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INTRODUCTION

Again, we CILA 2013 Congress meets in the city of Lisbon, to feel united in the same desire to be part of the events occurring at the environmental and climate change in the world.

The issue before us, particularly the Mercosur Group, is the responsibility for environmental damage, one of the most modern materials in the legislation of each of the countries in the region.

The purpose of this review is to situate and introduce the reader to analyze the progress of environmental law, in this particular case in Argentina. The emphasis has been especially constitutional and political progress of state and a cursory knowledge of the specific laws regarding the environment.

Under constitutional provisions, has been developed in recent decades the legislative process aimed at environmental legislation itself. This process has resulted invariably in the enactment of general laws or framework laws that have influenced the development of environmental law.

Finally, as participants in this new session of the Committee on Climate Change, we must not forget one of the conclusions of the Rio +20 Summit 2012, entitled: "The future we want", that is a message of hope to unite our efforts jointly and make the action of each is the foundation to address the changes that are coming to us and future generations.

EXECUTIVE SUMMARY

In Chapter I develop the progress of Environmental Law of Argentina, the most relevant constitutional amendments, and environmental law.

At the same time, try alternative instruments assurance mechanisms and the amendments made by the executive and the Superintendence of National Insurance on compulsory insurance of liability for environmental damage and Collective Advocacy Mandatory Insurance Surety.

In Chapter II the situation develops environmental regulations of the Federal Republic of Brazil, the existing mandatory environmental insurance policies and related matters. Furthermore reference is made to the risk factors considered relevant for the selection as a tool to secure the prevention of environmental damage.

In Chapter III, referring to civil liability regime applied to the Environmental Law Collective, the existing action to seek redress against the damage caused by an accident. At the same time, it develops the rules applied to the Environment. Chapter IV, environmental regulations is developed, the system of Environmental Impact Assessment and the competence of the environmental authority.

Finally reference is made to the provision of guarantees for environmental remediation.

CHAPTER I

REPUBLIC OF ARGENTINA

by Mary Kavanagh

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Introduction

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Executive Summary

Research work on Responsibility and Environmental Damage in Argentina, is structured in four chapters.

Chapter I, develops the basics of matter. The concept of environmental damage, its characteristics, the principles of interpretation, ending with Court rulings.

Chapter II, begins with the concept of environmental damage, its purpose, the sources said. It takes place in the same legal framework, the Principles of Environmental Policy., Environmental Impact Assessment. Finally is the Environmental Education and Environmental Information.

Chapter III develops the responsibility for environmental damage, the powers of judges and jurisdiction. Mention of insurance, guarantees and funds subsequently treated in extenso. In the same chapter, mention is made of the main management rules on the various environmental issues.

Chapter IV deals with the historical background of environmental law, its evolution. Then place the focus of the research, the Environmental Damage Liability, Environmental Security and State Responsibility

CHAPTER I

ENVIRONMENTAL DAMAGE

In addressing the issue of environmental damage, we must consider that the environmental damage is the loss, damage or change in the terms chemical, physical or biological flora and fauna, landscape, soil, subsoil, water, air or the structure and functioning of ecosystems. While the effect on the integrity of the person, without consent is introducing into the human body of one or more pollutants, the combination or derivation thereof resulting directly or indirectly from exposure to materials or wastes and liberation, discharge waste, infiltration or illegal incorporation of these materials or wastes into the atmosphere, water, soil, subsoil and groundwater friáticos or any means or natural element.

Concept

The concept of environmental damage varies according to the notion of environment is attained and adopted. Taking a limited notion, as it identifies the environment with the natural heritage or natural resources, or even some authors as Ramón Martín Mateo describing the notion of ambient or environmental law in the protection of goods natural, air and water that are essential to the existence of man on earth, who think that the ground is subject to other discipline as the overall management of territorial or urban law. Moreover Jorge Bustamante Alsina defines environmental damage as ecological damage, which falls on the natural heritage properties, ie natural resources, which affect the water, soil, wildlife and outdoor. At the same time if we adopt a broader notion of environment, one that includes the landscape, or cultural heritage is to be able to frame both the damage to the environment and natural resources, even to resources of cultural qualify collective assets and property and damage to the ecological balance within the concept of environmental damage.

Indirect Civil Environmental DamageIs a person who suffers on itself (your body, your health, your physical and mental) or on their assets (their property, real property or livestock) through an element of the environment in a state of degradation. We call this damage "indirect" because it assumes the pre-existence to existence of a direct damage something in the environment.

Direct collective environmental damage 2

This is the damage that occurs on some element of the environment, irrespective of whether it will lead to damage to a person or their property. We call it dispenses direct configuration

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1-The liability for environmental damage. Dr. Nestor Cafferatta
2-1st Day of Environmental Outreach and its recent regulation. Dr. Mariana Valls

From the point of view of time, environmental damage can be classified as continuous, permanent or progressive, ongoing damage is one that is for damage there someone or individually. The LGA, Article 27 defines it as "any significant alteration that adversely modify the environment, resources, balance of ecosystems goods or collective values."

CHARACTERISTICS OF ENVIRONMENTAL DAMAGE

As Dr. Nestor exposes Cafferatta, environmental aggression may be scattered, diffuse, shifting, translational, nomadic, traveling, hardly containable, traveler, mutant, disconcerting, without geographic, temporal, personal or potentially expansive multiplier sometimes with retardatorio effects, progressive, cumulative, synergistic, invisible, silent, deadly or highly risky, explosive or toxic, degrading, capable of causing in its development path or multiple damages, supra-individual and / or individual, or extra-patrimonial involvement health rights or personal rights and / or co-participation, insignificant or small to outright disasters or unpredictable effects havoc.

Environmental damage is diffuse, not only by the difficulty of identifying the agents that cause it, but also by the determination of the subjects who are entitled to take legal action before the courts or administrative authorities as well as those who can reach a possible compensation.
Moreover, environmental damage can become Expansive, your event type creates negative effects and sometimes these do become new generating causes other damage inflicting on a string that could be endless, thus affecting a multiplicity of resources. Environmental damage can also be, concentrate or spread, the first is the kind of damage which is easily identifiable source derived from a discrete or continuous event, while the spread or diffuse damage occurs when there is a multiplicity of sources producing the damage, geographically scattered, with their identification and individualization of great difficulty.

From the point of view of time, environmental damage can be classified as continuous, permanent or progressive, ongoing damage is that which is the product of a long process time and therefore its development is not a result of a single action localizable in time, but only the work of a set or series of cases, the same or more authors in different periods. If the effects of environmental damage continue in time we would be permanent damage. Meanwhile most progressive damage is that which is the product of a series of successive acts, whose conjugation causes a greater harm than the sum of each individual damage generated by each wrongful act. **3**

PRINCIPLES OF INTERPRETATION OF ENVIRONMENTAL DAMAGE [4]
The environmental policy principles recognized by Article 4 of the General Environmental Law (LGA).

ARTICLE 4. - The interpretation and application of this Act, and any other rules through which environmental policy is executed, shall be subject to compliance with the following principles:
Matching Principle: The provincial and municipal laws relating to environmental matters should be suited to the principles and rules laid down in this Act, if it be not so, it will prevail over any other provision that conflicts.

Precautionary principle: The causes and sources of environmental problems will be addressed as a priority and integrated, trying to prevent negative effects on the environment may occur.

Precautionary principle: Where there are threats of serious or irreversible absence of information or scientific certainty should not be used as a reason for postponing cost-effective measures, at cost, to prevent environmental degradation.
Intergenerational equity principle: Those responsible for environmental protection should ensure the proper use and enjoyment of the environment by the present and future generations.
Progressive principle: Environmental objectives should be achieved gradually, through interim and final targets, projected on a temporary schedule that facilitates the adaptation for activities related to those goals.

Principle of Responsibility: The generator degrading environmental effects, present or future, is responsible for the costs of preventive and corrective actions of recomposition, without prejudice to the validity of the environmental liability systems that apply.

Principle of subsidiarity: The State, through the various levels of government, has the duty to cooperate and, if necessary, participate in a complementary manner in the actions of individuals in the preservation and environmental protection.

Principle of sustainability: economic and social development and utilization of natural resources shall be through proper management of the environment, in a manner that does not compromise the potential of present and future generations.

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3 - Environmental damage and prescription. Msc Mario Peña Chacón

Principle of solidarity: The Nation and the provincial will be responsible for the prevention and mitigation of adverse transboundary environmental effects of their own

actions, as well as minimizing environmental risks on shared ecological systems. Principle of Cooperation: Natural resources and ecological systems are shared equitably and used rationally. Treatment and mitigation of environmental emergencies transboundary effects will be developed jointly.

JURISPRUDENCE

Surface Mining. Permit to Operate. Using toxic chemicals. Arbitrary judgment. Analysis of the court that granted the appeal. Protection

Buenos Aires, March 29, 2011.

Acts

A group of residents of the town of Tilcara, Jujuy Province, promoted protective action against the local state in order to order the administrative authority having jurisdiction Humahuaca Mines Administrative Court, which, on the one hand, refrain from granting any permit prospecting, exploration or mining or open pit, in any of its processes, using chemicals such as cyanide, mercury, sulfuric acid, uranium and other toxic substances like, and, on the other , to revoke the permissions granted or pending. Also, as a precautionary measure requested the suspension orders prospecting and exploration of minerals made by the company "South Uranium SA".

Issues Presented

Actors amparo founded on the precepts deduced by the second paragraph of Article 41 of the CN and the precautionary principle established by the General Environmental Law. First Instance

Administrative Court of Mines

The Administrative Tribunal of the local state, rejected the protection action on the grounds that the plaintiffs had not established the possibility that the damage claimed was caused Decision of the Superior Court of Justice

The Superior Court of the Province of Jujuy, to hear the constitutional challenge brought by arbitrariness by actors, reversed the judgment of the Administrative Court of the local state, the superior court, having found that in processing the cause had committed a serious irregularity which violated the rights of defense of a party entitled, ordered the transfer of the case to the court of origin for that, having been given notice of the company "South

Uranium SA" and giving him the right of demonstrate that the activity for which authorization offered sought not a risk to the environment (pages 4/80), was issued a new ruling according to law.

That against that ruling, the Province of Jujuy and the actors brought extraordinary federal resources respectively, in which the parties invoked the presence of a federal question exclusively set on the basis of the doctrine of this Court on arbitrary judgments. The Superior Court granted the extraordinary resources provincial deduction merely stating that "... since it is, the question of a final judgment rendered by the court last or the cause, that resources were presented at the end, the question introduced and sustained federal form and that the subject proposal is typical of the power conferred on the Supreme Court of Justice of the Nation, and valuing above all, the importance of the matter and the interests involved, we feel that the resources should be granted. "

That this Court has had occasion to declare, emphatically and repeatedly, the nullity of resolutions that were granted extra resources where it has found that those did not give satisfaction to a suitable condition for obtaining the purpose for which it was intended (Art. 169, second paragraph, of CPCCN of R. 535. XL VI. Appeal of unconstitutionality filed in the record. No. B-193 302/08 (Administrative Court) innovative injunction: Leaño, Julia R. and others v . provincial government. Nation 310:2122 and 310:2306 Faults, 315:1589, 323:1247, 330:4090, 331:2301, 333:360, among many others).

That this is the situation that takes place in the sub lite, on the grounds that the Local Court failed to rule categorically and circumstantially (with all giblets, without omission or special circumstances, as defined by the Royal Academy) on enforcement of substantial and essential requirements of the special appeal, which are, in the case of the collection, the presence of a final judgment of a federal question and the nature invoked by the appellants. Indeed, in situations substantially similar to that examined in sub lite, this Court has stated that while it rests solely judged on whether or not a case of arbitrary judgment (Faults 215:199), not less True, this does not relieve the courts called to issued on the grant of extraordinary appeal, to resolve such appeal circumstantially if prima facie-valued-account for each one of the grievances that give rise to reasonable grounds to give support to light of known doctrine of this Court, invoking an exceptional case of unequivocal, as is the arbitrary (Judgments 310:1014, 313:934, 317:1321, 323:1247, 325:2319, 329: 4279, 331:1906, 333:360, among others).

The basis of these precedents is based on that followed an opposite orientation, the Court should-admit that saw its extraordinary jurisdiction is in principle authorized or denied without reasons to endorse either result in violation a clear prejudice the right of defense of the litigants and the proper administration of justice of the Court. Therefore, declaring the nullity of the resolution on pages. 138/139. Devuélvanse

proceedings the court of origin to the issuance of a new decision point under the present. Notifíquese and refer.

Ricardo L. Lorenzetti. - Elena I. Highton de Nolasco. - John C. Maqueda. - E. Raúl Zaffaroni.

Mendoza, Silvia Beatriz and others v National State and other damages Perjucios on July 8, 2008

Acts

Mrs. Silvia Beatriz Mendoza and others filed suit in the Supreme Court against the Federal Government, the Province of Buenos Aires, the city government of Buenos Aires and against 44 companies. Against the authorities, by the powers of regulation and control, by having the original ownership on natural resources for their jurisdiction over the island formations surrounding its shores and for failure to comply with existing environmental regulations; against neighboring businesses by hazardous waste dump in the river, not to build treatment plants, not to adopt new technology and that with its industrial, polluted river basin Matanza-Riachuelo. Therefore, to compensate damages claimed compensation in money.

Issues Presented

The actors started their petition under Article 75, paragraphs 10 and 13 respectively of the Constitution Argentina, in Articles 121 and 124 of the Basic Law and mentioned in Article 81 of the Constitution of the Autonomous City of Buenos Aires.

Jurisdiction

Supreme Court of the Nation

Decision of the Supreme Court

The Supreme Court's Office was issued determining the responsibility rests with the Federal Government, the Province of Buenos Aires and the city of Buenos Aires in the prevention and repair the existing Environmental Damage in the Basin.

CHAPTER II

ENVIRONMENTAL LAW

OBJECT

The Environmental Law aims at the creation, modification, transformation and extinction of legal relations that affect the enjoyment, preservation and improvement of the environment.

SOURCES [4]

The sources of environmental law are the same as those of positive law, for being the one included in this.

The sources can be classified as formal or material Doctrine. The source materials are the facts, needs, conflicts highlight the failure of existing legislation or the lack of regulation of the same. Moreover environmental regulation draws on the contributions of legal and non-legal disciplines, such as chemistry, physics, natural sciences, mathematics and statistics. Formal sources, however, are those mechanisms by which positive law occurs. Among them we can mention the law, custom, case law and doctrine.
Doctrine is not mandatory source, because it is the unanimous opinion of the scholars of the law.
Jurisprudence is the concurring opinion of the judges, which resolve similar cases in the same direction. When the case is maintained over time, given the interpretation of a particular legal text must be taken into account, since the courts usually follow each other's opinion. In case there are contradictory statements in similar cases tried in courts of one province or district court, then the Court of Appeals

Corresponding to unify proceed by fixing a bug Whole necessarily the sense that the law should be interpreted. These are mandatory for trial judges.
The custom is egalitarian social behavior in a sense, that has the characteristic that those who believe conduct is legally binding. In International Environmental Law, some principles have acquired the force of habit.

Finally the most important source of formal sources of law, the law. Call it the "rule of law of general social issued by competent authority" may be such law in the formal sense or in

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4-www.legislación-ambiental.com. Approaches to the notion of environmental law in the concert of contemporary legal science

a material sense. In a formal sense, the only laws adopted by the Congress after the process provided for in the Constitution, national or provincial. In a material sense, are all those laws that match the definition in the preceding lines. Thus, the laws are executive decrees, resolutions of the various levels of government, judicial decisions, taken individually, and contracts for the signatories

In terms of content, we have among us on minimum standards and regulations. While these categories are not exclusive to environmental issues, the constitutional reform of 1994 included both categories referring to our subject, in the third paragraph of Article 41. On minimum standards are those which, as its name implies, not governing the matter, it is only in general terms, deferring to its regulations applicable jurisdictions. According to another part of the Doctrine, environmental standards can be classified as follows:

a. -Organizational, are those that are responsible for regulating the environmental administration and functions.

b. -In technical-environmental protection; those concerned to legislate legal technical means of protection that work as incentives, sanctions or have dilatory effects, as the eco label, taxes and tradable permits.

c. -Regulating the intervention area, specifically those that are environmental, ie, the application object is strictly environment.

d. - Standards leader, General.

Legal framework 5

The Environmental Law in Argentina consists of the rules governing natural resources, activities and effects that man done to modify them to obtain cultural resources, as well as waste generated from this transformation .

The scheme of minimum standards for environmental protection after the reform of the Constitution in 1994 provided an opportunity to organize environmental regulations. Article 41 of the Constitution has established a new system of environmental competencies by providing that "The Nation shall regulate containing minimum of protection and the provinces those necessary to reinforce them, without altering their local jurisdictions ..." (3rd paragraph Article 41 CN).

The doctrine has not always interpreted as matching the concept of minimum and the change introduced by the constitutional reform: To Guido S. Tawil, this is a substantial change to the scheme has invested previously in force.

According to Felipe Gonzalez Arzac, reform has innovated to devote a specific scheme of distribution of powers for environmental protection in this area and institute a method of sharing news to the Constitution of Argentina.

Daniel Sabsay, in a note on Article 4, points to the difficulty of defining the scope of the delegation who have made the provinces of powers from the 1994 reform.
The scenario interpretive doctrinal level is dissimilar in the scope of minimum budgets and powers assigned enshrined in the Constitution.

The majority opinion finds that the National Congress is competent to dictate minimum legislation, defining clearly and precisely in the field of complementary competence or remnant that corresponds to the provinces. addressing not only issues of law or substantive background, but also administrative law, procedural law.
It must be pointed out that the environmental protection regime, which primarily should establish such rules state, national or federal should revolve around the idea of responsibility. Posting guidelines efficient precaution, prevention, recomposition, penalty damages, repression, criminal regime, to protect the environment.
The National Congress in a framework of fairness and loyalty will identify federal rules containing the minimum protection to leave the provinces latitude to dictate complementary rules.

Regulatory powers of the Executive

The Constitution assigns to "The Nation" the authority to issue rules on minimum environmental protection not only covers the legislative powers of Congress, but also the regulatory authority of the executive branch.

For his part, the Executive, if any express reference in the laws on minimum sanctioned by Congress, can develop specific aspects of these laws to confer self to common environmental protection, defining, subject to patterns of environmental policy established by law, the necessary conditions to ensure environmental protection throughout the country.

