mining, transformation, production, consumption, utilization, control or treatment, the quality of which does not allow it to be used again in the process that generated that material." MGEL art. 3(XXVI).

45. MGEL arts. 134(II-IV), 143-145, 152.

hazardous "waste" and contains no references to hazardous "materi-
als."47

A. Toxic Substances, Pesticides, and Fertilizers

In general, hazardous substances are not regulated by MGEL, but
by the GHL and its executive regulation. GHL does not define
hazardous substances; it only requires the Health Ministry to list
substances which present "a hazard or constitute a risk to human
health."48 However, R-GHL does provide some guidance. It
establishes that a substance constitutes a risk to health when "upon
entry to the human body, it produces physical, chemical or biological
alterations, which harm human health either immediately or mediate-
ly, temporarily or permanently, or that produce death."49

In contrast, GHL expressly defines pesticides and fertilizers.
Pesticides are defined as "any substance or mixture of substances used
to prevent, destroy, repel or mitigate any form of life that is noxious
to health, property or the environment, except that which exists on or
in human beings and the protozoarians, virus, bacteria, mushrooms
and other similar microorganisms on or in animals."50 Fertilizers are
defined as "any substance or mixture of substances that is destined to
improve the growth and productivity of plants."51 Although GHL
briefly regulates the three categories together,52 its executive
regulation refers exclusively to toxic substances.53 It can be assumed,
however, that these rules are also applicable to pesticides and
fertilizers in the cases where they qualify as hazardous materials. In
the interest of clarity, however, the remainder of this Note refers to
toxic substances only.

Under the current regulatory scheme, both the Ministry of Health
and MENRF are given responsibility for establishing the maximum
permissible levels of human exposure to toxic substances, whether
directly or through their presence in air, water, or food.54 The
Ministries are required to set standards for both general population

47. See generally R-MGEL arts. 7-42.
48. GHL art. 278(III). Compare with TSCA § 2604(e).
49. R-GHL art. 1215.
50. GHL art. 278(I). Compare with FIFRA § 136(u).
51. GHL art. 278(II).
52. GHL art. 279(I).
53. GHL art. 1215.
54. R-GHL art. 1219.
exposures and occupational exposures. The standards must regulate the means of monitoring exposure levels, with the burden of monitoring and record-keeping falling on the operators of regulated facilities.

Regarding occupational health standards, R-GHL requires employers to conduct periodic medical monitoring of employees who are exposed to listed substances and to provide employees with the results of this monitoring. In addition, employers must supply employees with individual protective equipment as specified by the Ministry of Health.

B. Highly Dangerous Activities

MGEL does not specify what activities are legally considered "highly dangerous," but it does charge the executive branch, acting through MENRF, to publish a list of such activities in the Diario Oficial. Although not all dangerous activities are related to hazardous substances, hazardous waste management was one of the first activities listed.

Before placing any particular activity on the "dangerous activities" list, MENRF must first receive the opinions of relevant ministries. Furthermore, MENRF must determine the areas where zoning for hazardous activities is appropriate. However, because zoning and urban planning are typically municipal or state activities, MENRF may only promote the implementation of its determinations. A complementary disposition involving the same limitations is article

55. R-GHL art. 1220(I).
56. R-GHL art. 1220(IV).
57. R-GHL art. 1224. Both the Ministry of Health and MENRF may supervise and/or inspect such regulated facilities and levy administrative sanctions as a means of enforcement of this record-keeping duty. GHL arts. 396-401; MGEL arts. 161-69. Administrative sanctions, such as fines and facility closures, are also available. GHL art. 416; MGEL arts. 171-75. The imposition of harsh sanctions can reduce the potential for fraudulent record-keeping. However, the fact that compliance audits are severely limited by a dearth of resources makes the development of institutions such as the citizen suit critical for Mexican environmental law.
58. R-GHL arts. 1220(VII), 1226. This rule may not sufficiently protect human health. Medical monitoring is important not only during but also after occupational exposure, especially in cases of continuous, extended periods of exposure.
60. MGEL art. 146.
62. MGEL art. 146.
63. MGEL art. 145.
1233 of R-GHL, which requires the Ministry of Health to promote the limited use of land for industrial establishments that handle hazardous substances or dispose of hazardous waste. These rules serve a valuable ‘consultation’ function because the Ministries have access to beneficial technical information that states or municipalities may lack.

Facilities that carry out “dangerous activities” also become the subjects of specific administrative obligations. For example, without prejudice of the applicability of other regulations issued pursuant to MGEL, facilities conducting dangerous activities are subjected to a special type of norm, referred to as Technical Safety and Operating Standards. These facilities must incorporate in their processes the equipment and installations mandated by such standards. Furthermore, they may operate only after having presented for approval an accident prevention program that seeks to avoid incidents leading to environmental harm.

C. Hazardous Material and Waste

MGEL jointly regulates “hazardous materials and waste” in the same chapter. Hazardous wastes are defined as “all those wastes, in whatever physical state, which, because of their corrosive, toxic, poisonous, reactive, explosive, flammable, biologically infectious, or irritating characteristics, represent a danger to the ecological equilibrium or the environment.” Article 1216 of R-GHL further defines hazardous waste as “products, resources, or byproducts with no further use in the industrial process, which retain active agents that

64. MGEL art. 147.
65. In contrast to noncompliance with Official Norms, noncompliance with Technical Safety and Operating Standards is considered a crime. Otherwise, these standards would be redundant insofar as they only reiterate FLMN and MGEL’s general provisions for Official Norms. Rather than creating a special type of norm, the same result could have been obtained with a provision specifically requiring Official Norms to cover processes and installations of facilities dealing with dangerous activities. Instead, article 183 of MGEL could refer to noncompliance with Official Norms issued pursuant to article 147 of MGEL. See FLMN arts. 41, 43-51; MGEL arts. 36, 37.
66. MGEL art. 147. If the Ministry does not approve the facility’s accident prevention program, the facility may not begin operations. Approval may be conditioned upon compliance with amendments proposed by the Ministry. However, facility operators may petition for reconsideration of a plan through a writ of nonconformity. If the plan is still not approved, the facility operator may sue the Ministry in a federal district court through a writ of amparo. See LEY DE AMPARO art. 114(II).
67. MGEL arts. 150-53. With the exception of article 151, these articles apply to “hazardous materials and waste.”
68. MGEL art. 3(XXVII).
represent a risk to human health." In contrast, however, no definition is given for "hazardous materials" in either statute.

As with hazardous activities, MGEL delegates to MENRF the task of determining what wastes are to be legally considered "hazardous to the ecological equilibrium." All such determinations must be published in the Diario Oficial. The initial listing of these wastes was published April 6, 1988.

Hazardous waste management practices are regulated by R-MGEL, which refers exclusively to hazardous waste but omits any reference to hazardous "materials." Any facility that intends to handle hazardous waste must obtain an authorization prior to commencing operation. Such a registration may be granted only upon a showing that the facility will implement a management training program for employees and a contingency plan for emergencies.

Although the specifics of hazardous waste management are also set by Official Norms, MGEL and R-MGEL establish certain independent guidelines for waste management and treatment. Facilities generating and/or managing hazardous waste must seek, through reasonable and appropriate means, to minimize the quantity and toxicity of each facility's hazardous waste to the extent possible.

All facilities that generate or manage hazardous waste are held accountable for the following: identifying all sources of solid and liquid waste within the facility; making an inventory of individual types and quantities of any such wastes generated by each source; and labeling sealed containers. Container labels must include the

69. R-GHL art. 1216.
70. R-GHL arts. 150, 152. MENRF must consult with the Ministry of Trade and Industrial Promotion, the Ministry of Energy, Mines and Industry, the Ministry of Agriculture and Hydraulic Resources, and the Ministry of Justice before making this determination.
71. Hazardous waste management practices are generally applicable to hazardous waste generators. See R-MGEL arts. 7, 8. One notable difference is that whereas a hazardous waste generator has to register with MENRF, a hazardous waste management facility must obtain authorization to operate. However, both must have approval of their environmental impact statements prior to commencing operations. R-GHL arts. 8(l), 11.
72. MGEL arts. 28, 29; R-MGEL art. 10. Any ambient or effluent discharges containing some element of hazardous waste also require permits. See REGLAMENTO DE LA LEY GENERAL DEL EQUILIBRIO ECOLÓGICO Y LA PROTECCIÓN AL AMBIENTE EN MATERIA DE PREVENCIÓN Y CONTROL DE LA CONTAMINACIÓN DE LA ATMOSFERA, art. 18 (2d ed. Ediciones Delma 1988); REGLAMENTO PARA LA PREVENCIÓN Y CONTROL DE LA CONTAMINACIÓN DE AGUAS, art. 8 (2d ed. Ediciones Delma 1988).
73. MGEL art. 147; R-MGEL art. 12.
74. R-MGEL arts. 21, 23-26.
facility's name, the source's name, what substance is in the container, the date the substance was placed in the container, and an individual identification code. Any on-site movement and transportation of individual waste must also be recorded.  

The R-MGEL also requires that all areas of a facility used to store hazardous waste be equipped with fire and spill-prevention devices. These safety measures must be calculated to provide for a margin of error at least equal to 120% of the quantity that is actually to be stored. As an additional safety measure, storage of incompatible wastes in the same area is prohibited. In case of a spill, infiltration, or discharge of hazardous waste, the generator or management firm must immediately inform MENRF of the accident, the measures taken, and the potential harm to the ecosystem, so that MENRF may take whatever remedial action is necessary.