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5 - Minimum Standards for Environmental Protection. Hazardous Waste. Adhesion and minimal budgets Where we are and how we continue. Nonna Silvia.
With regard to the content of the rules on minimum environmental protection, shared the position that maintains the mixed, hybrid of these standards. The provisions can be located in both public law and private law, addressing not only issues of law or substantive background, but also administrative law, procedural law.

It must be pointed out that the environmental protection regime, which primarily should establish such rules state, national or federal should revolve around the idea of responsibility. Posting guidelines efficient precaution, prevention, recomposition, penalty damages, repression, criminal regime, to protect the environment.
The National Congress in a framework of fairness and loyalty will identify federal rules containing the minimum protection to leave the provinces latitude to dictate complementary rules.
The executive branch has the exclusive authority to issue the regulations needed to implement the laws of the nation, without altering its spirit with regulatory exceptions and reads Article 99, subsection 2 of the Constitution: "issues the instructions and regulations necessary for the execution of the laws of the nation, without altering its spirit with regulatory exceptions. "

The implementing regulation issued by the National Executive, as they do not alter the spirit of the law regulating, will have the same effect that the law, as is standard secondary or sublegal and shall apply throughout the Nation.

Moreover, the areas subject to national jurisdiction, which refers to Article 75 Clause 30 of the Constitution, when he says: "To exercise exclusive legislation in the territory of the capital of the nation and enact the legislation necessary for the compliance with the specific purposes of national utility facilities in the territory of the Republic. Provincial and municipal authorities retain police powers and imposition of such facilities, while not interfering with the fulfillment of those purposes. "

With respect to local jurisdictions have regulatory powers to complete the laws on minimum environmental protection and to prescribe such regulations as are necessary for the implementation of national laws on minimum and respective complementary. The provinces and municipalities, according to the provincial government may exercise in what has been called the doctrine "maximizing complementarity", ie additional prescriptive laws on minimum environmental protection is necessary to fulfill them.

Complementary to the Standards referred to in Article 41 of the Constitution, the laws, decrees, resolutions, and ordinances of local nature which dictate to ensure the operability of the national law.

Moreover, it should be understood that in the case that restrictive local regulations exist that a law on minimum, these must conform to it.

LAWS ON MINIMUN ENVIRONMENTAL PROTECTION.

Argentina, owns the tort system most developed in Latin America, environmental responsibility is strictly regulated by Law 25,676 General Environmental Law. This rule makes the national environmental policy and provides the basic institutional

structure which must be organized, sanctioned, interpreted and applied in specific provisions. Sets clear objectives, guiding principles and priority contains and outlines national environmental policy instruments. At the same time, raises the participation of the community and civil society in the decision-making processes.

Moreover, it is a priority that the Federal Environmental System provided by law, which aims to coordinate environmental policy and natural context which is the Federal Environment Council which also acquires a significant role in the implementation of most of the tools established by law.

Act 25675 is a framework law whose provisions must comply with specific standards. Meanwhile the provinces must also respect the budgets set by national law, must implement all its provisions and should set everything necessary to ensure implementation of the standard developing institutions and procedures designed to ensure this. Prices from

The standard establishes the minimum budget concept referred to in Article 41 of the Constitution, is to understand that "any rule which grants or common environmental protection throughout the country and aims to impose conditions to ensure environmental protection" .

Completes the concept that the rule establishing minimum budget should provide in its content "the conditions necessary to ensure the dynamics of ecological systems, maintain its capacity and generally ensure environmental preservation and sustainable development. Legally protected

The legally protected by law is the Environment, considered in its broadest sense, based on sustainable management, preservation and protection of biological diversity and the effective implementation of sustainable development.

The objectives of the national environmental policy:

a) Ensure the preservation, conservation, restoration and enhancement of the quality of environmental resources, both natural and cultural, in the conduct of the various human

activities.

b) To promote the improvement of the quality of life for present and future generations, as a priority.

c) To promote social participation in decision making processes.

d) To promote the rational and sustainable use of natural resources.

e) Maintain balance and dynamics of ecological systems.

f) Ensure the conservation of biodiversity.

g) Prevent any harmful or dangerous to human activities on the environment generated to enable ecological sustainability, economic and social development.

h) To promote changes in social values and behaviors that enable sustainable development through environmental education, both in the formal and the non-formal.

i) Organize and integrate environmental information and ensure free access of the population itself.

j) To establish a federal system of interjurisdictional coordination for the implementation of environmental policies at national and regional levels.

k) Establish procedures and mechanisms to minimize environmental risks, prevention and mitigation of environmental emergencies and for the rebuilding of the damage caused by environmental pollution.

Principles of environmental policy

The inclusion of guiding principles is a remarkable advance, because they must conform to any specific environmental legislation.

The different levels have ruled the obligation to ensure compliance with these principles integration into all decisions and activities.

They are principles of national environmental policy:

Matching principle: This principle states that provincial and municipal laws relating to environmental matters should be suited to the principles and rules laid down in the law, which takes precedence over any other provision that conflicts. Precautionary principle: The causes and sources of environmental problems will be addressed as a priority and integrated, trying to prevent negative effects on the environment may occur.

Precautionary principle: Where there are threats of serious or irreversible absence of information or scientific certainty should not be used as a reason for postponing cost-effective measures, at cost, to prevent environmental degradation.

Importantly, the prevention and precautionary principles, upon application, although they are similar, the difference between the two lies in that for precautionary not essential that there is sufficient scientific certainty the mere possibility of occurrence to deploy necessary measures to prevent degrading effects.

Progressive principle: Environmental objectives should be achieved gradually, through interim and final targets, projected on a temporary schedule that facilitates the adaptation for activities related to those goals.

Intergenerational equity principle: Those responsible for environmental protection should ensure the proper use and enjoyment of the environment by the show, and future generations. Principle closely linked to the concept of "sustainable development". Principle of sustainability: economic and social development and utilization of natural resources shall be through proper management of the environment, without compromising the possibilities of present and future generations.

Principle of subsidiarity: The State, through the various levels of government, has an obligation to cooperate and, if necessary, participate in a complementary manner in the actions of individuals in the preservation and environmental protection. Principle of solidarity: The Nation and the provincial governments are responsible for the prevention and mitigation of adverse transboundary environmental effects of their own actions, and the minimization of environmental risks on shared ecological systems. Principle of Cooperation: Natural resources and ecological systems will be used shared

equitably and rationally, treatment and mitigation of environmental emergencies transboundary effects will be developed jointly.

Moreover, the law states which are the instruments or tools to determine the objectives of the national environmental policy.

The instruments listed are:

a. Environmental planning

b. Environmental Impact Assessment

c. Control system on the development of human activities

d. Environmental Equation

e. Diagnostic System and Environmental Information

f. Economic System of promoting sustainable development

Environmental planning

Through COFEMA, considering the coordination of interests of different sectors of society both among themselves and in the public and through interjurisdictional coordination between each other municipalities, provinces and municipalities, provinces among themselves and with the Nation must develop a overall operating structure Nation territory. The aim is to ensure the environmentally sound use of environmental resources and production enabling maximum use of ecosystems. Degradation and ensuring minimal wastage. This L promoting social participation.

Environmental Impact Assessment

The Act defines an EIA as a written document and the Environmental Impact Assessment as a process.

The environmental impact studies should contain a detailed description of the work project or activity to be performed, identifying the consequences of such work or activity may cause on the environment and actions to mitigate identified as negative. The competent authority shall analyze the statement to be issued through an environmental impact statement.

Environmental Education

The standard defines environmental education as "the basic tool to generate values, values, behaviors and attitudes according to a balanced environment, tending to the preservation of natural resources and their sustainable use and improve quality of life the population. " The respective authorities in coordination with the Federal Council on the Environment and the Federal Council of Culture and Education are required to organize and implement plans and programs of formal and non-formal education.

Environmental Information

Environmental information is a principle enshrined in the Constitution in Article 41 and in the specific standard of minimum 25,831 Public Information Act on Environment to which we refer in the following points.

In regards national environmental information, the law provides that the enforcement authority Secretariat of Environment and Sustainable Development, to develop an integrated national system to manage environmental information available. At the same time expected by COFEMA established mechanisms for the effective implementation of a data collection system on basic environmental parameters.

On the other hand the authorities are responsible for providing information on the state of the environment and the potential effects it can have on human activities. Pro Finally, under the executive power once a year submit to Parliament a report on the environmental situation in the country.

Autogestión

Competent authorities have the function of establishing measures to promote and encourage self-management.

Citizenship

Citizen participation is a theme that is reflected in the Environment Act, stating that everyone has a say in the decision-making processes and in the second instance to access to justice regarding environmental damage incidence collective.

CHAPTER III

Environmental Damage

The General Environmental standard, a special chapter to the issue of collective impact environmental damage. The Environmental Damage Act defines as any relevant alteration that adversely modify the environment, resources, balance of ecosystems goods or collective values.

Unlike Law environmental damage per se harm to individuals through the environment. This distinction is critical when analyzing the elements and characteristics that define the two types of damage. In the case of damage to the environment, we find damage to the environment, either through alteration or destruction, which affects the quality of life of individual living beings, their ecosystems and the components of the concept of environment.

Collective responsibility for environmental damage

The standard refers to the responsibility of establishing collective environmental damage they cause environmental damage who is responsible for the restoration of the environment objectively to the state before the damage occurred. Since it is not always technically possible to restore the previous state in general is rare, the law provides for replacement compensation as determined by the judge involved. The above compensation shall be deposited into the compensation fund, fund created by law which is administered by local authorities.

The "a priori" responsible shall be absolved of liability if it can prove that despite having taken all measures to avoid the damage and without negligence, the damage was caused by

exclusive fault of the victim or of a third party who does not must respond.

Legitimation

The Environment Act determines who can initiate actions on the identified environmental damage by the Constitution: the affected party, the Ombudsman and non-governmental associations.

At the same time, broad legitimacy to power to provincial and municipal National States and the survivor as a person directly affected by the damage occurred in their jurisdiction. While broad standing, the standing supported by procedural law has a limitation in that deduced demand collective environmental damage by any of the legitimate, the rest I can not bring action, which nevertheless retains the right to intervene as third. Moreover, the application of a hablita to anyone for precautionary cessation of activities causing environmental damage group.

As for passive standing to those who participated in the commission of the collective environmental damage and several liability is sitting in the repair of damage to society. The same applies in case you can not determine the extent of damage contributed by each.

Powers of judges

The rule authorizes judges to order measures necessary to sort, test drive or harmful acts. Allowing mediated also be ordered emergency in any state of the process and as a precautionary measure and without application of a party. However, the rule provides that bail should be paid for damages that may occur perjucicios.

In "determine alleged violation of law 24.051 (Hazardous Waste Act), Octavio Felici and Felici Nicholas-cause 4565 -. The Federal Chamber of San Martin, Ward I, on June 14, 2005 said: "... Environmental law requires active participation of the judge, which should translate into a preventive act according to the nature of the rights concerned and as far their requirements, it is the duty of the judiciary despelgar those means that are necessary to prevent the harm feared or to neutralize or reduce as far as possible the consequences that may occur with their settlement ... "

The judicial pronouncements on environmental matters are essential in order to interpret the facts of reality in constant change, applying the substantive law and while respecting the

three basic principles of all the rule of law, the legality, the reasonableness and legal certainty.

The General Environmental Law, brings the tools of judges and raises the need for specific expertise and provides that process may be added to opinions issued by state agencies on environmental damage giving probative value, retaining the right parts challenge those reports.

Moreover, the Act provides that the judgment will have res judicata effect and "erga omnes" unless action is rejected by evidentiary issues. It should be mentioned that in addition to the classic reparative role of Judge, highlights the importance of the new preventive role that points to environmental enforcement.

Jurisdiction

The Act provides that corresponds postribunales application to local ordinary. In those cases in which the action or omission occurring situation raised jurisdictional involvement either involved resources or the environment as an integral concept.

It is the rule and the exception that the Supreme Court of Justice of the Nation has maintained. In the "Rock, Magdalena against the Province of Buenos Aires on Unconstitutional" the Supreme Court upheld the primacy of the local jurisdiction, noting that it relates to environmental protection is "provincial law itself" Local public law and competition authorities local.

Moreover in the case "LITSA Coastal Transmission Lines SA against Corrientes Province declaratory action is over ", in the judgment of November 18, 1999, the Supreme Court of Justice of the Nation, held in connection with the consideration of the police power of the province ... the rule rather than the exception is the existence of shared jurisdiction between the federal government and the provinces, so that the rules should be interpreted so that unfold harmoniously avoiding interference or friction could increase the powers of the central government at the expense of the powers and vice versa, but without losing sight of the provinces, given their position in the constitutional scheme, must observe a behavior that does not interfere directly or indirectly with the satisfaction of national public interest services. The environmental police should not escape all the conditions required concurrent power, that is, not to be incompatible with national pursued should prevail.

While in the case "LUBRICENTRO BELGRANO", the Supreme Court of Justice of the Nation February 15, 2000, said that "justice is competent local ... by not showing some of the exceptions listed in Article 1 of the law 24,051-(Conditions of the generation, handling, transportation, treatment and disposal of hazardous waste) nevertheless treated hazardous waste to be included in the category Y-9 Annex I of the Act, should be considered applicable provincial law 11,720 (Special Waste), under the provisions of Article 41 of the Constitution, which delimits the competition between the nation and provinces, whereas assignment of powers to the Federal Government can alter local jurisdictions. Regarding environmental damage and Act 25675 Article 32 called "environmental jurisdiction", as independent civil and criminal, also hold the ordinary rules of competition, not admitting any restrictions or access to species jurisdiction. The standard at this point indicates a specialized environmental courts still there.

Insurance, Guarantees and Wallpapers (6)

Decree 1638/2012

Mandatory Environmental Insurance Regulation under Article 22 of the General Environmental Law No. 25,675

Through Decree 1638/2012 the Government amended and repealed part of Mandatory Environmental Insurance System (ODS) that complements mandated by Article 41 of the Constitution Act 25675 and Regulatory. By Article 11, the new regulation explicitly repeal the resolutions of the Ministry of Environment and Sustainable Development (SAYDS) 178/07 and the Ministry of Finance (SF) 12/07 and SAYDS 1873-1807 begin_of_the_skype_highlighting 1873-1807 end_of_the_skype_highlighting and SF 98/07 and the Superintendent of Insurance of the Nation (SSN) 35168/10 and every rule that opposes the provisions of the recently published.

By Article 9 of Decree 1638 is created in the area of the headquarters of the Scientific Environmental Risk Assessment, as advisory bodies and technical assistance on environmental risk.

Compete to the Superintendent of Insurance of the Nation, develop insurance plans for purposes of complying with the provisions of Article 22 of the General Law of the Environment and the Chief of Ministers establish and periodically review the categories of risky activities, the categorization of industries and service activities. Moreover, the insurer must submit Initial Environmental Study Situation (UPS) to relieve the risk and detect preexisting damage the obligation, in addition to observing the corresponding documentation for 10 years. The owner of the business must submit compulsorily the UPS to the competent authority, this presentation was an option before. Article 41 of the Constitution provides that all citizens enjoy the right to a healthy and balanced environment, suitable for human development in order that productive activities shall meet present needs without compromising those of future generations and have a duty to preserve. At the same time establishes the priority, environmental damage the obligation to repair, as provided by law, and which corresponds to the Nation shall regulate containing minimum of protection and the provinces those necessary to reinforce, which cause the environmental damage will be strictly liable for its restoration to its pre-production. The legislature considered that upon the occurrence of incidents that create collective impact environmental damage, insurance is an appropriate response to address damaging events. Insurance Journal AAPAS

6-Argentina Association of Producers and Insurance Advisors XLIV Year No. 280-2012 begin_of_the_skype_highlighting 280-2012 end_of_the_skype_highlighting

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25,675 law in Article 22 provides that: "Every natural or legal person, public or private, to undertake risky activities on the environment, ecosystems and their elements constituent must purchase insurance with entity coverage sufficient to ensure financing the reconstruction of the damage therefore likely to be of a kind, as is also the

case and the possibilities, you can integrate an environmental restoration fund that enables the implementation of remedial action.

The environmental insurance required by Article 22 of Law 25,675 is to ensure the financing of the reconstruction of the environmental damage that required by Article 41 of the Constitution and Articles 27 to 33 of Law 25,675.

By Resolution No. 1398-1308

The Ministry of Environment and Sustainable Development defined the "Minimum Amount insurable sufficient entity" as the sum that ensures environmental damage recasting the collective incidence produced by a sinister pollutant.
It states that in order to comply with the provisions of Article 22 of Law 25,675, will be able to hire two types of insurance:

a) Surety for Environmental Damage Collective Advocacy

b) Liability Insurance for Environmental Damage Collective Advocacy

The covers have only to ensure the financing of the restructuring of collective advocacy environmental damage caused by accident, whether manifest as sudden or gradual, unless the restructuring is not technically feasible, in which case the compensation must be provided replacement.

For the purpose of the hedge is considered environmental damage configured collective advocacy when this involves an unacceptable risk to human health or the destruction of a natural resource or impairment abusive.

The Damage insurance for Environmental Advocacy, the cause that gave rise to the configuration of the incident should occur during the term of the policy.
In Damage Liability Insurance Environmental Advocacy Collective, shall be deemed covered damage or discovery whose first manifestation occurs during the policy period and notified to the insurer reliably during its term or the extended period of claim, at least shall be three (3) years from the end of the term of the policy.

Franchises authorized, shall not exceed ten (10) percent of the sum insured. In case of accident discovered that must be paid by the insurer can sue the owner of the insured risky activity.
In both types of insurance should include only those clauses limiting the risk that under asegurativa technique, prove essential to the nature of the risk.

Upon termination of the contracts, whatever the cause, must be duly notified in advance by the insurer to the competent environmental authority with thirty (30) days in advance. The insurer will charge, according to the evaluation criteria that are anticipated, the determination of the minimum insurable sufficient entity (MMA) to support the entity enough of the coverage required by Article 22 of Law 25,675.

The insurer must conduct a study of the Initial Environmental Status (UPS) to relieve the risk and detect preexisting damage. The documentation referred wing shall be retained by the insurer for a period of ten (10) years.

The study of the Initial Environmental Status (UPS) will consist of all the history, procedures and calculations used to determine the risk as levels of environmental complexity and the minimum insurable sufficient entity (MMA). In case of dissent on the Initial Environmental Status (UPS) will open an incident to establish that.
The holder of the risky activity in reliably communicate to the insurer within a period not exceeding three (3) days of its knowledge and competent environmental authority until the following business day, the first manifestation or discovery that may lead to damage collective environmental impact. The insurer will checks by staff and means available for that purpose, and must submit to the competent authority the conclusions it reaches. The environmental authority intimate damage the generator to submit a plan containing explicit indication Recomposition and breakdown of the tasks to be performed, deadlines and any other appropriate information element. The task of rebuilding will be authorized by the competent environmental authority, serving as established by regulations and the type of materials and site appropriate deal. Once approved restructuring tasks, the insurer shall make effective the sums of money needed to solve them, if the restructuring is not technically possible, must pay the replacement compensation limits under the insurance

contract.

Panel on Environmental Risk Assessment

This body of advice and technical assistance on environmental risks, will be responsible for the actions set out in Annex I:

a) Assist in the development of methodological guidelines and procedures for accrediting pair l state of the environment upon incorporation of financial security.

b) Draw up technical guidelines to help guide local jurisdictions, the judiciary and the private sector on risk assessment for environmental damage and the actions needed to stabilize and reduce the risk in accordance with the defined uses.
c) Advise and assist on environmental risks, restructuring, mitigation and compensation for environmental damage and financial mechanisms to meet their costs.
d) Develop and disseminate information capabilities for the prevention of environmental risks.
e) Research on implementation of environmental risk analysis and management systems such risks, on the execution of plans for remediation of environmental damage and the evolution of the market for financial guarantees in the environmental field.
f) Analyze adjustments and / or updates to the guidelines set forth in Article 2 of this decree.
g) Assist and advise on the design of the covers issued by the Superintendent of Insurance of the Nation.

h) Research for the Insurance of the Nation on the level of compliance with the obligations of insurers that sell environmental insurance.

i) Carry out any other activity or information exchange issues advisory matters governed by this Decree as may be assigned.

Federal System and Federal Ratification of Agreement (7)

The Environment Act establishes the Federal Environmental System, which should achieve sustainable development on the basis of consensus and harmonization necessary between the national government and the provincial governments.

The Federal Council on the Environment (COFEMA) has the key role in framing the proposals and coordination of actions in order to develop and make a real effective and implementable national environmental policy.

7- Minimum Standards for Environmental Protection. Hazardous Waste. Nonna Silvia

The coordinates COFEMA management strategies and regional programs in promoting environmental policies as a permanent agreement to operate with all sectors of the nation. Involved in the environmental issues.

Moreover under the executive power, to propose to the assembly COFEMA dictating resolutions or recommendations that foster the effective implementation of the laws on minimum, as well as the rules dictate complementary respective provinces and regulations.

PUBLIC INFORMATION LAW ENVIRONMENTAL 25,831 (8)

Article 1 of the cited standard establishes the minimum standards of environmental protection to ensure the right of access to environmental information that is held by the State finds it, both at the national, provincial and municipal governments of the Autonomous City of Buenos Aires, as well as independent agencies and public service providers.

The General Environmental Law No. 25,675 provides that every citizen may obtain from the authorities that manage environmental information and that is not legally considered as reserved, and the duty of enforcement authority to develop an integrated national information system that manages meaningful and relevant data and test environment available environmental information.

The Rio Declaration on Environment and Development, adopted n the framework of the United Nations Conference on Environment and Development in 1992, states that at the national level every person must have adequate access to environmental information that is held public authorities, including information on hazardous materials and activities in their communities locked and also emphasizes the responsibility of States to make information available to all.

The regulations of the above standard, appoints the Secretary of Environment and

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8 - www.ambiente.gov.ar - Secretariat of Environment and Sustainable Development

Sustainable Development and enforcement authority of Law No. 25,831. At the same time, in the field of National Enforcement Authority establishing the Office of Environmental Public Information.

Moreover establishing the National Offender Registration Public Information, which shall contain the data of officials and employees who violate the provisions of the Act and its regulations.

Article 1 defines the right of access to environmental information as the instance of public and citizen participation through which any person or entity, requires consultation of the authorities and get information that is not legally considered as reserved. Furthermore Article 2 states that "environmental public information is that which is related to environmental quality, which refers to the activities required to develop, regardless of the type of support that the documents. Are encompassed including:

a) Technical reports, opinions or files.

b) Plans, programs and strategies for the municipal, provincial, national or regional and international programs.

c) environmental permits, environmental fitness certificates, statements, guidelines and other similar administrative acts.

d) Documentation submitted, approved or rejected by the Administration on procedures Environmental Impact Assessment and its extensions, as well as Environmental Impact Statements issued.

e) Regulations

f) Environmental Indicators and statistics

g) Information on audits performed, monitoring, measurement, compliance with standards and benchmarks, and mediated events occurring adopted.

The information must be provided in the state you're in, the time of the application, not being obligated or compelled to classify process it.

It should be reiterated that the right to access to public information is based Environmental and settles constitutional right to a healthy and balanced environment.

LAW 25 670 MANAGEMENT AND DISPOSAL OF PCBS (9)

The law establishes a management plan aimed at removing the substance PCB (included in the Stockholm Convention as one of 12 persistent organic substances whose disposal must be signed by the countries according to an agreed timetable - approved by Law No. 23,922) and provides for the establishment of an Integrated National Register relieving the NPPs of the substance by the environmentally appropriate. Sets deadlines more meager disposal to those established in the Stockholm Convention for the same substance and qualitative limits established 50 ppm (parts per million) to determine if the law applies to this substance. It also prohibits the importation and sale of the substance.

As for its regulation, this is the first law on minimum regulated by the Ministry of Environment and Sustainable Development of the Cabinet of Ministers. Regulatory Decree No. 853 of July 6, 2007, prepared by the SAyDS involving technicians and specialists and discussed in the technical field of COFEMA. Set as enforcement authority SAyDS. Create the Interministerial Commission PCBs Management function shall agree that policies and actions between different areas of the national government and the Honorary Advisory Board Management Character PCBs have advisory, assistance and advice to the enforcement authority. In it sets the technical aspects of the regulation. For its part, the enforcement authority, through the Coordination of Substances and Chemicals, has acted since the enactment of the law in coordination with local authorities for the submission and implementation of

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9-Secretary of Environment and Sustainable Development of the Nation. SAYDS

phase-out plans, the creation of records Local and National Registration, similar to hazardous waste.

Polychlorinated biphenyls or PCBs refers to a group of 209 isomers obtained by the chlorination of polychlorinated and is characterized by the content of chlorine. These products are dangerous because of their persistence in the environment. Regulatory Background (10)

In the last paragraph of Article 41 of the Constitution prohibited the entry of actual or potentially hazardous waste into the country. In order to "regulate the entry and use in the country of substances or is contaminated with it in order to preserve the environment and human health." National Environmental Authority passed the Resolution of the Ministry of Environment and Sustainable Development N ° 249/02 Hazardous Substances composed of PCBS, properly regulated regime that it pertains to the use of substances, products or machinery containing compounds PCBS.

The standard refers specifically to the development and implementation of a National Plan of minimization and elimination of PCBS involving different areas of national public sector with responsibility in this area by setting minimum contents of one, inventory, emission sources, pollution levels, methodology and timetable for disposal and remediation.

Prior to the rule set by the Ministry of Health and Ministry of Labour have decided to ban throughout the country the production, import and marketing of Polychlorinated Biphenyls setting a deadline for replacement in 2010.

Minimum Standards for the management and disposal of PCBs

The minimum protection for the environmental management of PCBs arising from Article 1 of Law 27,670, under the terms of Article 41 of the Constitution.

The standard is intended: To oversee the operations associated with PCBs, the decontamination or disposal of equipment containing PCBs, used PCBs and prohibition of

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10 - Minimum Standards for Environmental Protection. Nonna Silvia

PCBs into the country as well as the ban on production and marketing. It creates the National Register Integrated Holders of PCBs which will be registered within a maximum of 120 calendar days of publication of the law, manufacturers and marketers of all PCBs and PCB holders holders except units with a total volume PCB least one liter. In order to ensure the restructuring of environmental damage and cover the risks to health, is arranged the obligation to take out liability insurance, surety, bank security, self-insurance fund or other equivalent compensation as be determined by regulation. With respect to liability for Law 25,670 is presumed that the PCBs new or used and any device that contains it is a risky thing.

Moreover, the system of sanctions for violations and irregularities to law shall be determined according to the damage caused by applying warning, fines, ban for a fixed period closing. With the proceeds of the fines is available to the constitution of a fund exclusively for restoration and environmental protection in each of the jurisdictions and as otherwise set additional rules.

Prohibitions
The prohibitions contained in Law 25 670:

- The importation and entry to the entire territory of the nation of PCBs and equipment containing PCBs

It is prohibited in all the territory of the Nation installing equipment containing PCBs -za Prohibited the production and marketing of PCBs in the country.

25688 ENVIRONMENTAL MANAGEMENT ACT OF WATER (11)

The law regulates the preservation of water, its use and wise use. Enter complex civil code reform environmental advocacy purposes. Legislation regarding interjurisdictional watersheds. Create generically the legal concept of watershed committees and federal agencies and advisory functions ascribed authority to authorize or prohibit activities that cause significant environmental impact on other jurisdictions, which is a federal matter.

This becomes a federal law enforcement activities that cause significant environmental impact on parts of basins located in other jurisdictions. Its constitutionality in this matter is beyond doubt.

The reference standard enacted on November 28, 2002, has provoked numerous reactions mainly by the provincial water agencies with jurisdiction who argue different views on its contents. The criterion was the opposition raised by the Province of Mendoza, asking the 19 March 2003 the Supreme Court of Justice of the Nation to declare unconstitutional the law 25,688.

The main aspects of the law have been challenged are given mainly by the need to specify in more detail the concept of water (eg, coastal marine waters and continental ice were not included, not including the progress made in the Federal Water Agreement and the Rules of Helsisnky, etc.). Moreover, the possibility that the Basin Committees issue binding opinions regarding the granting of water permits in interjurisdictional watershed, when the impact is potentially significant, has been considered mainly as unconstitutional. Both COFEMA as COHIFE spaces have generated debate which arose proposed amendments to the rule. In particular COFEMA said that the standard of minimum reference should be amended (COFEMA XXXVI Ordinary Assembly, 5 and 6 November 2003).

For its part, the Secretariat in conjunction with the Secretariat of Water Resources Nation have issued an opinion in 2004 where conflicts demonstrating that this law would create in their application, which could not be remedied by regulation, and proposing an amendment to the Water Law

The Committee on Environment and Sustainable Development of the Senate of the Nation,

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11 - Ministry of Environment and Sustainable Development SAYDS.

Minimum Standards for Environmental Protection. Nonna Silvia

also worked in this direction generating a dialogue whose aim was to identify the main obstacles of the standard.

SAyDS currently in dialogue with the various agencies involved, is working on a concrete proposal to overcome obstacles in this standard for application.
The Federal Council of the Environment (COFEMA), was issued by resolution 89/94, which is estimated in the principles that should be considered and should contain water standard:
1 - The definition of the subject matter of the law establishing minimum budgets. To that end should be included within the concept of water to surface water, groundwater, aquifers, coastal marine waters and continental ice.

2 - Determination of technical standards that set quality levels according to resource use, as well as the definition of maximum contaminant limits according to the receiving body to standardize technical standards which apply in different jurisdictions.
3 - Set as authority responsible for the preservation of water resources to the maximum local environmental authority.

4 - Recognition of the basin as the unit of environmental management.
5 - Implementation of mechanisms for the creation of opportunities for consultation of the environmental management of interjurisdictional water resources.
6. Maintenance of environmental flows for the balance of ecosystems
7 - The Rite of guiding principles for the protection of water resources through the following principles: the precautionary principle, principle of solidarity and interjurisdictional and intersectoral cooperation and equitable and rational use of water.
Secretariat of Environment and Sustainable Development and Water Resources Secretariat
The two agencies conducted a proposed amendment by criteria developed jointly, in order to suggest modifications that can incorporate the proposals and resolve the objections raised by the various agencies.

1 - Purpose of the Act: The rule should require that its scope is to establish benchmark criteria and methodological elements that have application across the country.
2 - Definition of water and watershed. Based on the principle of unity of the hydrological

cycle, we suggest adding the coastal maritime waters and continental ice.
3 - Recognition of the basin as a management unit basic environmental resource management.
4 - Principles to guide the management of water environment protection. We suggest adding to the text of the law the management principles that should guide the work of these bodies: the principle that water use must be rational, equitable and sustainable, the solidarity principle, the principle of cooperation.

5 - Mechanisms for creating opportunities for consultation. It is suggested that the law stresses the importance of organizing procedures and the establishment of organizations that have the function of promoting coordination and collaboration across sectors and jurisdictions, prevent conflicts and mediating, perform diagnostics on the environmental situation, analyze management plans. Referring to facilitate the consultation procedures as prior consultation and exchange of information the public hearing and other mechanisms to disseminate action plans before committing execution.

6 - Agreements and authorizations required for water use. Should be considered special uses of water recognized by local jurisdictions and the need for control with a permit.
7 - Determination of Minimum Environmental Protection. It is understood that corresponds establish benchmark criteria and methodological elements in order to ensure consistent implementation of the environmental protection of the resource. It is proposed to incorporate: technical standards on water quality standards, environmental flows, installation and operation of data collection systems.

LAW 25,916 HOUSEHOLD WASTE MANAGEMENT (12)

The Conference on Environment and Development, held in Rio de Janeiro, Brazil Republic in June 1992 -, was not only one of the landmarks of International Environmental Law represented but also awareness of the global importance of environmental stewardship. At that time, the company got a number of instruments, including Agenda 21.

12 -Report Arrayanes Group-National Project for Integrated Urban Solid Waste. Year 2010 - Secretariat of Environment and Sustainable Development

Agenda 21 is an action plan, which has been signed by Argentina. Residential is a continuous process in which many steps are taken locally, ie in municipalities and neighborhoods, which is the Local Agenda 21. Local Agenda 21 is a task for the citizens, social groups, NGOs and municipal authorities.

Agenda 21, Chapter 21 entitled "Environmentally sound management of solid wastes and issues sewage", arise certain principles that are well known and have taken the force of law in most countries when dealing of its environmental policy.

The necessary framework for action should be based on a hierarchy of goals and focus on the four main areas of waste-related programs, namely:

a) Minimizing wastes;

b) Maximizing reuse and environmentally sound recycling waste;

c) Promoting elimination and environmentally sound treatment of waste;

d) Expansion of the scope of services that deal with the waste. "

From them it follows the policy known as "3Rs": Reduce, Recycle, Reuse

Nationally, the Argentine environmental system is framed by the Article. 41 of the Constitution, built in the last constitutional reform of 1994.

Article. 41, as well as ensuring the right and duty of all people to enjoy a healthy environment, and to enshrine the concept of sustainable development, states that "The Nation shall regulate containing minimum of protection, and the provinces those necessary to reinforce them, without altering their local jurisdictions.

This demarcation of responsibilities between federal government and provinces is related to two constitutional provisions: Article 121, referring to the power of emergency that has been on the national provincial final paragraph of Article 124, in stating that the original ownership of natural resources belongs to the provinces.

As established in the third paragraph of Article 41, The Nation dictate "the rules containing minimum of protection." So far there are 7 Laws of Minimum: including the law on minimum 25,675 of the National Environmental Policy or Environmental Law The National Environmental Policy Act is the framework law on the environment, and sets out the objectives and principles thereof. Establishes the Federal Environmental System which will aim to develop environmental policy coordination between the national government, provincial governments and the City of Buenos Aires. The aforementioned system is implemented through the Federal Council on the Environment (COFEMA). The annexes of law has its charter and the Federal Environmental Pact. The aforementioned general law gave rise to the law on minimum 25,916 for household waste management. The Act is responsible for regulating the management of household waste, (whether residential home, urban, commercial, healthcare, medical, industrial or institutional).

Exceptions waste that are regulated by specific rules.

Residue is understood that a home is one that as a result of processes consumption and development of human activities, are discarded and / or abandoned. It also distinguishes between special generators (residential waste produced in quality, quantity and conditions such that require the implementation of specific management programs) and individual generators (those that do not require specific management programs). The parameters for determination are set by each jurisdiction. He set two deadlines for adequacy: One of 10 years for the disposal of household waste. Another term of 15 years, to the adequacy of the various jurisdictions to all provisions of the law. After two terms, prohibits residential waste management that does not comply with the provisions inserted in the law. Finally, the law prohibits the importation or introduction of residential waste from other countries into the country. It is noted that both articles that alluded to periods of adjustment as the article on the prohibition of entry were observed. Clarity that when referring to the Municipal Solid Waste in addition to the home, including those of businesses and industries that are not dangerous, pruning and trimming the plant, and the inert demolition. This is the name used by almost all sources above international and national law.

In the city of Buenos Aires, the 1854 Act, known as "zero waste", Article 8 states that it will promote:

• Reducing waste generation and use of more durable products or reusable.

• The separation and recycling of products likely to be.

• The separation and composting and / or bio-digestion of organic waste.

• Promoting measures for the gradual replacement of disposable containers for returnable

and separation of packaging to be collected separately to account and by companies that use them.

INTEGRATED MANAGEMENT OF MUNICIPAL SOLID WASTE - NATIONAL OBSERVATORY

The aforementioned law was regulated by Decree 639/07, which among other things establishes a timetable for the gradual reduction of the final disposal of municipal solid waste collected by the Public Urban Hygiene in the area of the Autonomous City of Buenos Aires.

When dealing with the regulation of Article 9, Decree established the formation of a Commission pro bono, for the development and subsequent elevation of a bill regulating packaging of the Autonomous City of Buenos Aires. It would consist of representatives of the different areas involved in the Government of the Autonomous City of Buenos Aires, NGOs, consumer associations, private sector firms, among other social actors involved. It also encourages the participation of representatives of other jurisdictions, in order to achieve an inclusive treatment of the subject.

Decree 760/08 repealed the regulations of Article 9 above. Furthermore, Article 2 defined the entities, namely:

• Producer who develops and manufactures products including producers and importers of raw materials that do not sell directly to consumers.

• Importer: who introduced foreign goods in the Autonomous City of Buenos Aires.

• Retail or wholesale intermediary: who is engaged in the wholesale distribution of commercial products domestic or imported.