Final disposal of hazardous waste is almost entirely regulated by Official Norms, although certain, very brief, guidelines are established in R-MGEL. In contrast with storage of hazardous waste, which is of a temporary nature (whether for further treatment and use, recollection or disposal), final disposal of hazardous waste is precisely meant to be final: any hazardous waste finally disposed may not be retrieved, unless such a substance was deposited temporarily in response to an emergency.

R-MGEL also establishes three general systems for final disposal of hazardous waste: (i) controlled confinements (constructions that guarantee definite isolation); (ii) confinement in stable geological formations that guarantee definite isolation; and (iii) agrochemical receptors. However, once MENRF determines that these systems are unfit for containment of substances because of the extreme hazard they represent, they must be disposed of in conformity with special Official Norms. The methods of localization, selection, design,
construction, and operation of final disposal sites are all determined by Official Norms.\textsuperscript{85}

Once the hazardous waste has been finally disposed of through any of the systems described above, the generator or the waste management firm must present a monthly report to MENRF with the following information: (i) the quantity, volume, and nature of the deposited hazardous waste; (ii) the date of the final disposal; (iii) the location of the final disposal site; and (iv) the type of system used for each category of hazardous waste.\textsuperscript{86}

D. \textit{Transboundary Movement of Hazardous Material and Waste}

Transboundary movement and disposal of hazardous material and waste represent two of the main concerns for Mexico, as well as for most other developing and less-industrialized countries. These priorities become especially clear when one considers that developed countries account for eighty-six per cent of the world's industry and developing countries only fourteen per cent.\textsuperscript{87}

Given this international interest in controlling the transnational movement of hazardous material and waste, it is not surprising that although MGEL grants the executive branch exclusive power to regulate hazardous substance exports and imports, MGEL does set forth some mandatory guidelines. These guidelines state that hazardous substances shall not be imported solely to be stored or dumped.\textsuperscript{88} Clearly, the goal is twofold: (i) that an industry specializing in the management and treatment of hazardous waste will be installed; and (ii) that Mexico will not become a dump site at the same time.\textsuperscript{89} In broad terms, the mandatory guidelines are the following:

(i) A requirement that hazardous waste materials and waste may only be imported for treatment, recycling, or reuse, through processes that comply with applicable law, regulations and norms. Conversely, importation of hazardous material, and waste is forbidden when the only purpose is their final disposal or deposit, without treatment.

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85. R-MGEL arts. 32-35.
86. R-MGEL art. 34.
87. \textsc{Brañes}, supra note 11, at 492 n.351.
88. MGEL art. 153(II), (III).
89. \textsc{Brañes}, supra note 11, at 498.
(ii) Transport of hazardous materials and/or wastes that do not meet the safety or quality standards of their country of origin, or are prohibited in their country of origin, is forbidden.

(iii) Traffic of hazardous material and waste through Mexico to other countries is permitted only when the receiving country has expressly consented. Likewise, the export of waste generated in Mexico is only permitted when the consent of the receiving country is provided.

(iv) Hazardous waste generated by the assembly industry, commonly known as maquiladoras, must be returned to the country of origin within the time limit set by MENRF.

(v) Insurance covering damages on either side of the border, or any other guarantee, must be bought or offered by the exporter or importer before MENRF may authorize the export or import of the materials.90

(vi) Article 54 of MGEL grants MENRF the discretionary power to deny entry to highly dangerous substances which would otherwise comply with the terms of MGEL and its Regulation, when it finds the risk to the environment generated by the waste is too great.

Authorizations already given by MENRF for the importation or exportation of hazardous materials and wastes may be revoked if the following occurs: (i) the materials or waste are subsequently proven to represent a greater hazard than taken into account at the time the authorization was given; (ii) the operation does not meet other guidelines set by MENRF; (iii) the hazardous materials no longer have the attributes or characteristics upon which authorization was based; or (iv) the petition for authorization contains false or misleading data.91

MGEL also expressly prohibits the importation of pesticides that are not approved for use in their country of origin.92 Hence, when U.S. pesticides that are not registered for use in the United States are manufactured for export, they may not be exported to Mexico.93

90. This guideline reflects the general principles of the Basel Convention on the Control of Transboundary Movement of Hazardous Waste and its Elimination of 1989 to which both Mexico and the United States are signers. For a brief overview of the Basel Convention, see Bñaes, supra note 11, at 499-501.

91. MGEL art. 153(VIII).

92. MGEL art. 144.

93. FIFRA § 136o.
III. ENFORCEMENT MECHANISMS

MGEL's enforcement scheme for its substantive requirements is comprised of the following instruments: inspection and supervision of facilities and business records, administrative sanctions (i.e., fines and closures), definition of crimes under MGEL and their correlative criminal sanctions, emergency measures, and "public denunciation," which is similar to citizen suit provisions in U.S. statutes. As mentioned supra, matters governed by MGEL are of a national and not strictly federal nature, so they are subject to jurisdiction by federal, state, and municipal governments. Under this scheme, however, the Mexican Congress expressly provided that the rules governing enforcement mechanisms are to be uniform; thus, state legislatures and municipal boards must incorporate them into their laws and ordinances. In the case of inspection and supervision of matters of federal jurisdiction, however, the federal government may delegate such administrative tasks to the state or municipal governments through compacts.