• Distributor or retail intermediary: who is engaged in the retail distribution of domestic and imported commercial products.

• Any other person responsible for the placing on the market of products that use become waste: packers, recyclers and recovery, with the exception of regenerative recyclables in marked in Law 992 (1619 BOCBA N) and its amending and registered in the National Register of Soil Permanent Mandatory Recyclable Materials (RUR).
For its part, Article 3 states that the implementing authority of the 1854 Act is the Ministry of Environment and Public Space, who has the following functions:

• Establish the amount of the contribution.

• Establish exceptions to the payment of the contribution.

• Determine automatically, in case of failure to lack of information or payment of the contribution, the amount of the debt and issue the certificate of execution of tax debt.
• Develop plans, programs and projects to ensure the integrated management of municipal solid waste in sanitary and environmentally sound manner, in order to protect the environment, living beings and property.

• Manage funds deposited in order to ensure compliance with Law No. 1854.
• Authorize the format of the symbol certifying products and / or primary packaging, secondary and tertiary products.

• Issue regulations in order to comply with the provisions of the 1854 Act. The Article 16 of Decree 639/07 deals with the original provision and provides that the generators should have selectively wet and dry waste shortlisted in bags, containers or any other recipient expressly approved by the Competent Authority. The Enforcement Authority implemented gradually and in accordance with the needs and characteristics of each area proper disposal mode.
Will be subject to special handling, the following wastes (without prejudice to the implementing authority incorporate new categories).

• The demolition waste, maintenance and construction in general.
• Electrical and electronic waste and disused.

• The batteries after their useful life.

• Used tires.

• Furniture and / or household high volume used or generated in large amount.

Article 17 of the Decree specifies the methods to arbitrate the Enforcement Authority:
• Containers in public.

• Containers generators in special facilities, in accordance with specific management programs, approved by the Competent Authority.

• Any other system to ensure segregation of fractions in an environmentally sound and safe.

At the provincial level, 13,592 law of the Province of Buenos Aires, in Article 3 establishes the principles and basic concepts underlying the policy of integrated management of municipal solid waste, they are:

1) The principles of precaution, prevention, environmental monitoring and control.
2) The principles of shared responsibility involving solidarity, cooperation, consistency and progressiveness.
3) The consideration of waste as a resource.

4) The incorporation of the "Responsibility of the deceased", by which any natural or legal person who holds or manages produces a residue, is required to ensure or to ensure disposal in accordance with local regulations.

5) Minimizing the generation and the reduction of the volume and the total and per capita of waste produced or available, setting progressive goals, which must conform obligated.
6) The recovery of municipal solid waste, where "recovery" to losmétodos and reuse and recycling processes in their chemical forms, physical, biological, and mechanical energy.
7) The promotion of policies to protect and conserve the environment for each of the stages that integrate waste management, in order to reduce or lessen the potential negative

impacts.

8) The promotion of sustainable development through environmental protection, preservation of provincial natural resources from the negative impacts of human activities and savings and energy conservation, should be considered the physical, ecological, biological, legal, institutional social, cultural and economic factors that modify the environment.

9) The compensation Jurisdictions receiving provincial environmental Polos (PAP) will be posted with express Municipal Executive participation. Municipalities may establish special charges to such activity. –

10) The economic use of waste, tending to employment generation in optimum health as relevant objectives, with particular the situation of informal workers in the trash.
11) Social participation in every way and at all stages of the integrated management of municipal solid waste.

12) The collection and treatment of waste is an essential service for the community character, in ensuring the safety and environmental preservation.

Household waste (13)

The law sets minimum standards 25916 environmental protection for household waste management. Defined by Article 2 ° to the dustbin of those elements, objects or substances as a result of the consumption processes and development of human activities are rejected and / or abandoned.

The reference standard adopts the view of management of this waste as a set of interdependent and complementary activities that begins in the initial stage of generation and reaches the final disposal of waste, while also including closure and post-closure subsequent deposits.

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13 - Minimum Standards for Environmental Protection. Nonna Silvia

The comprehensive management involves several stages that the law lists and for which then establishes guidelines / solutions to ensure effective and efficient implementation.
a) Generation

The activity includes the production of household waste. Any natural or legal person who produces household waste generator is called and is required to perform the initial collection and initial disposal of such waste as provided in the jurisdiction in which you are.
b) Initial Disposition

It is the action by which are deposited or leave residues. The generator made and must be made by appropriate methods to prevent and minimizen possible negative impacts on the environment and quality of life of the population.

The initial setup will be:

- General: no sorting and separating waste

- Selective: with sorting and separating waste by the generator

Generators in terms of quality and quantity of waste and the conditions under which they are generated and ls standards established by each jurisdiction that will be issued via complementary:
- Individual Generator: which does not need specific management programs.

- Generator Special: home the waste produced in quantity and such conditions need to implement specific management programs, at the discretion and with the approval of the competent authority.

c) Collection:

The set of actions comprising the collection and loading of waste collection vehicles. The collection will be:

- General: without discriminating the different types of waste

- Differentiated: discriminating by type of waste according to their treatment and subsequent measurement.

It is for the competent authorities to determine the methodology and frequency of collection as will environmental and geographical characteristics of their jurisdiction. They must also ensure that household waste are collected and transported to the sites that have been enabled for this purpose, trying to prevent and minimize negative impacts on the environment and quality of life of the population.

d) Transfer:

Includes activities temporary storage and / or packaging of waste prior to transportation. Plant is called transfer those to those facilities authorized by the competent authorities in which household waste are temporarily stored and / or packaged for transport.
e) Transport:

Includes trips of waste between sites included in the comprehensive management. Transportation must be carried by vehicles and fitted out to ensure the containment of the waste and prevent dispersal in the environment.

f) Treatment

Includes all operations aimed at conditioning and recovery of waste. Treatment plant is referred to those facilities authorized by the competent authority in which household waste is packed and / or recovered. In case of rejection processes all waste recovery and failed to enhance final destination shall be a center for disposal.
g) Disposal

It includes the set of operations to ensure the permanent storage of household waste, as well as unavoidable rejection fractions resulting from the methods of treatment adopted. While this stage fall within the activities of the closure and post-closure of disposal facilities. It is called disposal center to those places specially equipped and authorized by the

competent authority for the permanent disposal of household waste. These centers should be located in areas well away from urban areas, non-flooding and planning within the territorial jurisdiction where to be deployed. Can not be located in protected areas or sites of cultural heritage protection or natural.

Depending on the characteristics of household waste to dispose, technologies used and the environmental characteristics of each jurisdiction, competent authorities are responsible for establishing the requirements for enabling disposal centers. It is provided that in all cases for enabling these centers requires the approval of the Environmental Impact Assessment that includes the implementation of a Monitoring Plan during phases of operation, closure and post-closure.

Competent Authorities and Enforcement. Coordination

The rule provides a clear demarcation of powers between the so-called authorities and the enforcement authority, noting the Federal Council on the Environment and interjurisdictional coordination bodies.

Competent Authorities

Are the bodies determining each of the local jurisdictions are responsible for organizing and establishing additional rules as may be necessary for law enforcement to be responsible for the comprehensive management of household waste generated in their jurisdictions. They also responsible for promoting the recovery of waste by implementing compliance programs and gradual implementation.

The Act gives local authorities as competent authorities, while municipalities are dealing with the matter, the provinces who will so determine.

The rule applies the principle of progressive environmental law, giving the possibility of a realistic planning which would cover the different local joints.
Two other principles of environmental law also applies the standard of household waste are those of solidarity and cooperation to regulate the issue in coordination between national, provincial and municipal with consensus and agreements in the field of COFEMA.
The competent authorities may plan a joint between them so as to ensure greater efficiency

in the effective implementation of policies in the field.
Enforcement Authority

The most senior body with environmental competence determined by the National Executive functions are:

a) Formulate policies on household waste management, consensus within COFEMA
b) Prepare an annual report with the information that you provide the provinces and the City of Buenos Aires, which should at least specify the type and amount of household waste that is collected and also those that are recycled or have potential for recovery in each of their jurisdictions.

c) To promote measures that include the integration of informal circuits waste collection.
d) To promote environmental education programs, according to the objectives of this Act.
e) Provide guidance to the organization of programs for recovery and recycling systems in different jurisdictions.

f) Promote public participation in programs to reduce, reuse and recycle waste.
g) promoting via social media programs and economic and legal instruments, the recovery of waste and the consumption of products whose production or use recycled material with potential for recovery.

h) To promote and encourage participation in the productive sectors and trade in goods in the integrated waste management.

i) Promote and agree, within the COFEMA, a national program of quantifiable targets for waste recovery of progressive realization, which must be reviewed and updated periodically.
Federal Environment Council – COFEMA

The Federal Environment Council is the coordinating body in an attempt to cooperate with the fulfillment of the objectives of the law, the corresponding COFEMA:
- Agree on comprehensive management policies of household waste

- Agree on technical and environmental criteria to be used in the various stages of management
- Agree with the enforcement authority goals domicilarios waste recovery. Prescription punitive actions

The powers delegated to the nation to enact minimum standards of environmental protection includes the power to establish the minimum budgets violations involving the administrative responsibility, set the limitation period of the respective punitive actions corresponds to the provinces through the issuance of supplementary regulations. Period of Adjustment

The version included congressional deadlines for local jurisdictions to adapt to the provisions of the law the comprehensive management of household waste, 10 years on disposal of household waste and 15 years for the remaining stages of integrated waste management. The periods referred to in such statements opposing the matching principle laid down in Article 4 of Law No. 25,675 of Environment, under which provincial and municipal laws relating to environmental matters should be suited to the principles and rules laid down in the Act and all standard through which runs the national environmental policy. The Executive Branch is not considered appropriate to set deadlines that may differ compliance as it pertains to local jurisdictions enact additional rules and implementing agencies to ensure their citizens the full enjoyment of that environmental protection

g) promoting via social media programs and economic and legal instruments, the recovery of waste and the consumption of products whose production or use recycled material with potential for recovery.

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The Republic of Argentina in the middle of the last century, began to keep a close relationship between the industrial plant and the concentration of the population. As the settlements grew in size, becoming more complex and demanding processes more inputs, the consequential effects on the environment also increased.

The most frequent use of machinery, more fuel, more natural resources and inputs to obtain a final product, led inevitably increased generation of hazardous waste. The improper disposal of hazardous waste - industrial and pathological-that was nonexistent in some cases, the increasing accumulation of them, international and foreign nationals who were being punished led Argentina to face the challenge of regulating management of this waste. The enactment of Law No. 24,051 in the year 1991 in Argentina, was a major step towards regulation of the environment. The rule is a regulatory body created to cover a very broad spectrum of issues and situations, with a clear intention environmentalist. It is the first rule in the country that integrates with national environmental preservation efforts. The rule states, very complete control over the life cycle of waste, by controlling all stakeholders and activities reached.

It is a strict law could establish management guidelines when it had few theoretical tools of control.
Law No. 25,612 for the Integrated Waste Management Industrial and service activities, is the first rule of minimum standards for the protection of the competitive environment in the Nation delegated by the constitutional reform of 1994.

Of a law needed to be updated and adapted to the new constitutional regime as Law No. 24.05, Hazardous Waste, a law was passed more general guidelines imperfect Industrial Waste Management and Service Activities.

Both standards are in force, Law No. 24,051 is an Act of Accession, Article 67, Invites respective provinces and municipalities in the area of its jurisdiction to issue the same kind of issues that the present treatment of hazardous waste.

In the first paragraph of Article 60 of Law No. 25,612, is trying to repeal Act No. 24051 was vetoed. Therefore both legal bodies are co-existing. Overlapping rules and contradiction in some cases raises concurrency conflicts that undermine the proper planning of regional and national prevention of environmental pollution in the area. Enforcement Authority

Law 24.051, Article 59, determines that the enforcement authority level will be more competent in the area of environmental policy, as determined by the executive branch. Since its approval by the enforcement authority is the Ministry of Environment and Sustainable Development.

Law 25,612 as usual criteria established by the Hazardous Waste Act, will enforcement authority with jurisdiction over environmental area as determined by the Executive. Scope
The Hazardous Waste Law 24.051, is a mixed standard includes provisions for federal and non-federal nature. It is a national law of local application, in some cases federal application and contains common law rules. While a standard membership. Moreover the Act, in terms of liability, defined as complementary regime of the Civil Code, which is background code, common law rule applies throughout the country .. Likewise the articles referring to the criminal regime are complementary Penal Code and applicable throughout the country.

Finally, it is a law of accession, as articulated invites their respective provinces and municipalities to adhere dictating rules of the same kind.

Law 25,612 establishes the minimum standards of protection to the Waste Management and Industrial Services activities, which are generated in the country.

Material Scope

In the scope of material, is where both standards pose substantial differences. Law 24.051 applies to hazardous waste, among which include pathological. The Act applies to 25,612 Waste from industrial and service activities. D Hazardous Waste Act has a broader scope, leaving the Act Industrial Waste Management and Waste Services activities outside regulation.

The Hazardous Waste Law 24.051, takes the concept of "hazardous waste" in Article 2 defined as such for all material that is subject to disposal or abandonment and that can directly or indirectly cause harm to living beings or Cundo can contaminate soil, water, the atmosphere or the environment in general. The standard considers "dangerous" in particular residue that is listed in Annex I or possessing some of the characteristics listed in Annex II. Annex I: List of 45 categories under separate control in 18 and 27 waste streams have certain waste constituents.

Annex II: List of hazardous characteristics. That possess them, leading to the waste in question is considered dangerous and be subject to the law. Moreover 25,612 Law and Industrial Waste Management Services Activities, with a different standard defines industrial waste as "any item, substance or object in solid, semi-solid, liquid or gas, obtained as a result of an industrial process, by performing a service activity, or be directly or indirectly related to the activity including any emergencies or accidents, which the holder, producer or generator can not use it, discards or legal obligation to do so "

The regulatory body provides additional definitions, clarifying the very name of the law Industrial Process: The law defines it as any activity, process, development or operation of maintenance, repair or change in form, substance, quality or quantity of a commodity or material to obtain a final product using industrial methods . Service Activity: This standard defines as any activity that complements the industry or by the characteristics of the waste generated is comparable to the previous one based on risk levels established by law.

Importantly, the Law 25,612, does not clarify the industrial waste are those of the type made dangerous or whether it also includes non-hazardous waste generated as a result of industrial activity itself.

Household waste are excluded from this law states that all industrial waste should be considered risky thing, generators are required to treat all waste and hazardous properly in order to achieve the reduction or elimination of hazardous characteristics , which is impossible in the case of non-hazardous. This issue has been resolved by the subsequent passing of the Law on Minimum 25,916 for household waste management. This standard

promotes an environmental waste, where technical and operational components are interdependent and complementary.

Moreover, the Law on Waste Management and Industrial Services activities does not include a concept of "input" or considered as included or excluded from the arrangements. However, referring to the import ban mentions inputs of industrial processes and use. The implementation of the Hazardous Waste Act, brought with difficulties because of the breadth of the scope thereof, it is proposed to take as a basis adapting international standards. So will any waste residue that is included within the categories subject to controls of Annex I and possessing any of the hazardous characteristics of Annex II of the reference standard.

At the same time defined as input to "All good used in the production of other goods. They are a particular case of input, hazardous waste used as such in other subsequent production processes. "

Excluding Wastes

Hazardous Waste Law 24.051

Are expressly excluded from the scope of the standard:

- The household waste

- Radioactive waste

- The waste from normal operations of vessels, which are governed by special laws and international conventions.

The exclusion referred to the standard on household waste makes sense, as these are their regulation by Law 25,916 of Residential Waste Management. Also radioactive waste are regulated by Law 25,018 of Radioactive Waste Management and nuclear waste regulated by Law 24,804 of Nuclear Activity.

It is noteworthy that the residues from the normal operations of vessels have been excluded from the Hazardous Waste Act. So far, in the field of navigation are not legislated basic principles against pollution caused by hazardous waste, such as creating an accountability system based on a procedure which includes monitoring the waste from its generation to its disposal end.

Law 25,612 Industrial Waste Management and Service Activities
The rule follows the criteria of the Hazardous Waste Act, excludes biopatogénicos waste, and radioactive waste resulting from the normal operations of vessels. The Act extends the

exclusion, in relation to the previous standard, the waste from aircraft
.
Pathological Waste

A pathological waste is one who has infectious characteristics. The residue contains potentially pathogenic microorganisms to be exposed can cause an infectious disease. Among the various pathological waste may include: syringes, gloves used, traces of blood, body fluids and animal remains of bodies, contaminated sharps and any material that has enido contact with potentially pathogenic microorganisms.
Hazardous Waste Law 24.051

Pathological wastes are hazardous and are included in the standard. The law is the same in Article 19 and Annexes I and II.

For the purposes of the law are considered pathological:

- Residues from laboratory culture

- Traces of blood and blood products

- Organic waste from surgery

- Animal waste product of medical research

- Algodones, gauze, bandages used, ampoules, syringes, sharps, disposable materials, items soaked with blood or other substances that are not sterilized
- Chemotherapeutic Agents

Regarding the hazardous characteristics, pathological wastes are covered by the category H6.2 (UN Class 6, Code No. H6.2) infectious substances, substances or wastes containing viable micro organisms or their toxins which are known or or suspected to cause disease in animals or humans.

dThe Hazardous Waste Act provides for the enforcement of its provisions prior to the authorization to be granted by the authorities responsible for buildings:
- Hospitals
- Health and dental care

- Maternity

- Clinical analysis laboratories

- Biological research laboratories

- Animal Hospitals

- Care centers and animal health

- Biomedical research centers and those who use live animals.

Law 25,612 Industrial Waste Management and Service Activities
Pathological wastes are excluded from the norm, while the law mentions biopatogénicos residues not specify the difference between them is therefore one of the points of the confusion rule.

Pathological wastes are regulated by Law 24.051 Hazardous Waste Act, pending legislate on the subject matter.

Meanwhile, another question arises regarding the pathological wastes are dangerous without being generated by health facilities. Until the passage of the law that sets budgets 25,612 on industrial waste, the law still valid Hazardous Waste, the waste in question remain in the gray area of the law, lack of regulation, except that being perceived as coming from activities comparable to the service industry.

Prohibitions
The Basel Convention adopted on March 22, 1989, as a response to the international community to the problems caused to man or the environment from global production of hazardous wastes with toxic characteristics, ecological, poisonous, explosive, corrosive, flammable or infectious the dangers of cross-border transport carries them. This is the background to the reform of the National Constitution of 1994.
The Constitution, in Article 41, prohibits the entry of waste or potentially dangerous as well as radioactive waste into the country.

An analysis of this point, it appears that what is prohibited is the entry of hazardous waste and radioactive, radioactive and may in turn be dangerous or not.
At the same time, the ban does not reach the introduction of other materials or radioactive hazardous even if that is not technically considered as waste.
Hazardous Waste Law 24.051

The constitutional clause and the decree that complements the Basel Convention banning recepta joining the national hazardous waste law, which in Article 3 prohibits "... the importation, introduction and transportation of all types of waste from other countries to the territory and national airspace and sea ... "prohibition also covers nuclear waste.
With regard to air transport, in the chapter that corresponds to carriers, the Hazardous Waste Act prohibits the transportation of hazardous waste in the airspace under the jurisdiction Argentina.

Law 25,612 Industrial Waste Management Services and Activities
The law in question prohibits the importation, introduction and transportation of all types of

waste, from other countries into the country and its air and sea space. However this raises the following exceptions:

- That the application for regulatory authority included in a positive list
- To show stakeholders that are used as inputs for industrial processes.

Records

National Registry of Generators and Operators of Hazardous Waste

The National Registry of Generators and Operators of Hazardous Waste created by Law 24,051, performs all the tasks assigned to the national environmental authority for that standard. At the same time as the body whose function is to assist the environmental authority in the articulation and implementation of policies related to their activity. The reference body gives the Environmental Certificate that certifies exclusively approval system for handling, transport, treatment or disposal that apply to registered hazardous waste.

At the same time provides reports on the evaluation of applications for registration and verifications.

Law 25,612 Industrial Waste Management and Service Activities, assigned to the province and the City of Buenos Aire, control, control of waste management of industrial and service activities.

Liability

The Hazardous Waste Act incorporates the concept of strict liability consecrated by the Civil Code. The rule presumes that unless proven otherwise, all waste is risky thing, in terms of the second paragraph of Article 1113 of the Civil Code. "... In the event of damage to things, the owner or keeper, to absolve themselves of responsibility, must demonstrate that their party was not at fault, but if the damage has been caused by the risk or vice of the thing, only fully or partially exempt from liability because of l crediting the victim or a third of whom should not respond. If things had been caused to the express or implied will of its owner or keeper shall not be liable ... " Moreover, no responsibility disclaims generator, within tort not be effective against third parties or transmission Domain voluntary abandonment of hazardous waste. The Hazardous Waste Act liability extinguished only when the damage caused by waste is the result of the higher risk that a particular residue acquires as a result of faulty treatment performed in the treatment plant or disposal.

The responsibility of the standard of hazardous waste, the waste is subsistent, for generators transformation does not disappear, specification, development, evolution or treatment of hazardous waste that caused damage.

In this context of responsibility "ad infinitum", we bring out the spirit of the legislation, which translates to avoid the increasingly common practice, as despicable, to shed, leaving

residues or clandestinely dispose bodies at different receivers, with the harmful effects that entails.

Liability in the Law 25,612

Regarding Liability Act reference, broadly maintaining the strict regimen required by the Hazardous Waste Act.

For the standard 25,612, is just a waste of industrial origin, without distinguishing dangerous or not to treat it similarly to how the law regulates hazardous waste. The scheme covered by this standard, gives rise to a civil liability regime that includes industrial waste as "risky things" regardless concerned hazardous industrial waste or non-hazardous. At the same time introduced an amendment to exempt from liability to the generator when the waste is used as input to another process as productive and regulations. In order for legal certainty for both the managed and responsible for the implementation of the standard, as minimum budget must be determined accurately when setting environmental damage "concentration levels of pollutants in the receiving bodies are above established by regulatory standards. "

Criminal Law Regime 25,612

The Hazardous Waste Act defines criminal offenses, with express reference, in some cases penalties provided by the Penal Code. It creates the offense of contamination, tampering or poisoning through the use or management of hazardous waste, either willfully or negligently in a manner dangerous to health, soil, water, the atmosphere or the environment in general.

This rule has filled a loophole in providing for the institute of crime as to protect the environment through the contemplation of the collective interest.
Figure willful in Hazardous Waste Law

Figure willful arises from Article 55 of that rule, which prohibits the conduct of "poisoning, adulterated or contaminated" in a manner dangerous to health, water, the atmosphere or the environment in general intentionally hazardous waste.

Figure culpable in the Hazardous Waste Act

Figure culpable arises from Article 56 of the law, which prohibits the conduct of "poisoning, adulterated or contaminated" in a manner dangerous to health, soil, water or environment with hazardous waste in general negligence, recklessness, incompetence or deviations from regulations.

Law 25,612 provides that is punishable by imprisonment from 3 to 10 years, that "using waste industrial and service activities, alters or contaminates, water, soil, atmosphere or

endangering the life quality d population living in general biodiversity or ecological systems. "

The rule in question, expands the definition of the offense, to replace public health as legally protected by the quality of life of the population and of living things, biodiversity or ecological systems.

Environmental Impact Assessment

It is a necessary tool for environmental management in the decision making process involving environmental issues to safeguard the public interest. This procedure ensures the systematic analysis of the environmental impacts produced by a proposed action and the alternatives provided. It is the responsibility of the enforcement authority, the "conduct environmental impact assessment on all activities related to hazardous waste"

Administrative Penalty system

The Hazardous Waste Act the topic in a special chapter is placed between the Civil Liability and Criminal Regime. Any violation of the provisions of the Act and its complementary regulations can be punished with the penalties cumulatively states and apply regardless of civil or criminal liability attributable.

26,331 BUDGET LAW minimum environmental protection of native forests
The Forest Act was passed five years ago, several organizations have developed a report that warn little progress in implementing the rule and require strict compliance. The sanction of the rule meant a breakthrough in environmental matters for the country and a momentous achievement in the participation of civil society in demanding an effective environmental protection standard.

Since the enactment of the standard annual deforestation decreased by approximately 20%, figures rose from 280,000 to 230,000 hectares per year. Since the enactment of the law until the end of 2012 1,145,044 hectares were deforested. (14)

Native forests are a valuable resource essential for sustainable development. They make up the habitat of many species of flora and fauna, so vital to the maintenance of biodiversity, are also the habitat of a large population of the country, especially in rural and indigenous communities, which live in the forest. Forests also provide food, medicine, wood and other environmental goods to the entire population.

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14 - Environmental organizations warn www.vidasilvestre.org.ar little progress in the implementation of the Forest Act.

The Act aims to:

- Promote the conservation of native forests through a Land Management, which regulates the expansion of the agricultural frontier and other changes in land use.
- Implement measures to control the decrease in area of native forests.

- Improving and maintaining ecological processes and cultural os in native forests that benefit society.

- Establishes that native forests must be preserved, although techniques have yet to demonstrate its benefits or harms of clearing (precautionary principle and preventive)
- Promote activities that enhance, conserve, restore, enhance and sustainably managed forests.

Scope

The Forest Act has the characteristic of a federal rule applies nationwide. Local jurisdictions are subject to its provisions from the penalty of the law and under the provisions of Article 41 of the Constitution.

Forest Land

The land of native forests, is one of the central tenets of the rule.
The law regulates the management of forests in Chapter II providing basic guidelines to be met by jurisdictions in their implementation. And Article 99 of the regulation in question establishes three categories or areas where the order should be classified ranging from high to low degree of conservation.

Category I: Red

Category II: Yellow

Category III: Green

Category I Red: must be covered native forests higher degree of conservation, to be overly restrictive ruling on activities that can be performed there. Native forests in red category may not be subjected to processing activities involving, reserving for uses such as habitat Aboriginal or scientific research.

Category II Yellow: to understand the native forests of medium conservation value, in which allows performing certain activities involving intervention in the forest such as the sustainable management and tourism, among others, subject to compliance with the other requirements of in the law for such activities, management plan, environmental impact assessment and so on.

Category III Green is the least conservative, considering that there may be possible transformations partial or native forest. That is accepted as clearing a total transformation of the forest, which would also be met as indicated by the standard.

Moreover, it is appropriate to point out, which is a substantial aspect of the law: the obligation placed on the provincial governments to make land management of existing forests in their jurisdiction, within one year from the sanction of the law. Within this term mentioned, governs what is called "clearing moratorium" according to Article 8 of the reference standard, since the enactment of this and until that is done the land of native forests can not authorize jurisdictions new clearing.

The standard sets requirements to be met by all those who undertake any regulated activities. The Act establishes the general obligation whereby anyone who performs or intends to perform a cut or native forest management must obtain authorization from the implementing authority of the respective jurisdiction.

At the same time, the law stipulates the creation of a National Fund for the Enrichment and Conservation of Native Forests. This Fund is a vital economic tool to achieve the objective of the law.

The Fund must be distributed each year among the jurisdictions that have made environmental management of their forests. The distribution should be determined by the total forest area in each jurisdiction and the percentage of coverage. Fund management is for the Secretariat of Environment and Sustainable Development.

Historical Background of International Environmental Law

Stockholm Summit 1972

The Biosphere Conference, held in the year 1968 was the starting point of international politics in relation to environmental issues and the Stockholm Conference of 1972 carried on the concern.

Scientists, experts and representatives of the participating countries adopted a Plan of Action which includes 109 recommendations to governments and international organizations. At the same time adopted a statement of 26 principles and proposed the creation of a new agency for assistance in order to achieve concrete results in accordance with the Conference and urged the creation of a Global Fund for Environmental Defense. (15)

1992 Rio Summit

The Rio Declaration on Environment and Development is a proposed United Nations (UN)

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15 - Environmental Law Handbook. Argentine and Latin American. Jorge Atilio Franza

to promote sustainable development. The summit was adopted at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992. The Declaration reaffirmed the principles established in the Declaration of the United Nations Conference on the Human Environment adopted at Stockholm in 1972. Johannesburg Summit 2002

The World Summit on Sustainable Development, held in September 2002 in Johannesburg, hosted by the UN was conceived as a continuation of the Earth Summit in Rio de Janeiro in 1992. The main objective of the Summit was to give a realistic response to the issues raised in the previous decade that had been expressed for the first time at the Conference on Human Environment in Stockholm in the early seventies.

The Johannesburg Summit, born from the moment of his departure with a double challenge: first to improve the lives of all human beings and otherwise protect the environment. It is the first of these challenges which is a necessity in the internal planning UN. Specifically, within the objectives and requirements of this new conception of socio raised in Johannesburg next to protection of the natural environment, issues such as the eradication of poverty and the changing patterns of consumption and production. It thus shows the international concern for the prosperity, security and stability in the world and emphasizes the need to reduce the differences. The protection of biodiversity is positioned parallel to the decrease of differences with poor and non-poor land.

The objectives of the Summit include:

1) Eradicate extreme poverty and hunger

2) Achieve universal primary education

3) Promote Gender Equality him and empower women

4) Reduce child mortality

5) Improve maternal health

6) Combat HIV / AIDS, malaria and other diseases

7) Ensure environmental sustainability

8) Develop a Global Partnership for Development

Evolution of Environmental Law (16)

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16 - Minimum Standards for Environmental Protection. Nonna Silvia

The Environmental Law in Argentina consists of the rules governing natural resources, activities and effects that man done to modify them to obtain cultural resources, as well as waste generated from this transformation

By the late nineteenth century began to independently regulate the various natural resources, both at national and provincial levels. In the year 1886 is sanctioned by the Mining Code of the Nation. Moreover several legal bodies before half of the decade of the 70s of last century, regularly dealing with natural resources.
The second stage begins after the first international meeting at a World Conference on Human Environment convened by the United Nations General Assembly and of the Stockholm Declaration.

In 1982 the United Nations Program for the Environment and Development in Rio de Janeiro was an important milestone in the history of international environmental law. The Republic of Argentina took the same increasing the insertion process of environmental dynamics in positive law and adopting various international agreements on the subject. By the year 1980, most of the provinces of Argentina, had incorporated the principle of environmental protection in their constitutions.

Moreover, it is important to remember that the starting point for systematic environmental protection throughout the country was the Federal Environmental Pact, signed in 1993. Constituents reformers, in full accordance with the principles recognized by the United Nations Conference on Environment and Human Development in Stockholm 1972 and the United Nations Summit on Environment and Development in Rio de Janeiro in 1992, introduced the issue environmental in Article 41 of the Constitution. (17)
The constitutional reform of 1994, has enshrined the right to a healthy environment and the corresponding duty to preserve it and that in turn allows for effective sustainable development. Also includes important topics such as minimum protection to the environment, rational use of natural resources, the restructuring of environmental damage, environmental education and information, protection of biodiversity, the preservation of natural and cultural heritage.

Beginning in 2002, have enacted minimum standards for environmental protection.

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17 - All citizens enjoy the right to a healthy and balanced environment, suitable for human development in order that productive activities shall meet present needs without compromising those of future generations, and have a duty to preserve it. The priority, environmental damage the obligation to repair, as provided by law.
The authorities shall provide for the protection of this right, the rational use of natural

resources, the preservation of natural and cultural heritage and biodiversity, and environmental information and education.

The Nation shall regulate containing minimum of protection, and the provinces those necessary to reinforce them, without altering their local jurisdictions. Is prohibited from entering the country or potentially hazardous waste, and radioactive.

Liability for Environmental Damage (18)

In Latin America, the Environmental Law emerges and evolves from the traditional branches of law, it is understandable that the first way and the laws of the countries in Latin America are trying to solve the problems arising from the production of environmental damage is precisely by applying legal rules themselves of Civil, Criminal Law and Administrative Law.

The application of administrative law is the first way to tackle the problem of liability for environmental damage by applying administrative sanctions.

The Administrative Law is unlike civil law rather than a preventive mission restorative, basing its effectiveness in a predominantly monetary penalty system, nevertheless in some countries the Environmental Administrative Law presents innovative character traits that tend to complementary environmental restoration damaged environment. Moreover, the application of civil law has traditionally corresponded to repair damage and therefore extends to the Environmental Law.

Thus, in some Latin American countries, environmental laws try to solve the paradigm of repairing environmental damage simply referring to the application of civil law, as for example with Uruguay, Ecuador and Mexico. In other countries, such as Bolivia and Honduras remission civil law is accompanied by procedural rules that seek to protect the legal interests fuzzy. In some cases, such as in Argentina, Brazil, Colombia, Costa Rica, and Chile have also incorporated some principles related to repair environmental damage.

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18 - UNEP Regional Office for Latin America and the Caribbean. Responsibility for environmental damage in Latin America. Dr. José Juan González Márquez. Paper Series on Environmental Law. 2003

You can see that Brazil is one of the first countries where the legal protection of recognized legal interest in environmental diffuse through the institutions of the civil investigation and public civil action,

Another example of the trends that has environmental legislation in Latin America in terms of liability for environmental damage is in the Chilean legislation whose law on General Environment of 1994 includes a definition of environmental damage and deals expressly Responsibility scheme. The ordinance establishes a specific environmental liability regime and different regulated by the Civil Code and against civil action for damages created environmental action.

The legal regime of mostly Latin America, has joined the Criminal Law on Environmental Policy. Alarming environmental threats to the population and legislators in the world, climate change, the greenhouse effect, the hole in the ozone layer, acid rain, are facts that require governments to provide the criminal law with appropriate instruments environmental protection.

Most of the laws have regulated on types of sentences that include actions harmful to the environment. In Brazil, we have issued specific rules on the subject, the Environmental Crimes Act which means a breakthrough which organizes any number of laws decrees and circulars.
In recent years, the criminal law can be the complement of civil law and administrative law, with the aim of establishing an integrated system of compensation for damage to the environment. It is worth mentioning that the criminal law in recent years away from repressive sanctions, to participate in the repair of environmental years by using innovative alternative sentencing.

In Argentina, (19) the institution of responsibility is one of

appropriate mechanisms for the protection and preservation of the environment, allowing those who produce are required to repair damage if given the budget to make this happen. The General Environmental Law 25,675, (20) governs only fragmentarily and environmental damage collective advocacy, leaving outside its scope of application of individual environmental damage. In the absence of specific rules applicable s understood that the Civil Code regime. Positive law in general and administrative in particular, is irrelevant to determining the existence of liability for environmental damage.

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19 - State responsibility. Thomas Hutchinson. National University of Buenos Aires.

The term "environmental damage" is ambivalent, because designates not only the damage lies with the environmental heritage that is common to a community, but also relates to the environmental damage that causes rebound - par ricochet-legitimate interests of a particular person, particular harm is setting this property or extramarital.

One of the main problems in the area of civil liability for environmental damage lies in the difficulty to prove the causal link, mainly because of its complexity. Case law has held that the analysis of the test in these cases, you must have a particular treatment as the nature of the attack is not consistent with the usual systems of analysis of proofs.
The General Environmental Law, enables to bring the action for collective environmental damage repair to the same persons authorized to initiate under Article 43 of Magna Carta.
In relation to the subjects that should be held responsible, and can present unique causal assumptions or often plural, which in turn can be combined, cumulative or disjunctive.
Moreover, the person may be entitled the State, because of their actions or omissions of the exercise of police power and even environmental tort.

The specific set of environmental damage again, pecuniary compensation as a remedy and sole subsidiary to compensation in kind.

The most important consequences of the new approaches to liability for environmental damage are the derivatives of the effectiveness of compensation, which involves insurance. Another type of complementary or alternative solution to the system of liability for damages, may be the establishment of guarantee funds.

Environmental damage repair (21)

In addressing the issue of compensation for environmental damage, we must refer to two important points. One relates to the attribution and causation by environmental damage and the other refers to the quantum compensatory generalities.
In principle factor attributing responsibility for environmental damage is objective (Article 1113 Civil Code 2nd part "... In the event of damage to things, the owner or keeper, to absolve themselves of responsibility, must demonstrate that on his part was not at fault, but if the damage has been caused by the risk or vice of the thing, only fully or partially exempt from liability by crediting the fault of the victim or a third person who should not respond by ... ").

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20 - Liability for Environmental Damage - Parkinson Besalú Aurora, Alterini Atlio 21-Summa. Volume II. Nestor Cafferatta

Thus hold standing to claim for environmental damage the person or persons who have suffered harm themselves or their property. Action may be required to repair the environmental damage against subjects who degrade the environment and against the State

when it has authorized or consented degrading activity.