A. Inspection Proceedings/Procedure

MGEL's inspection and supervision procedure is the principle tool to verify compliance with its substantive regulations. This inspection procedure follows the typical approach found in Mexican administrative law. Inspectors must carry a written inspection order issued by the authority with jurisdiction, which (i) shows that the inspectors are duly authorized to carry out the inspection procedure, (ii) identifies the place or zone to be inspected, and (iii) states the purpose and scope of the proceeding. Prior to beginning their work, inspectors must identify themselves to the facility representative and provide him or her with a copy of the inspection order. The facility representative must then designate two witnesses who will be present along with the representative during the

94. MGEL art. 4.
95. MGEL art. 160.
96. MGEL art. 161.
97. See generally MGEL arts. 161-69.
99. MGEL art. 162.
inspection. If the representative fails to designate witnesses, or the witnesses refuse to accept the charge, the inspector is authorized to choose the witnesses. Regardless of which party ultimately names the witnesses, two witnesses must be present. Further, as long as the nomination procedure complies with MGEL, the procedure may not be challenged on the grounds that the subjects of the inspection did not select the witnesses.100

A record of the procedure must be made and signed by the inspectors, the inspected party, and the witnesses, but only after the inspected party has been given the right to add any declaration it deems appropriate for the protection of its rights. Failure of the inspected party or the witnesses to sign the record shall not invalidate the record.101

The inspected party must provide all information requested unless such information is protected under the Industrial Property Law. If the inspected party so requests and a judicial order does not require otherwise, information disclosed pursuant to inspection is confidential.102 Should the inspected party oppose or obstruct the procedure, the inspecting authority may request police assistance in carrying out the inspection.103

Upon receipt of the record by the authority that ordered the inspection proceeding, such authority will order the inspected party to immediately adopt any corrective measures of urgent need. In such an order, the inspected party shall also be granted a ten-day period in which to present in writing a brief referring to the inspection proceeding, alleging what the party deems to be necessary for the protection of its rights, and offering pertinent evidence.104 Once the inspected party has been heard and his or her evidence entered, or once that party's right to present the brief has ended, the authority shall have thirty days in which to notify the inspected party of the resulting administrative order.105

Any resulting order must detail the measures to be taken by the inspected party to correct the deficiencies or irregularities that were detected in the inspection, the term given the inspected party in which

100. MGEL art. 163.
101. MGEL art. 164.
102. MGEL art. 165.
103. MGEL art. 166.
104. MGEL art. 167.
105. MGEL art. 168.
to comply, and any applicable administrative sanctions.\textsuperscript{106} Within five days of the termination of the term granted for compliance, the inspected party must present proof of compliance in writing to the requiring authority. The inspecting authority shall also notify, when appropriate, the corresponding government attorney's office of any acts or omissions potentially constituting a crime for their subsequent prosecution.\textsuperscript{107} However, the inspected party may challenge the resulting administrative order within the fifteen days after having been notified through a writ of inconformity.\textsuperscript{108} This writ and subsequent judicial review are discussed \textit{infra}.

B. \textit{Emergency Measures}

MGEL authorizes MENRF to implement emergency safety measures whenever an imminent risk of ecological unbalance or of contamination with dangerous consequences for ecosystems, their parts, or the public health occurs.\textsuperscript{109} Among the emergency measures available are seizing hazardous substances and closing facilities which produce hazardous substances.\textsuperscript{110} In addition, MENRF or other Ministries may implement safety measures authorized by other legislation for specific situations. An important example is issuance of emergency Official Norms pursuant to FLMN. No public comment period is required under this procedure, and the emergency Official Norm may remain in place for up to six months with one renewal period of six more months.\textsuperscript{111}

\begin{itemize}
\item \textsuperscript{106} MGEL art. 169.
\item \textsuperscript{107} MGEL art. 169.
\item \textsuperscript{108} MGEL art. 176.
\item \textsuperscript{109} MGEL art. 170.
\item \textsuperscript{110} MGEL arts. 167, 170. \textit{Compare with} FIFRA §§ 136f, 136g (recordkeeping requirements and facility inspections); TSCA § 2610 (inspections and subpoenas); and \textit{Comprehensive Environmental Response, Compensation and Liability Act} (CERCLA), § 104(e)(3), 42 U.S.C.A. § 9604(e)(3) (West Supp. 1994) (governmental officer entry into establishments, vessels or facilities).
\item \textsuperscript{111} FLMN art. 48. For an Emergency Official Norm to remain in effect beyond two six-month periods, it must be reissued as an ordinary Official Norm. \textit{Compare with} FIFRA § 136d(1), (3) (suspension orders); CERCLA § 9604(h) (presidential emergency procurement powers). Judicial remedies are also afforded the Environmental Protection Agency in TSCA § 2606 (action to seek seizure and relief to avoid imminent hazard) and in RCRA § 6973 (administrator's authority during imminent hazard and sanctions for imminent hazard violations).
\end{itemize}
C. *Administrative Sanctions*