With respect to causation, the result of applying the theory known Environmental of proper cause. Causation does not require complete certainty, it is a real possibility of establishing a reasonable degree of probability.

The other issue relates to quantum compensatory, argue about Iturraspe Mosset, Hutchinson and Donna, who often is difficult to quantify the precise environmental damage. How to quantify and through that irreparable injury time parameters on the quality of life for future generations? , What is special in addition to business and in some cases may be able to compensate all damage?

The court in exceptional cases may accurately determine the damage and almost always in the presence of a remediable environmental degradation, to such a degree that allows the restoration of the status quo ante. The inability to determine accurately in that sector the amount of damage, applies the fair valuation.

The judge must consider in determining equitable compensatory effect not only the cost required for restoration, but also the severity of individual behavior and the benefit to the offender as a result of their wrongful conduct of environmental goods. This draws a mixed punitive model, both foundations as punitive-retributive reparatory Following damage from environmental aggressions are usually only susceptible estimation approach or by reasonable discretion of the judge.

In terms of standing, Albina Bustamante says that in terms of environmental damage recamar hold standing to compensation for the damage caused by pollution, the person or persons who have suffered harm on themselves or their property. Also in case of death of the victim may sue the latter damage to legitimate or testamentary successors, except that only the moral responsibility of the direct victim.

As for passive standing, it is argued that the action can look primarily against subjects that degrade the environment. Currently the action is brought against the owner or guardian who has custody of the thing. The damage that has its origin in the pollution of a water or air pollution or noise will result from the action of a number as possible perpetrators. Environmental Security (22)

22-Environmental Summa. Volume III. Nestor Cafferatta

Article 22 of Law 25,675, established the duty to purchase insurance, for any natural or legal person performing public or private risk activities for the environment, ecosystems and their constituent elements. The title of this article called the Environmental Security. This insurance must have an entity to ensure sufficient funding for the rebuilding of the damage therefore likely to be of a kind.

The Ministry of Finance and the Ministry of Environment jointly issued resolutions 98/2007 and 1973/29007, for which guidelines reglaron environmental damage insurance collective advocacy. The joint resolution refers to the environmental liability insurance and only occasionally the surety.

Moreover, Article 22 of Law 25,675, requires insurance coverage not of any scope, but with enough to cover the financing of the reconstruction of the damage, text on a first reading might suggest that countries environmental insurance should be mandated by law as sufficient coverage is important to the financing needed for the rebuilding of the damage. But the joint resolution establishing coverage limits, based on criteria other than the adequacy of funding for the achievement.

The disparity between the text of the standard and the guidelines contained in the joint resolution makes it convenient to give a notion of insurable risk in the insurance contract. The law establishes the obligation to take out insurance, this habit leads us to be interested in two aspects. The first one concerns the characteristics required to determine which risk and insurable, the second aspect of the contract exceeds the insurance plan individually considered and this makes the general interest in the solvency of the insurer. Risks should qualify as insurable, ie of a similar nature, object, value and duration essentially homogeneous. Np must be generalized, as they become uninsurable. There should be a rare occurrence, because the insurer may not appreciate it, you must then resort to statistics, from sound actuarial data.

The statistics obtained from claims experience allows the insurer to accurately assess the frequency and cost of all probable risks asumir.El proposed reinsurance and coinsurance the insurer allow others to assume part of the risk, in exchange for a part of the premium. On this technical basis, the insurer has established risks that meet the ability to be insurable, the law of large numbers is responsible for explaining the technical balance that can reach the insurer, in spite of the uncertainty that each individual insurance contract behave. Hagopian and Laparra, (23) define the Law of Large Numbers as follows: the greater the number of risks insured, the closer the frequency and the unit cost of actual claims frequency and the unit cost the expected claims. On this basis, the meeting of the risks and the calculation of premiums to the insurer will have the necessary funds to meet the payment of claims in a timely manner. Saavedra Lopez (24), addresses the issue, saying the law of averages and the Law of Large Numbers applied to the mass of the risks assumed by insurers allows them to calculate appropriate premiums to be paid by insurers to form the

guarantee fund, which in turn, will allow in the future to pay appropriate compensation against the occurrence of any events siniestrales.

These precepts, take us back to Article 22 of Law 25,675, which provides that an entity must have sufficient financing to fund the rebuilding of the damage. To make the risk insurable and what is within certain limits, it is sufficient that the legislature deems it appropriate. We need to meet the risk characteristics as outlined. Moreover, the insurer should be able to have the possibility of hiring a chord reinsurance risk assumed is proposed.

Until the enactment of Law 25,675, the coverage related to the risk of sudden or accidental pollution, were granted on a limited basis. These contracts were no specific policies for environmental risk, but clauses instrumentaban more complementary coverage, limited in nature (25), including in policies structured around the civil liability for damages to third pop conduct of business of the insured. These conventions amparaban a range of specific risks, depending on the type of activity, such as sudden or accidental pollution mentioned. Under this scheme, the loss is defined as "that fact, sudden, accidental, incidental or otherwise inevitably occur on a date identified in time, as a result of specific risk specified in the policy contract.

The passage of environmental legislation, in particular the standard 25,675, substantially changed the normative core under whose protection had been granted the coverages outlined.

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23 - Hagopian, Mikaël - Laparra, Michel, Theoretical and practical aspects of reinsurance. Mapfre. Madrid 1996.

24 - Domingo Martín López Saavedra, Hector A. Perucchi, the reinsurance contract and liability issues and insurance.

25 - For example, the civil liability of a "sudden pollution" with coverage for a) damages and expenses of removal, cleaning or disposal, where were the result of a sudden event, unintended, unexpected, unusual and alien to normal operation of the insured's premises. b) the civil liability arising from the use of toxic, harmful and dangerous as a result of the exercise of the insurance business, comprising compensation for "personal or material damage and repair costs of the altered environment. c) civil liability exposure to third waves, radiation or electromagnetic fields coming from the insured premises.

Moreover, 98 resolutions in 2007 and 1973, issued jointly by the Ministry of Environment and Sustainable Development, adopted the "basic guidelines to the contractual terms of the insurance policies of collective advocacy environmental damage."

The resolution, in the preamble, which states that matter rule comprises: 1) minimum standards of environmental protection, as provided in Article 41 of the Constitution and the Law 25,675, 2) substantive law in civil matters - LIABILITY - and commercial-insurance in accordance with Article 75, paragraph 12 of the Constitution. The coverage is intended to "ensure the availability of the necessary funds to restore environmental damage collective advocacy, caused by accident, whether that manifests itself as sudden or gradual. Environmental damage is considered collective advocacy, to that affecting something in the environment, regardless of that results in injury to a person or their property. Article 41 paragraph 2 of the Constitution provides that "... The authorities will provide the protection of this right, the rational use of natural resources, the preservation of natural and cultural heritage and biological diversity and information and environmental education ... ". Resolutions 98/2207 and 1973/2207 (SAYDS) temporarily reduce its scope as follows: "... according to the progressive principle established by the General Environmental Law 25,675 and the nature of insurance and financial guarantee, the mandatory provision is limited at this stage, the recomposition of restorable media, water and soil ... ". Law 20,091 of Insurers and their control, assigned to the Superintendent of Insurance of the Nation the following functions:

The adoption of so-called "basic guidelines" does not imply that an insurer can use them in an insurance contract. Compete to SSN, the prior approval of the policies to be used. At the same time, has sole and exclusive control that gives the reference standard and is therefore the authority to control the law entrusts the prior approval of the plans and technical and contractual elements of the policy and the rhymes employed.
The Executive, (26) through Decree 1638 of 2012, partially modified and repealed rules Mandatory Environmental Insurance System (ODS), completing the orders of Article 41 of the Constitution Act 25675 and Regulatory.

The policy change, assigned to the National Insurance Superintendency (SSN), the development of insurance plans for purposes of complying with the provisions of Article 22 of the General Environmental Law (LGA), and Headquarters Cabinet of Ministers shall, periodically review the categories of risky activities, the categorization of industries and service activities by level of environmental complexity and the minimum insurable sufficient entity.

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26 - Insurance Journal. Argentina Association of Insurance Producers. Year XLIV No. 280 2012. Pages 38 and 39.

The policy change, assigned to the National Insurance Superintendency (SSN), the development of insurance plans for purposes of complying with the provisions of Article 22 of the General Environmental Law (LGA), and Headquarters Cabinet of Ministers shall, periodically review the categories of risky activities, the categorization of industries and service activities by level of environmental complexity and the minimum insurable sufficient entity.

The new Act provides that the insurer must make the study of Initial Environmental Status (UPS), to relieve the risk and detect preexisting damage, with the obligation to keep the documentation for ten years. At the same time, the owner of the insured risky activity, the UPS must present to the competent authority, this presentation was an option before. Argentina Chamber of Environmental Risk Insurers, believes the policy change, has recorded significant progress in the degree of compliance of the required insurance guarantees granted in the last year by more than 1,000 million dollars in favor of the community .

With regard to the sums insured, the resolution states that "the insurance sum is the maximum and only the insurer agrees to pay for the total of claims covered by the policy. The decision to refer the ceiling, fit with the technical bases of insurance coverage for environmental responsibility in impracticable insurance is unlimited and the even more impossible to have the insurer with a reinsurance

The guidelines proposed by the joint resolution, contrasts with the dictates of the General Environmental Law. Article 22 of this rule, establishes the obligation to take out insurance coverage such as to ensure the financing of the restructuring of the damage therefore likely to be of a kind.

The texts disparity between standards of different rank and unenforceability of the insured and third party regulations subordinate to a law when the latter embodies a certain "mandatory" were among the most central guidelines issued by the House plenary National Civil. By this doctrine dispensed plenary insurance limits, to render unenforceable the third those amounts resulting from a decision of the supervisory authority in insurance matters. Resolutions 98/2007 and 1973/2007, in its guidelines, refer to the surety and environmental liability insurance.

The surety, has in late 2008, with a policy adopted by the SSN for an insurance company. This method assumes by the insurer, making counter by the contractor of the policy and related third parties to the latter. According to the amounts involved, the failure of the counter offered to the insurer may be a barrier to access to the insurance, especially in cases of small businesses.

The surety is in its infancy and partly environmental liability insurance faces more difficulties performing.

Moreover, the Secretariat of Environment and Sustainable Development, by resolution 1398, which established the agency should consider as a minimum amount of sufficient in terms of Article 22 of Law 25,675, Article 3 of resolution 177/2007

These regulatory bodies, considered as minimum amount sufficient entity, the sum that ensures environmental damage recomposition collective advocacy pollutant produced per incident. At the same time requires the minimum amount insurable in environmental liability insurance, including environmental insurance surety in no case be less than the minimum amount sufficient entity.

State Responsibility (27)

The state's role in environmental issues, has a major role. Internationally we can cite the 1972 Stockholm Declaration and the Rio Declaration of 1992.

Dr. Atilio Alterini noted that in theory the cost of accidents are given these alternatives: the ability to provoke someone who solidaristic and does what is necessary to avoid them and someone without a sense of solidarity, which disregards front ocasionarlos the possibility if the cost avoidance mechanism it is more expensive than it should compensate the damage. This antisocial behavior requires the protection of the State, acting in interventionist. While environmental protection function corresponds primarily to the State, which is in essence based instruments publicistic, private law can provide important tools in an attempt to achieve a healthy environment.

At present, it is understood that the function of the State to protect the environment, and is shared by the community. The situation changed substantially with the development of environmental awareness. As a result of this global phenomenon is concluded that the citizen could participate directly in the management of environmental assets. Today the trend is the most diverse countries in the sense that the community "must" protect the ecological balance, transforming mere beneficiary of state environmental function in a real owner of duty-power to act positively in pursuit of environmental preservation.

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27 - Liability for Environmental Damage. Aurora V.S. Parkinson Besalú

In our constitutional system the environmental function is clearly stated in Article 41 of the Constitution and consists of the following elements: the right to a healthy environment, the duty to preserve and not to compromise future generations and the obligation to repair the damage environment. Then also states that "The authorities will provide the protection of this right, the rational use of natural resources, the preservation of natural and cultural heritage and biodiversity and environmental education and information." The doctrine holds that these elements form a compact core policy sets a target environmental and social performance limits and legal production.

Moreover, Article 41 of the Constitution, as it pertains to the issuance of environmental standards, establishes that: "The Nation shall regulate containing minimum of protection and the provinces those necessary to reinforce them, without altering local jurisdictions ", therefore the environmental police power is constitutionally shared between the federal government and the provinces.

Given the importance to the provinces dictating these rules, the Federal Council on the Environment (COFEMA), is the right place to build and agree on the criteria. The Federal Environmental Pact July 5, 1993, recognizes the Federal Environmental Council as a valid instrument for the coordination of environmental policy in Argentina. The General Environmental Law provides that the Federal Environmental System will be implemented through the Federal Council on the Environment (COFEMA). In competition, the approach adopted by the General Environmental Law, it is for the courts as appropriate for the territory, matter or people. Federal Competition will be where the act, omission or situation will indeed generated degradation or contamination in interjurisdictional environmental resources.

In short, the State's mission is to exercise the duty to safeguard the health and welfare of its inhabitants, all within the broader formulation of quality of life. In this context, includes the protection of the environment. On this basis it unfolds is the public environmental function.

Conclusion

In the present investigation, we have examined the most important issues of liability for environmental damage in Argentina.

Progress of Environmental Law in Argentina, both show significant progress in environmental legislation and the implementation thereof. The most significant legal changes have occurred in the constitutional field, this means that you have set the foundations for the development of environmental law. These advances include the progressive consolidation of integrated environmental management. Since the constitutional reform of 1994, is devoted specifically to the environment protection and the obligation to repair the environmental damage. At the same time it should be mentioned, that Argentina has joined several international treaties into domestic law as a normative framework.

Moreover, it is undeniable that the Rio Conference, directly or indirectly influenced as a source of these changes. The issue of conservation and sustainable use of natural resources such as biodiversity conservation, wildlife, protected natural areas, biotechnology, biosecurity, natural disasters have been new developments in the last decade. Analysis on Responsibility and Environmental Damage, Insurance Law includes the central theme of our research. In Argentina, the General Environmental Law 25 675, developed in this essay, in article 22 requires compliance with environmental insurance by those who develop environmentally risky activities. Liability Insurance for Environmental Damage collective advocacy itself, constitutes an unenforceable requirement to date, because the assurances required standards - surety, bank security, the establishment of a self-insurance or a compensation fund or other equivalent, as determined by regulation, are not regulated by the competent authority in environmental matters, except surety. In this regard, it is necessary that the spirit of the legislator is inclined to continue and deepen the Environmental Security. It is necessary that the environmental insurance market expands competency framework, working in a coordinated manner, agreeing all above criteria. Consider appropriate, the development of alternative tools, progress and self-insurance funds restoration.

The recent amendments to the Mandatory Environmental Insurance System, modify the founding spirit, inspired by the Constitution and the Law on Environment General d. The new guidelines are a spirit compensation, as opposed to the Constitution, the law and the foundational rules for collective advocacy environmental claims that pointed toward remediation.

Changed and Mandatory Environmental Insurance as environmental management tool aimed at remedying the other addressed to ensure the financing of actions for damages. At the same time the changes include the creation of new policy instruments tend to a different meaning of the original orientation, the latter for the central part of a policy of awareness about the preservation of the environment and take responsibility to rebuild damage in that sense is they may produce.

The measures taken by the executive branch and the Superintendent of Insurance of the Nation generally approved the new conditions of the two policies governing hereinafter option subject to forced recruitment. The new policies are Mandatory Insurance and Surety Insurance Mandatory Liability for Environmental Damage Collective Advocacy. Moreover, another major change is the shift of the Secretariat of Environment and Sustainable Development, of its own powers, consisting of set and regularly review the categories of risky activities, the categorization of industries and service activities by level of environmental pollution and the minimum amount sufficient insurable entity in the field. All this has been transferred to the administrative orbit of the Cabinet of Ministers of which depends on the Ministry of Environment and Sustainable Development.

Another relevant aspect amendments eliminating need for environmental compliance of the Secretariat of Environment and Sustainable Development, as a prerequisite to approval of environmental policies by the Superintendent of Insurance of the Nation, the only body Finally to elaborate and approve insurance plans.

Therefore, the insurance industry to impose the conditions regardless of the opinion of the beneficiary of the same, with a special circumstance to highlight, as the subject is forced to take insurance, without any legitimacy, can determine the extent of the coverage to be presented to comply with the law, with the fact that the obligation to comply is one and that the policies adopted, contrary to the clear and simple environmental standard currently provide different scopes.

The community will have insurable interest for more coverage if you decide to take the policy forced Surety, however will have less coverage if you purchase a policy of liability for environmental damage.

Another change is relevant to emphasize that from the presentation of the new policies is mandatory also approved the submission, to the competent authority and an affidavit, the study of the initial environmental situation that insurance obligated to perform when when hiring policy to relieve the risk and detect preexisting damage. Finally, the policy of Environmental Damage Liability policy is an indemnity against the

occurrence of an event that constitutes a covered loss, ie direct damage. Not required as a condition precedent to a third party claim or determined the procedure to be followed before a civil or criminal.

In our opinion, will be the competent authority to the appropriate development of alternative implementation assurance, grounded in the spirit of the legislation set out in Article 41 of the Constitution: "The right of the people to enjoy a healthy environment and promote sustainable development ".

Acronyms

BOCBA Official Gazette of the City of Buenos Aires

CN Constitution

COFEMA Federal Environment Council

MMA Minimum Amount of sufficient Insurable

PCBS Polychlorinated biphenyls

PPN Parts Per Million

RUR recyclables Reclaimers

SAO Mandatory Environmental Insurance

SF Financial Situation

UN United Nations

UNCED United Nations Conference on Environment and Development

UPS Initial Environmental Situation

UNEP United Nations Environment Programme

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CHAPTER II

FEDERAL REPUBLIC OF BRAZIL

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ENVIRONMENTAL LIABILITY INSURANCE AND TECHNICAL aspects: reality and challenges ENVIRONMENTAL INSURANCE 1

Pery Saraiva Neto 2

René HERNÁNDE Vieira Lopes 3

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1 SUMMARY

The purpose of this study is to conceptualize and demonstrate some elements that are considered of great importance in relation to the development of environmental insurance in Brazil, especially from the perspective of legal and technical security. The text is divided into four themes, the result of interdisciplinary research and production, as indeed every author has distinguished academic record. It is also the result of work carried out by the Environmental Insurance ONT AIDA / Brazil, representing the collective growth of research and activities.

Therefore, the first issue, legal biased, has elements of environmental responsibility, with emphasis on the perspective of the courts on the issue, arguing the matter in the light of environmental insurance.

The second theme, the extraction of an actuary, is self-confident, conceptualizing and specifying its peculiarities with respect to environmental risks.

The third theme, the author has experience in forestry, back to the analysis of environmental underwriting by insurers, analyzing data and documents to be considered in the process of accepting risks and their determinants.

Finally, the fourth theme, prepared by a professional with training in environmental management, environmental insurance is analyzed as an economic tool and stressed conditions for effectiveness.

2 ENVIRONMENTAL RESPONSIBILITY AND ITS IMPLICATIONS FOR THE INSURANCE LAW

2.1 ENVIRONMENTAL CRISIS ECONOMIC INSTRUMENTS AND LEGAL ENVIRONMENT PROTECTION

In a crisis the arrival of the mechanisms for environmental protection in order to ensure and promote the preservation of the environment and therefore the quality of human life, is a logical and necessary. These mechanisms emerge daily, either through scientific, commercial regulations, or other, so they can take just one example: the new technologies, the establishment of environmental quality standards and emission standards, the clean development mechanism, environmental legal frameworks, licensing and environmental assessment.

It happens that there is still, in essence, a great dichotomy in environmental issues, namely an alleged inconsistency between development and preservation of the environment or, in other words, the intense conflict between developers and conservationists theses. Apart from these discussions, however, currently the coronation of the current favorable to the idea that, with the help of innovation, you can search and development at levels consistent with sustainable modes.

Sustainable development, therefore, takes the concept of compatibility and, therefore, the creation of tools to permit alignment between development and environmental conservation.

In the legal enforcement area has occurred through such regulation called economic instruments and, in particular, protection of the environment.

In the lesson FERRAZ (2008), that is, from the principles of economic, admitting that "the classic" logical imputation 'added new conception of legal rules "and before" attitudes that still tolerated, still considered legitimate, but we are interested in controlling, reducing and encourage their replacement by other more environmentally suitable, you also have to think about the logic of the new law bringing explores and efficient responses in these tasks. '

Economic instruments for environmental protection are already widespread in the Brazilian legal scenario and deserve mention: the licensing and environmental assessment, environmental taxation, environmental compensation, payment for environmental services, reducing emissions by deforestation and degradation (REDD) and environmental insurance.

The environmental insurance, still in early stages of development in the Brazilian scenario, does not ignore constant apriomorar study concepts and amplitude, and especially from the perspective of the domestic law of interdisciplinarity, conducting dialogues and approaches between environmental law and Insurance's right.

This is because the Insurance Act, while traditional branch of private law, to operate in environmental responsibility, the need to adapt to reduced construction legal edge of environmental law, especially the jurisprudential development that is being built at a rapid pace and furious in this new legal branch.

This article aims to clarify concepts related to environmental insurance and portray the legal environment in which insurance is intended to be inserted.

2.2 CLIMATE CHANGE AND SAFE ENVIRONMENT: AWARDS AND CHARACTERIZATION

Before delving into the legal analysis of environmental insurance, short weave relevant consideration of the distinction between climate change and environmental insurance because, when the following topics, often create the false impression unissidade. It is clear that dealing with climate change is of limited importance for general insurance, while the environmental insurance is different theme.

In short, climate change, and environmental insurance have one thing in common issues, environmental, however, are separate issues and proper distinction is crucial to an understanding and improving these issues in insurance.

It is indisputable understanding of climate change and the perception of changes in climate, especially due to emissions of air pollutants, the interference with the climate. Therefore, scientists contend significant temperature variations occur in the opposite direction to historical measurements; excess unusual periods of rain, or shortage; gales unpredictable, among others.

The consequences are all known, both in rural and urban areas (hurricanes, landslides due to excessive rains, etc). Such events, for the safety of context, would hinder the predetermination of risks and thus, among others, affect pricing (raw). Suppose, for example, in agricultural insurance. Any insurer in the registration process will take into account the peculiarities of the area where the weather is good insurance inserted object (multi-risk, for example) and, therefore, take into account the history of climate inventory. However, climate change indicate the opposite, or significant changes, historical weather patterns. Thus, the insurer simply does not possess reliable standards to measure and assess the risk. Likely consequence: the actuarial imbalance.

It is therefore evident that climate change, the result of human action historical degrading, have the power to affect traditional insurance structures, with implications in the characterization, quantification and qualification of risk, since if new damage (losses) caused the "nature" of man.

It stands as a result of the impact of climate change on security business, especially in property insurance and liability.

Well. Insurance segment of the Environment, in frank evolution, has another nature. This insurance is designed to facilitate the repair of the damage caused to the environment by human activity, especially for business. Examples: sewage discharges into rivers, contaminated water and killing fish or cause harm to human health of the populations that were provided by water resources, soil contamination, air pollution, noise pollution , among others, affecting the health of the population and harmful environmental quality. Once such damage to the environment caused legal liability, which means, among others, the duty to repair environmental damage. For example, the recovery of degraded areas, recovery of fish stocks, contaminated soil remediation and therefore treatment of the water table, and provide health care for those affected.

In this context Brazil responsibility to repair the environmental damage caused by the Constitution, which states:

Article 225. Everyone has the right to an ecologically balanced environment and common use and essential to a healthy quality of life, imposing on the government and society the duty to defend and preserve it for present and future generations.
§ 3 - Procedures and activities considered harmful to the environment shall subject the offender, the natural or legal persons to criminal and administrative penalties, regardless of the obligation to repair the damage.

Likewise is the Law 6.938/1981, which deals with the National Environment Policy, see:
Article 4 - The National Environmental Policy will aim at:

VI - the conservation and restoration of environmental resources, with a view to their rational and permanent availability, contributing to the maintenance of ecological balance in favor of life;

VII - the imposition, pollution and the predator, the obligation to recover and / or any damage caused and the user's contribution to the use of environmental resources for economic purposes.

Article 14 - Without prejudice to the penalties provided by federal, state and local, non-compliance with the measures necessary to maintain or correct the problems and damage caused by the degradation of environmental quality offenders subject:
§ 1 - Without prejudice to the penalties provided in this article, the polluter should, regardless of fault, to compensate or repair damage to the environment and third parties

affected by their activities. The prosecutor of the Union and the States will have the capacity to bring an action for civil and criminal liability for damage caused to the environment.

The above examples make the call environmental damage, while the texts are reproduced above legal frameworks for accountability of the agents causing environmental damage. This damage and the extent of this is that the responsibility is the ultimate object of environmental insurance.

Environmental insurance is dedicated to ensuring that man cause environmental damage, while climate change refers to the nature of that harm humans and their activities, influencing traditional insurance.

2.3 ENVIRONMENTAL INSURANCE: CONCEPT, NATURE AND THE ENVIRONMENT IN BRAZIL

Although insurance policies on the market in Brazil for environmental damage, the safe call by the incidental nature suddenly have a very limited scope. Thus, it is argued that the restrictive coatings are not suitable for environmental insurance yearning to serve as an instrument conducive to environmental protection, either preventive or remedial in. Therefore, the right worthy of protection by the Environmental Law, does not fit the classical notions of civilian, especially related to property rights and the protection of individuals.

In lucid words POLISHED (2011), it is "diffuse rights, not just individual rights, property whose assets have known. We refer, however, to goods of general interest of the community, without particularized property, the diffuse. Owned people, and future generations. "

Such a conclusion, with a broad legal support and legal doctrine, derived from the system itself-Brazilian environmental legislation and, more specifically, the constitutional provision, because the Brazilian Constitution in Article 225 states that "everyone has the right to an ecologically balanced environment balanced, well for common and essential to a healthy quality of life. "

Environmental insurance within the meaning and scope noted above, however, is not consolidated in the Brazilian market, but increasing.

The difficulties of such an application can be made, for example, (i) cultural issues, such as the false understanding of insurance as a mere mechanism for transfer of responsibility, (ii) the early stage of the effectiveness of environmental regulations (flexibility legislative,

jurisprudential disagreements, accountability and oversight of the fragile and inefficient), (iii) the so-called "Brazil risk" that, together with notes of retro investments away, and (iv) the absence of a legal framework for the regulation of environmental insurance. Despite such obstacles, as we have said, there are signs of recovery soon. On one hand, the visible increase of insurance companies that are developing products best suited to the reality of the Environmental Law of Brazil. Second, the growing concern doctrinal, with a significant increase in publications on the subject. Third, the degree of economic development who lives in Brazil, with greater investment in major infrastructure and energy production by requiring high-risk call for offering products tailored to mitigate them. Finally, recent news, due to the enactment of Law 12,305, 02/08/2010, Law called National Solid Waste Policy, which in Article 40 states that "environmental licensing activities or operating hazardous waste, the national SISNAMA licensor may require the hiring of liability insurance for damage caused to the environment or public health, observing the rules on recruiting coverage and limits established by the regulation. Sole Paragraph. The provisions account the size of the company, according to the regulations. " Although this can not be considered as a legal standard for Environmental Security, which undoubtedly represents a first step towards regulation and, above all, to the institutionalization of environmental insurance as an economic instrument for environmental protection.

The law in question, when it comes to environmental insurance, continues a trend that is already evident in the European theater. Interestingly reference in Directive 2004/35/EC, which was received in Portugal by Decree-Law 147/2008 providing as follows: "Art 22. Mandatory financial security. 1 - Operators pursuing the professional activities listed in Annex III (eg waste management, discharges to surface water / groundwater abstraction / impoundment of water, "transportation" - high risk) are required one or more financial guarantees their own autonomous, alternative or complementary each other, allowing them to take responsibility inherent in its business environment. 2 - Financial guarantees may become through insurance underwriting, obtaining bank guarantees, participation in environmental funds or constitution capital reserved for this purpose. " If there are signs that Brazil is moving toward consolidation of a secure environment that best suits their current level of environmental protection, or an "Environmental Risk Insurance" as a term that tends to consolidate to designate this insurance coverage primate that their development is linked precisely to the time of environmental law and, more precisely, to the modern concepts and amplitudes of environmental responsibility. Strict attention to the warning above is above all a question of true risk management of insurers. If the insurance contract back to "ensure the legitimate interest of the insured (...)

against default risk", under Article 757 of the Civil Code, the key environmental insurance are closely attuned to the current understanding of the responsibility environment, since very little is equivalent to the classical notion of civil liability. Only then can predetermine all risks and succeed, including market consolidation, in this new phase.

2.4 ENVIRONMENTAL RESPONSIBILITY AND COMPLEXITY OF ENVIRONMENTAL DAMAGE

The liability insurance, as it is understood today, it molds to the traditional notion of responsibility. In it, with skill and objectivity teaches BECHARA SANTOS (2002, p. 58) that "no other purpose than to ensure payment to the insured which will be used to repair the damage they cause to others once characterized his the fault, therefore, his grievance within the limits and conditions set forth in the contract. " Concerned, therefore, the replacement of the assets of a third victim, with a refund of the economic situation of the insured, when they met the elements of liability, namely: the act or omission, damages and among them, causation.

If, however, environmental responsibility, everything starts to change.

First, with respect to the action, we have environmental responsibility is objective, ie independent of the existence or degree of culpability of the offender, under Article 14, § 1, of the Law 6.938/1981 , previously transcribed, so no matter the guilt of degrading agent is supplied to the first element of responsibility. Thus, according MIRRA (2003, p. 69), "accountability degraded the environment, just to prove (a) environmental damage, (b) an activity to degrade the environment and (c) the causal link between damage and degrading activity actually irrelevant to discuss whether or not the fault of the agent. " We conclude, therefore, that strict liability tends to facilitate performance in protecting the environment when the character is restorative, which does not exclude the question, more often tortuous, demonstration of injury and causation. What is now being held in this case because it "highlights the relationship between cause and effect of environmental damage, the agent responsible for their obligation" (MILK, 2003, p. 202). Another band with respect to causality, two points should be emphasized. First, it strengthens the jurisprudential trend towards taken, as a rule, reversing the burden of proof against the degrading programming, including the possibility of reversing the financial burden of proof. In this sense, reflects the judgment of the Superior Court: Public Civil Action. Environmental damage. APPEAL OF INSTRUMENT. Expert evidence. Charge reversal. ADVANCE OF DEFENDANT. DESCABIMENTO.

PRECEDENT. I - In case of public civil action filed by prosecutors seeking to establish State environmental damage, were granted, the knowledge and application of the reversed burden and cost of its participants interlocutory appeal brought against the decision. II - He who creates or eliminates the risk of environmental damage is required to repair the damage and, in that context, he moved the entire burden of proving that his conduct was not harmful. III - appropriate, given the circumstances, the reversal of the burden of proof, in fact, happens to society, which has the right to look to repair or compensate in any practice detrimental to the environment - Article 6, VIII, CDC c / co Article 18 of Law No. 7.347/85.
Moreover, even in regard to the causal link, it is argued, primarily doctrinal level, the adoption of more permissive criteria for characterizing causation. This thesis has proposed and supported by lawyers range.

According Steigleder (2004, p. 203/204), the impact of the results of bond risk attenuation comprehensive theory of cause and effect is not necessary to demonstrate a perfectly right and proper, just a "mere" connection "between the activity and the harm." However, it is worth noting the caveat that "this damage must be closely linked to the professional activity of the person responsible, glimpsing a connection between the injury and the environmental risks inherent in the business or state. "

LEITE and Carvalho (2007, p. 88) approach to enhance relaxation of causation when it comes to the theory of probability, in the sense that the probability of "merely an activity that has caused damage to the environment should be sufficient for the employer accountability provided that this probability is crucial. "

If the traditional liability, based on the classical scientific paradigm, was anchored in the belief in their ability to achieve certainty and, according to this logic, demanded full proof of causality, probability theory proposes to break this model. A method of attaching a module of evaluation of probabilities, the authors caution that "establish legal causation involves an assessment of the probability / improbability of a given activity have caused the damage in question" (Leite and CARVALHO, 2007, p . 92).

Another band, jurisprudential understanding interesting reference on the inapplicability of Environmental Law "theory of the facts", as shown in the following judgment of the Superior Court:

Special Appeal No. 769 753 - SC (2005/0112169-7). JOURNALIST: Minister Benjamin HERMAN
CIVIL AND ADMINISTRATIVE PROCEDURE. ENVIRONMENT. Public Civil Action.

LIABILITY FOR ENVIRONMENTAL DAMAGE. COASTAL ZONE. 7.661/1988 LAW. PROMONTORY HOTEL CONSTRUCTION AREA. REVOCATION OF LICENSE OR PERMIT AND URBAN ENVIRONMENT. Working potentially cause significant environmental degradation. Draft Environmental Impact Study - EPIA E ENVIRONMENTAL IMPACT REPORT - RIMA. RACING FOR PERMISSION AND URBAN ENVIRONMENT. The polluter pays principle (article 4, VII, part of the Law 6.938/1981). Responsibility (Article 14 § 1 of the Law 6.938/1981). PRINCIPLE OF ENVIRONMENTAL QUALITY IMPROVEMENT (ARTICLE 2 OF LAW 6.938/1981 CAPITA).

A. Dealing with records of action proposed by the Civil Union in order to keep the city of Porto Belo-SC and the occupier of the promontory particularly land and sea, for the illegal construction of three-story hotel with about 32 rooms.

2 °. The Federal Regional Court of the 4th Region, by majority, upheld the appeal of the EU and federal prosecutors to support demand, welcoming Embargoes offender, just to relieve the owner of the cost of the demolition of the property .
3 °. Undisputed that the hotel in Praia da Encantada, was raised in land and marine promontory, the latter defined as an accident of geography "cable or rocks formed by high cliffs" (Concise Oxford). The union says the building is after illegal dumping in the area, "strictly in the sea", which, at the time of construction, including the interruption of free passage and movement of people along the beach.

4 °. In exact terms of the judgment of the appeal (emphasis added): "The project in question is apparently own expert report on pages 381-386, in an area called promontory This area is considered permanent preservation, the State law .. Santa Catarina through Law No. 5.793/80 and Decree No. 14.250/81 and by municipal legislation (Municipal Law n ° 426/84). "

5 °. If the court of origin was based on objective and technical evidence of the case (photos and expert opinions) to determine a) the characterization of the work or activity in question as it may cause significant environmental degradation - that require preliminary study Environmental Impact Assessment (EPIA) and the Environmental Impact Report (RIMA) - . b) the nature of non aedificandi area immediately surrounding the hotel (so does with the fulcrum in the standard municipal art 9, paragraph 7 of Law 426/1984 begin_of_the_skype_highlighting 426/1984 end_of_the_skype_highlighting, which ranks with as "Permanent Preservation Area" , and state law, the Law and Decree 5.793/1980 14.250/1981) prohibits the Superior Court to review those conclusions and Precedents 7/STJ 280/STF obstacle.

6. Tunc is invalid, ex, by absolute nullity due to a congenital defect or license authorization urban environment that ignores or fails to comply with the requirements established by law and normative acts federal, state and local, and produce effects that are usually themselves (nullum quod est, nullum effectum producit) or support validation or confirmation. 7 °. Law 7.661/1988, which established the National Coastal Administration, provided between the conservation and protection of the goods concerned, preparation of Draft Environmental Impact Study - accompanied by their respective EPIA Report Environmental Impact - Rima.

Eight. Do not confuse Mr. requirements and technical limitations that are part of the planning permission and environmental (= the posterius) with its own EPIA / Rima (= the Prius), and which must necessarily precede it, being forbidden as the indispensability of Scientists legally motivated her discharge, remove implicit, tacit or simplistic, sealing justified both to ensure full information to stakeholders, including the community to facilitate administrative control and judicial decision itself.