MGEL does not establish specific sanctions for specific infractions. Rather, it authorizes a number of measures through which non-compliance may be sanctioned: (i) monetary fines ranging from twenty to twenty-thousand days of the general minimum wage in force in the Federal District (Mexico City) at the time the fine is imposed; (ii) temporary and permanent facility closures; and (iii) administrative arrest for as much as 36 hours.\(^{112}\) Also, when the severity of non-compliance so justifies, the authority may seek the suspension, revocation or cancellation of the concession, permit, license or any authorization granted for the commercial or industrial activities or services which led to violation.\(^{113}\) When imposing a sanction, MGEL requires the sanctioning authority to consider (i) the gravity of the non-compliance, (ii) the economic situation of the infractor, and (iii) any possible re-occurrences.\(^{114}\)

D. *Criminal Sanctions*

With the exception of flagrant crimes, as defined in MGEL, in order for the Federal Attorney’s Office to prosecute crimes established by MGEL, MENRF must first make a denunciation.\(^{115}\) Any activity defined as dangerous by MGEL and carried out in violation of MGEL or of the Technical Safety & Operating Standards, discussed *supra*, or any activity regarding hazardous substances or waste carried out in violation of MGEL, which harms the public health, flora, fauna or ecosystems, or their elements, is considered a federal crime and is punishable by fines and imprisonment from three months to nine years.\(^{116}\) Whenever the substances involved are

\(^{112}\) MGEL art. 171.

\(^{113}\) MGEL art. 172. *Compare* MGEL art. 172 (license suspensions, revocations, and cancellations) *with* FIFRA § 1361(a) (civil penalties) and CERCLA § 9609 (civil penalties and awards).

\(^{114}\) MGEL art. 173.

\(^{115}\) MGEL art. 182.

\(^{116}\) MGEL arts. 183-84. For examples of other environmental crimes, see MGEL arts. 182, 185-87.
toxic or highly dangerous,\textsuperscript{117} fines based on minimum wage amounts and imprisonment from one to eight years may also be imposed.\textsuperscript{118}

E. Public Denunciation

In 1988, MGEL introduced the "public denunciation" to the Mexican legal system, which bears some similarity to citizen suit provisions in U.S. statutes. Public denunciation gives any person the opportunity to inform the appropriate governmental authority of any act or omission that violates provisions of MGEL or other environmental regulations.\textsuperscript{119} Upon presentation of the denunciation, which must include the name and address of the denouncer and the information that will permit the localization of the source, MENRF shall inform the denounced source or potentially affected parties of the denunciation and take the necessary steps to verify the denunciation.\textsuperscript{120} Within fifteen days of the denunciation, MENRF must report to the denouncer what actions have been taken pursuant to the denunciation and the results thereof.\textsuperscript{121} Although public denunciation has received praise from commentators and has been effective at times, critics have argued that it is merely a petition provision and not an actual lawsuit.\textsuperscript{122}

Another criticism has arisen from contrasting public denunciation with U.S. citizen suits. Citizen suit provisions in U.S. statutes usually address two situations: (i) civil actions against any person, including governmental bodies, who fails to comply with provisions of the statute; and (ii) civil actions against the administrator of an agency to compel performance mandated by the statute.\textsuperscript{123} At present, public denunciation only allows for the first situation without express reference to governmental entities; thus, MENRF could shield itself

\textsuperscript{117} Compare the language used in GHL art. 278 (including "pesticides and fertilizers" expressly as toxic substances) with the language used in GHL art. 456 (applying generally to "toxic and dangerous substances").

\textsuperscript{118} GHL art. 456.

\textsuperscript{119} MGEL art. 189.

\textsuperscript{120} MGEL arts. 190-92.

\textsuperscript{121} MGEL arts. 190-92.

\textsuperscript{122} BRAÑES, supra note 11, at 224, 618. In environmental matters, the denunciation may be viewed as a specific mechanism for petitioning the government. CONST. art. 8. From this perspective, public denunciation can be used to challenge the denial of a petition by arguing that the denounced conduct does not directly affect or interest the denouncer and by forcing the government to verify the occurrence of violations.

\textsuperscript{123} Compare with the citizen suit provisions contained in TSCA § 2620; RCRA § 6972; and Clean Water Act (CWA) § 505, 33 U.S.C. § 1365 (1988).
behind a narrow interpretation of MGEL when a party seeks a
denunciation to carry out a pending, non-discretionary duty mandated
by MGEL.

The current formulation of public denunciation receives the
harshest criticism for its failure to provide any binding legal ef-
fects—that is, it has no teeth. While litigation is not necessarily the
most efficient substitute for sound regulation, it may serve as an
important complement. This is especially true where the human and
material shortcomings of a bureaucratic body limit the effective reach
of its acts of supervision, inspection, and enforcement, as well as in
cases of “agency capture” or corruption.

However, it should be noted that because of Mexico’s legal
tradition and its generalized rejection of institutions that carry the
potential of spawning litigation, any legislation allowing actual citizen
suits should clearly define the scope of these suits, such as what
person or entity has standing to sue or when agency action or inaction
is sufficiently “ripe” to be litigated, and what acts of authority may or
may not be objects of such litigation.

Any implementation should also borrow from the United States’
experience with citizen suits. For example, while “non-discretionary
duty” seems to be a straight-forward standard, it has led to much
litigation. Furthermore, citizen suits in the United States have not
escaped criticism: critics contend that such suits have forced the
Environmental Protection Agency to take hasty and ill-considered
action, have required the premature enforcement of controversial
measures provoking “backlash” against the environmental movement,
and have caused the Agency’s priorities to be unduly influenced by
environmental groups.

124. See MENELL & STEWART, supra note 1, at 226.
125. See Environmental Defense Fund v. Thomas, 870 F.2d 892 (2d Cir. 1989), cert. denied
126. MENELL & STEWART, supra note 1, at 835. The constitutionality of citizen suit
provisions is also at issue. In the United States, the debate over a comparable institution has
focused on the standing requirement since the U.S. Supreme Court has required an “injury in
fact” to constitute a “case or controversy” under article III of the Constitution. See Lujan v.

In Mexico, implementation of citizen suits would encounter similar constitutional obstacles.
The Mexican Constitution also refers to “controversies,” arts. 103, 104, and, in actions brought
by private parties against the government, to “injured party,” art. 107(1). “An injured party . . .
is anybody who suffers a direct lesion in their legal interests, in their person or in their
patrimony, by any law or act of authority, in trial or out of trial.” 70 S.J.F.5a 2276 (1955),
F. Administrative Defenses

As a last note, private parties affected by acts of MENRF under MGEL or of the Ministry of Health under GHL may petition for reconsideration, with a right to enter evidence and a hearing “by presenting a writ of nonconformity before said authorities within the fifteen days following the notification of the challenged act, or the equivalent writ before the local authorities.”127 If upon reconsideration the result remains adverse to the private parties’ interests, that party may pursue further administrative litigation by suing the government in a Federal District Court, through a writ of amparo,128 within fifteen days of notification of those results.129 Parties to such litigation may petition for review of the District Court’s judgment by a three-member Federal Circuit Court as a matter of right.130

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127. MGEL arts. 176-81; GHL arts. 438-45. On June 1, 1995, FLAP will implement the “writ of revocation” which can be used to oppose most federal agency actions; it will replace the “writ of nonconformity.” See FLAP arts. 1, 83.

128. Article 107 of the Mexican Constitution and the LEY DE AMPARO provide the structure of an amparo action. Amparo, which means “shelter,” is a legal action to oppose governmental actions. Laws may be challenged as unconstitutional; administrative acts and final judgments of state courts of last resort and some federal courts may be challenged on due process grounds if other remedies are exhausted. CONST. art. 107(III), (IV), (VII). Federal Courts have jurisdiction over this type of litigation. CONST. arts. 103(V)-(VII), 107(V), (VII), (VIII).

129. LEY DE AMPARO arts. 21, 114(II).

130. Id. art. 83(IV).
IV. TOXIC TORTS

MGEL does not regulate civil liability arising from the generation or handling of hazardous substances. However, the Civil Code for the Federal District, as revised in 1994, establishes rules which may serve as a legal basis of claims for reparations or damages from an entity possessing or misusing hazardous substances. These rules include the concepts of liability for the commission of illicit acts; strict liability for the possession or use of dangerous objects; joint and several liability; indivisibility of harm; statute of limitations; and causation. As has proven to be the case in the United States, these rules may not be adequate in all situations and could require complementary legislation. This section will first describe these rules and then make critical comments regarding their application to toxic torts.

A. Liability From Illicit Acts

As the general rule for extra-contractual liability, C.C.D.F. considers that "he who acting illegally or against good custom causes damage to another, is obliged to repair it, unless he proves that the damage occurred in consequence of the fault or inexplicable negligence of the victim." Mexican doctrine and jurisprudence have consistently characterized such liability as the product of three elements: fault (lack of fulfillment of an obligation), harm, and the causal link between the two.

With regard to fault, where the harm results from a conduct which breaches the standards established in applicable Official Norms, the plaintiff's burden should be limited to proving the occurrence of the harm and that the non-compliance caused the harm. This analysis should apply only insofar as article 55 of FLMN makes such norms the relevant legal standard: "In civil, commercial or administrative..."
controversies, when the characteristics of goods and services are not otherwise specified, the judicial or administrative authorities shall take Official Norms as their reference in their resolutions.  

B. Strict Liability From Dangerous Objects

Alternatively, C.C.D.F. establishes strict liability for harm arising from the lawful use of dangerous mechanisms, apparatus, or substances that are either (i) inherently dangerous or (ii) dangerous because of their high velocity, explosiveness, inflammability, or use of electricity. A plaintiff need only prove harm and causation, in which case the defendant will be held liable even though he did not act illegally or negligently. When the plaintiff has met this burden, the defendant may avoid liability only by proving that the harm was caused by the victim’s “fault or inexcusable negligence.” The activities listed in C.C.D.F. that create such strict liability are complemented by article 1932, which refers to explosion of machinery or inflammation of explosive substances; emission of gases which are harmful to human health or property; exposure of deposits of infectious substances; and the accumulation of material which is harmful to health or which generates a harm. In contrast to illicit-acts liability, in which proof of compliance with relevant Official Norms may be offered as a defense, if a harm results from the use of dangerous objects, liability is strict.

C. Remedies

The legal consequence of generating a harm is regulated in article 1915, which establishes two possibilities: “The repair of the damage shall consist, at the election of the injured party, in the restoration of the status previously existing, when this is possible, or in the payment of [compensatory or actual] damages (daños) or [consequential and/or
expectation] losses (perjuicios)." However, to fully appreciate this disposition from a U.S. point of view, one must note that the concept of damages is much more narrow in Mexico than in U.S. common law.

With the express intent of avoiding claims for speculative damages and profligate litigation, C.C.D.F. limits damages to two types, and also requires that they be the direct and immediate consequence of the harmful act. The first type, actual damages, represents "the loss or deterioration suffered by property through failure to fulfill an obligation." The second type, compensatory damages, represents "compensation for the loss of any legal profit to which the party was entitled but did not receive as a consequence of the non-fulfillment of the obligation." The limits of these damages are clearly defined in article 2110, which states that "damages and losses must be the immediate and direct consequence of the failure to perform the obligation, whether they have already been caused or will necessarily be caused." Much litigation has arisen out of the limitations imposed by this rule. However, the courts have consistently denied an interpretation that goes beyond the immediacy and directness of any damages sought. It should also be noted that no exemplary or punitive damages may be claimed.

Preventive remedies may also be sought through an institution similar to an injunction in the United States, the *interdictos.* These consist of the civil actions that possessors of real property have against those who trespass or that generate a nontrespassory nuisance. The effects are to prevent despoilation, restitute possession, or enjoin the acts leading to the nontrespassory nuisance. However, these are vintage instruments of civil law that expressly apply to nuisances associated with dangerous "works," and acts that despoil, or tend to despoil, possession of property. Thus, their application to the toxic

141. C.C.D.F. art. 1915.
142. C.C.D.F. art. 2108.
143. C.C.D.F. art. 2109.
144. Article 1915 of C.C.D.F. also establishes the basis for determining actual and compensatory damages for personal injuries, disability and death. Additionally, article 1916 authorizes a claim for moral damages if disfiguration results. Moral damages, which are additional to compensatory damages, are determined by the trial judge. Unlike U.S. tort law, the victim and defendant's economic situations are taken into account.
146. The term "works" has been interpreted to mean construction sites, but could also include industrial processes.
tort concept may be difficult and their usefulness may be limited to those cases in which the use and enjoyment of possessions is clearly impeded.

D. Joint and Several Liability

Lastly, but still relevant to toxic tort litigation, the C.C.D.F. expressly lays down rules for joint and several liability and for indivisibility of the harm. When a number of persons have caused one harm, whether indivisible or not, they shall be joint and severally liable to the harmed person.\(^{147}\) Consequently, all available remedies may be claimed from any one or all of the joint and several tortfeasors. The relationship between joint and several tortfeasors is controlled by article 1999 of C.C.D.F. which establishes the following rules:

(i) A joint and several tortfeasor who covers the damages owed or complies with the remedy demanded, shall have the right to sue the other tortfeasors for contributory damages.
(ii) Unless otherwise agreed to, the joint and several tortfeasors are liable for equal parts.\(^{148}\)
(iii) Should one of the tortfeasors become insolvent, this portion of liability shall be proportionately distributed among the other tortfeasors, including those whom the harmed party had already released from liability.

V. THE PRESENT LIMITS OF TOXIC TORTS IN MEXICO

As is the case in the United States, the pursuit of toxic tort litigation would test the limits of Mexican laws allowing such lawsuits. This section briefly addresses three areas where this would be especially true: causation, statutes of limitation, and collective or “mass” torts.

A. Causation

Unless a harm caused by a hazardous substance is immediate and direct, the Mexican doctrine of causation severely limits actions seeking reparation of gradual harm resulting from such substances. This causation doctrine is derived from article 2110 of C.C.D.F.,


\(^{148}\) This rule contrasts with the common law rule of divisibility of harm. By apportioning liability according to each defendant’s degree of liability, the common law rule would seem to reach more equitable results. This is especially true in cases involving CERCLA liability. See SCHROEDER & PERCIVAL, supra note 3, at 195.
discussed *supra*, and states that actual damages and consequential and/or expectation damages must be the *immediate and direct consequence* of the lack of fulfillment of the obligation, whether they have already been caused or will necessarily be caused.¹⁴⁹ This creates the same two problems found in U.S. common law: proving that the plaintiff has actually been exposed to the defendant's toxic or hazardous substance, and, more importantly, that such exposure has caused the plaintiff's harm.¹⁵⁰

The limits of actual and expectation damages and immediate and direct causation become especially clear when considering the "novel remedies" that have begun to surface, with varying degrees of success, in U.S. common law, such as emotional distress, medical monitoring, or enhanced risk.¹⁵¹ Regarding the last two of these concepts, the direct nature of damages recoverable under Mexican Law and the strict causation requirement of Mexican Civil Law make recuperation under these concepts practically impossible, as they refer only to mediate and indirect situations which *may* arise out of exposure. This is true even if physical harm is proven as a basis for actual damages. Mental distress, or mental pain and suffering, on the other hand, could perhaps be claimed as an actual damage, arising directly out of exposure. However, any such claim would be unlikely to succeed if not joined with an action for actual material damages.

B. *Statute of Limitations*

A two-year statute of limitations for this type of claim begins on the day the harms were *caused*,¹⁵² although there is a ten-year statute of limitations for civil actions which arise from the commission of a crime.¹⁵³ The two-year statute of limitations is not problematic when exposure causes immediately detectable harms. However, it may preclude damage suits when harms become apparent only after


¹⁵². C.C.D.F. art. 1934.

a latency period of two or more years.\textsuperscript{154} Toxic tort litigants in the United States have faced similar problems.\textsuperscript{155}

C. \textit{Mass Torts}

Class actions have not been instituted in Mexico.\textsuperscript{156} However, when a large number of people have been aggrieved by one source, a possible procedural strategy involves formation of a plaintiffs' association so that all plaintiffs sue jointly and designate the association as their legal representative. Of course, such associations do not preclude other parties from claiming damages on their own behalf.

VI. \textbf{RECOMMENDATIONS AND CONCLUSIONS}

While the main purpose of this Note has been to outline the rules of Mexican law governing hazardous substances, a few critical comments and recommendations are appropriate in conclusion. The general framework of Mexican environmental law, as applied to the regulation of hazardous substances, offers a functional administrative structure. However, the author believes that improvement is possible, especially in the following areas.

First, the legal standards governing further regulation of hazardous substances should go beyond setting the content of Official Norms and should also clearly establish a threshold of risk that would mandate regulation of substances meeting that threshold within a certain time-span.

Second, these and the other legal standards of Mexican environmental law should be complemented with "enforcement-forcing," if not action-forcing, mechanisms contained within a citizen suit provision. This provision would facilitate enforcement that has not been carried out, whether due to error, oversight, agency capture, or corruption. Administrative class actions should also be considered for cases where agency action or inaction aggrieves a large number of people.

Finally, the rules governing liability at civil law generally prove too inflexible to accommodate the area of toxic torts. Because of the legislative process that governs the creation of a law in a civil law

\textsuperscript{154} Only a very liberal construction of article 1934 would allow tolling of the statute of limitations during the latency period of a disease.

\textsuperscript{155} \textit{See MENELL \& STEWART, supra} note 1, at 723.

\textsuperscript{156} \textit{But see LEY DE AMPARO} art. 57(II) (allowing consolidation of plaintiffs' actions against governmental entities).
system and the tradition of conservative and methodical interpreta-
tion, the Mexican Courts are not equipped to deal with the creation
of new remedies. Furthermore, because the many sectors of Mexican
society are traditionally litigation-averse, further specialized civil
liability legislation may be required. Such legislation would require
establishing express causes of action, raising presumptions as to
causation or tolling of statutes of limitation until the harm is
discovered. Class action suits should be implemented in both civil
and administrative courts to facilitate litigation involving a large
number of plaintiffs.

157. From a policy perspective, however, these steps alone would be insufficient. First, an
overall assessment of Mexico's hazardous substance problem is needed. This would entail
determining which types of remedies are appropriate for the Mexican legal system. In any case,
specific causes of action are needed to more clearly define the amorphous concept of a toxic
tort.

158. Implementation of class actions would first require considerable input from the Mexican
Bar and public interest groups. Gradual implementation in certain areas, such as consumer and
securities fraud, toxic torts, and antitrust litigation, could evolve into a more general class action
scheme. As the case has been with Mexican antitrust law, the United States' rules and
jurisprudence could provide a flexible model for adaption to the Mexican procedural framework.
See Joshua A. Newberg, Comment, Mexico's New Competition Law: Toward the Development
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