9. Undoubtedly it would, for administrative purposes, absurd authorize the Union to prescribe any business or activity in the coastal country. We also know that the state environmental agency and the municipal jurisdiction failing so lonely and selfish, in exercise of the prerogative - universal and absolute - environmental licensing on the coast, denying relevance in setting the licensor police power, dominance and Site characteristics (as representative areas and endangered ecosystems of the Coastal Zone, the existence of migratory species endangered, tidal lands and mangroves), labor and extent of impacts in question, making in law and in fact nothing concrete eventually expressed interest IBAMA and other federal agencies involved (Ministry of Cultural Heritage of the Union, p. ex.). 10. Federal Decree 5.300/2004, which regulates Law 7.661/1988, adopts the "fundamental principles of coastal zone management" to "cooperation between levels of government" (through agreements between consortia and the Union, the States and Municipalities, each increasingly common and indispensable in the field of environmental licenses) as well as a "precaution" (Article 5, sections X and XI, respectively). This cautious stance, however, has just emptied undoubtedly when subsequent judicial review, nothing but the fact of the degradation of the environment is all that remains to be examined because of the lack of dialogue and collaboration between environmental agencies and monopoly vision exclusivist territorial same licensing jurisdiction.

11. Pacific Supreme Court jurisprudence, in accordance with Art. 14, § 1, of the Law 6.938/1981, degradation due to the polluter pays principle, the provisions of art. 4, VII (first part) of the Act, is required, regardless of fault, repair - for obvious reasons on their

own - all the damage they cause to the environment and third parties affected by their activities, being dispensable perquirir on the subjective element, which consequently makes it irrelevant whether good or bad faith for the purposes of acertamento the nature, content and scope of the obligation to restore the status quo ante and ecological compensation.

12. Given the principle of improving the quality of the environment, adopted by Brazilian law (art. 2, caput, of Law 6.938/81), the proposition inconceivable that if a property, rural or urban, is in the region and environmentally damaged or compromised by act or omission of a third party, would be expendable its future preservation and conservation (and, more emphatically, eventual restoration or recovery). This thesis indirectly create absurd canon of equality applies to the alleged right to pollute and degrade: if others with impunity, desecrated, destroyed or cleaned the protected environment, the prerogative worth for each and everyone benefits. (...)

Well, with everything to prove the specific features related to environmental responsibility, the following judgment of the Superior Court, claims that the broad responsibility of everyone involved with the environmental danosidade:
Special Appeal No. 650 728 - SC (2003/0221786-0). JOURNALIST: Minister Benjamin HERMAN

CIVIL PROCEDURE AND ENVIRONMENTAL. LEGAL STATUS of mangroves and marshes. LAND OF THE NAVY. Permanent preservation area. ILLEGAL WASTE LANDFILL. Environmental damage. STRICT LIABILITY. REM propter OBLIGATION. Causality. PREQUESTIONAMENTO NO. JUDGE'S ROLE IN ENVIRONMENTAL ENFORCEMENT. JUDICIAL ACTIVISM. CLIMATE CHANGE. Legal or constructive DESAFETAÇÃO DISQUALIFICATION. SUMMARY 282/STF. Violation of art. SET NO 397 CPC. ART. 14, § 1 of the Law 6.938/1981.
A. As a rule, does not violate Art. 397 of the CPC's decision rejecting the submission of documents not related to facts or new that have not been presented in the procedural stage, ie after the citation to discuss the report of the expert your appeal.
2 °. For centuries we have prevailed between the distorted cultural conception saw the mangrove sensu lato (= strictly mangrove swamps) consummate model ugly, dirty and unhealthy, ugly duckling a type of ecosystem or antithesis of the Garden of Eden.
3 °. Ecosystems transition between sea, river and land, mangroves have been overlooked, popular and legally, and therefore considered vacant and anyone connected with the breeding of mosquitoes that transmit serious diseases, such as malaria and yellow fever . A despicable environment, both occupied by the poor population, as stilts, and synonymous with poverty, dirt and the socially excluded (such as areas of prostitution and other illegal

activities).
4 °. Publicize mangroves, especially in times of urban epidemics, was planned by people and the State's duty, enshrined in both the perception of people feel that health laws enacted in the various levels of government.

5 °. Benefactor-modernization, the mangrove opponent was encouraged by the Administration and based on the leniency of justice, because no one would hinder the action of someone who was socially embraced as an example of the entrepreneur in the service of civilizing urbanization and sanitation purify the body and spirit.
6. The destruction of mangroves has emerged as the recovery and healing of an anomaly of nature aberration converting natural - humanization, sanitation and treatment of their ecological character - The Garden of Eden that was never part.
7 °. In Brazil, unlike other countries, the judge does not create obligations for environmental protection. They spring from the law, after passing through the sieve of the Legislature. Therefore we do not need activist judges because activism is the law and the Constitution. Fortunately our judiciary is not obsessed with an ocean or lagoon halfwords legislative festival. If gap exists, not for lack of law, not even the default law, is due to the absence or deficiency of the administrative and judicial enforcement of environmental unequivocal rights adopted by the legislator.

Eight. Current Brazilian legislation reflects the conversion of mangroves scientific, ethical, political and legal repositioned, leading to the condition of public health risk to the ecosystem level as critically endangered. In order to protect its ecological, economic and social, the legislature gave them legal status of Permanent Preservation Area.
9. It is the duty of all owners or not, to ensure the conservation of mangroves, increasing need, especially in times of climate change and rising sea. Destroy direct economic use, standing under the incentive of profit and easy short-term benefits, drain or land them for speculation or land use, or turn them into landfills characterize severe damage to ecologically balanced and well-being community, behavior which must be quickly and forcefully condemn moderate and Administration and the Judiciary.
10. In accordance with Art. 225 of the 1988 Constitution, the mangrove is the common use of the people, marked by imprescriptible and inalienable. Therefore, the result of the grounding, drainage and illegal mangrove degradation does not equal the Marine Institute, plus the land provisions of art. 20, section VII of the Constitution.
11. It is inconsistent with Brazilian law desafectado called tacit or legal disqualification for reasons of fact.

12. Environmental obligations resulting from illegal dumping or debris in the soil are likely propter real, which means adhering to the title and transferred to future owners, dispensing is debate about the good or bad faith of the buyer, as it is not within the responsibility subjective, based on fault.

13. For the purpose of determining causation in environmental damage are equivalent no, no, when it should do, which lets you do, do not care who funds to do that, and who benefits when others do.

14. Found a causal relationship between the action and the failure of the candidates to environmental damage in question is not, objectively, the duty to promote the recovery of the affected area and compensate any remaining damage in the form of art. 14, § 1, of Law 6.938/81. (...)

However, as a last example of rigorous environmental responsibility, following the trial, also the High Court of Justice regarding the buyer's responsibility degraded area for recovery, although it has not been the cause of damage, recognizing their solidarity against Former owner:

Special Appeal No. 1,186,130 - RJ (2010/0052940-9). JOURNALIST: Minister Benjamin HERMAN
CIVIL AND ADMINISTRATIVE PROCEDURE. ENVIRONMENT. ACTION DEMOLITÓRIA. Guardrail marginal landfill construction. Damage to the environment. OFFENSE TO ART. SET NO 535 CPC. Infringement by a third party. PROPERTY OWNER. Responsibility and solidarity. ART. 14 of Law 6.938/1981.
A. In this case, the State Superintendent Foundation of Rivers and Lakes - Being the Demolitória action brought against the company Furniture and Decoration Marco Ltda, The search for landfill disposal and ruined buildings in the range of marginal protection Lagoa da Tijuca ..

2 °. The Court of the State of Rio de Janeiro upheld the conviction monocratic dismissing the case without prejudice, stating the cause of illegitimacy passive advertising company sued on the grounds that the works were not made irregular by the defendant, but by a third occupying the neighboring property.

3 °. The solution of the debate, with sufficient reason, without offending the art features. 535 of the CPC.

4 °. It is undisputed in the record that a) the work has been built in the area of environmental protection b) the legal representatives of the company are the owners of the property gradient, and c) the accused occupied the site at the time of the occurrence of an environmental violation.

5 °. It is settled law of the Supreme Court, "the obligation to recover environmental degradation" practiced by the previous owner or third domain "includes one who has the ownership of the property, but not its own outbreak of the damage, taking into account their propter rem nature "(LCDD in Ag 1224056/SP, Rel Minister Mauro Marques Campbell, second class, 08/06/2010 DJE).

6. The owner of the property that allows, by act or omission, or work activities of another severally liable for any damage to the environment because it relies ensure its preservation, so it may appear that demand is passive pole goal demolition of illegal buildings and improvements, especially when end up favoring it or appreciate the ground. (...)

Finally, with regard to damage, has the most significant innovations. Damage to one or a few individuals is only a small part of the magnitude of environmental damage, since it is said that the individual and their assets are achieved only in a reflection. Relevant in this task will damage the environment itself.

Based on the choice made by the Brazilian Constitution for the environment, is to realize that there are two dimensions of environmental damage, ie the possibility of environmental damage autonomous except on private property. In other words, there is a distinction between damage to microbem macrobem and the environment, to the extent that damage to private microbem primarily affects those in possession of his domain, while damage refers to damage macrobem to the environment due consideration.

Since especially with respect to environmental damage macrobem, further differentiation is suggested by the teaching, namely: on the one hand, pure ecological damage, environmental damage other in general. Leite (2003, p. 95) presents pure ecological damage considering that "the environment can have a narrow conception, that is, in relation to the natural components of the ecosystem and not artificial or cultural heritage. In this range, environmental damage would mean pure ecological damage and protection were being made on some of the key components of the ecosystem. [...] The damage affecting so intense nature of the goods themselves, in the strict sense. Unlike the environmental damage can have a wider range (sensu lato). This means that besides the pure ecological damage, there is another dimension, referring to the broad

interests of the community, covering all components of the environment, including cultural heritage, protection of the environment and all its components (Leite, 2003 , p. 96a). It was from ground for conceptual purposes, three different amplitudes of environmental damage. To illustrate this distinction well, use appropriate lesson Steigleder (2004, p 122/123.), When presented the following hypothesis: the environmental damage resulting largely overlap always pure ecological damage as well as damage to the individual, because the two hypotheses , is being damaged adjacent diffuse interests in maintaining environmental quality. Therefore, an oil spill in the sea, causing water pollution and fish kills because: a) Damage to individual fishermen who depend economically on fishing activity - due to the existence of several people connected the same factual situation, configure homogeneous harm individual interests, in which the note remains the individual - b) pure ecological damage, as the marine ecosystem remain reached in its essential characteristics, and c) environmental damage widely, from the environmental

5.2 POTENTIAL ENVIRONMENTAL INSURANCE

The approach proposed in this topic was to discuss the issue related to environmental insurance, designed to support the information and explanations, in order to provide adequate screening and management of environmental risks to the insurance business. No thinking of environmental insurance in Brazil, currently neglecting the specificities related to the new institute civil liability, when applied to environmental issues. Meets Finally, some observations.

Besides the typical function of the insurance contract, the projection of the risks, valid for different branches, with the guarantee element as the immediate object of the contract, environmental insurance is emerging as an important tool for environmental protection. Despite the fundamental principles focus on environmental issues in the prevention and precaution in the event that it was not possible to avoid degradation of the environment, efficient mechanisms must exist to enable the repair or restoration of environmental damage. Here stands MILK (2007, p. 180) that "nothing adiantariam precautionary and preventive measures are responsible for any damage not required to comply with their duties or answer for their actions. Therefore, (...) there is no need for the State to articulate a system that provides security to the community. "

To adapt to this reality, the Brazilian legal, environmental, leaned triple responsibility system. Therefore, in addition to the criminal and administrative responsibilities, causing damage to the environment is liable, or is obliged to repair the damage caused to the environment.

Environmental responsibility, guided by the principle that the polluter pays, like putting the relevant legislation, effective and has serious concerns about the responsibility of programming that degrades the environment.

In this sense, the figures of liability under § 1 of article 14 of Law 6938/81, the possibility of piercing the corporate veil, where the personification of society can hinder compensation for damage to environmental quality ambient environment (Law 9.605/98, Article 4), or the possibility of reversing the burden of proof in legal proceedings aimed at accountability degrading agent, and the imposition of the obligation to repair the damage environment, commonly performed through the interposition of Environmental Public Civil Action. Note that the legal system is taking shape in the sense that once the damage to the environment, the damage and its effects should be repaired effectively. In this context, there is no doubt that the number of environmental insurance is to increase the protection system and repair environmental damage.

Therefore, if the schedule degrading not have the financial means to honor its obligation to this transgenerational macrobem relevance diffuse insurance coverage will ensure restoration of environmental damage. However, from the point of view of the trusteeship system benefits the environment, has been developed Environmental Security role as "any person who hires hopes his heritage is not consumed in an action for damages. For Moreover, the victims have the guarantee of repayment "(Trennepohl, 2008, p. 99). Another band that highlight "the insurance companies that have influence on the adoption of environmental management practices" (Trennepohl, 2008, p. 99), in which, for insurers agree to assume certain coverage, you will not need to do demands and controls. In these cases, the insured shall be obliged and faithfully comply with in order to prevent and mitigate the negative impacts to the environment. In other words, should be adjusted to adapt to the risks listed in the contract, duly stated in the policy, including as a condition of maintaining the coverage, so that the alignment of business conduct and environmental standards required.

3 possibilities and effects of self-insurance for environmental risks Self-insurance occurs when an organization (company) assumes a risk itself. In this case, there is obviously no risk transfer to an insurer and, therefore, the occurrence of an event, the costs are borne entirely by the tortfeasor. However, this issue should be analyzed more deeply about the reasons for the failure to transfer, you can have several causes:

a) When the severity of the damage and have a low probability of occurrence, allowing them to be absorbed by the organization without any danger to their solvency. The small working capital or reserves are sufficient to deal with the damage that will not impact on the solvency of the organization;

b) Lack of insurance coverage that will transfer risk. In this case, or if there is an emerging market for insurance or risk not attractive to the insurer;

c) The notable lack of negligence penalty or loss of another order.

In the first two cases, the solution is risk management. However, if the probability is too high or variable over time, or if gravity is high, lack of insurance coverage imposes the need for risk management quality.

However, with the coverage and potential damage impact on its solvency, insurance is the best option considering that is inherent in the relationship between the insured risk transfer and insurance coverage in exchange for a small loss sheet, call premium. Therefore, it is not necessary to create reserves by the insured to address the potential environmental damage, a need that will be the insurance company that uses estimates of average frequency and severity of building these provisions.

In the third case, the absence of sanction, be it financial, is of another order to cause discomfort to the agent causing the damage, the trend is not holding insurance. Organizations with this profile are often run by people with little empathy forward and benefits does not care about the environmental impacts to third. Countries with weak laws that do not apply or even penalties for environmental aggressors or whose legal system in favor of the prohibition of the penalty in time, encourage continuing negligent complacency in a position where they are and have profit with it . A population that does not care about the environment exacerbates this abandonment.

It is worth remembering that the arrangements for the provision of resources for future events and loads the results of the company.

If environmental damage occurs and the obligation to repair are present, the environmental insurance can be activated and therefore the company that caused the damage will not be significantly impacted economically beyond any deductible and the amount of the premium paid above. That is, a small part of their heritage was lost instead of significantly more. With this, we can say that when there is an obligation to pay for environmental damage or act to reduce their consequences, neglect threatens their solvency to be part of their reserves in avoidable costs. In a sense we can say that the negligence transforms reserves

reserves.

When a company ignores environmental issues and the benefits more than another that cares about environmental issues and, therefore, have spent with her, the society in which these companies are inserted becomes an accomplice of this principle if not opposed to such practices and also the second executioner, whose financial health can be shaken by the imposition of the "environmental costs" that somehow affect your benefits. Therefore, we can classify the burden of self-insurance or negligent. While the former involves, for example, risk management and cost analysis is hurt, the latter simply does not care about what may result from such negligence.

And in this case, the State has a fundamental role: the clearer and stricter laws, with penalties that are challenged by time, there is much difference. And ... environmental insurance depends on it.

4 ENVIRONMENTAL AND ITS IMPORTANCE FOR SUCCESS IN RENTAL AND MAINTENANCE OF A LIABILITY INSURANCE POLICY ENVIRONMENT

The insurance segment called RC Environmental Risks (Susep), also known as environmental liability insurance or just insurance environment is actually a type of insurance is still in early stage of development in the Brazilian market, although it has Brazil emerged in about 7 years ago. Undoubtedly the field of market opportunities for insurers operating in this industry need to develop content on the subject, from simple brochures containing commercial general explanations for disseminating assurance techniques recommended for the construction and maintenance of a healthy market, is being done. Therefore, the following reports will contribute to that list of possibilities outlined above, focused on the definition of operational and environmental aspects that demonstrate the reasons why these aspects are important for this kind of insurance underwriting for both the client and the agent and the insurer.

4.1 OPERATING ENVIRONMENT

Although each operational activity has, by its specific aspects, certain other major environmental, we list some of these issues that are common among them and that, in turn, are also essential for the analysis of risks in the underwriting business insurers. That said, this article is subject to three environmental aspects of operation so that we can analyze inadvertently exhausting task, important relationships within the underwriting process, acceptance and negotiation of settlement of claims that comprise the Environmental Liability Insurance (Environmental Security). The themes are: the Environmental Management of Industrial Solid Waste Licensing and potentially polluting.

4.2 THE IMPORTANCE OF ENVIRONMENTAL ANALYSIS OF LICENSES underwriting ENVIRONMENTAL RESPONSIBILITY

Why apply and analyze, for example, the Environmental Operating License? There are some very important issues in the environmental licensing process is extremely valuable for risk analysis in insurance underwriting environmental responsibility. The first is a matter of subscription Insurer less technical role and to assess the legal compliance of your business prospects in the Brazilian environmental legislation. It is intuitive that one of the important criteria for the mandatory review of a particular industrial operation to recruit environmental insurance is the existence of a valid license and operating environment existing at the time of the risk analysis.

You can not assume that this premise may occur without any progress in the negotiations between the insured and the insurer potential, as the insurer must not, of course, holding an industrial operation that does not enforce a legal requirement, or is subject to environmental licensing, but not shaped as required by law.

The existence of an environmental permit expired and not renewed, unless the employer to show that it took all reasonable measures within a time limit to request your new license legally operating environment and identified that the delay is motivated strictly by any delay in the analyzes the process of renewal of the body responsible for the environment, which is a warning to the insurer that the management of environmental issues and the potential client has weaknesses that this type of behavior can also adversely affect your ability to manage other aspects environmental important to have the potential to cause damage to the environment if handled improperly and others.

Overdue step of verifying the legality of the company from the point of view of Brazilian environmental legislation, environmental license of operation provides an important service to the subscriber by the Insurer provides environmental technical information that is useful, no doubt, to proper understanding of risks associated with the exploitation of the environment.

Taking as an example the model of the exploitation of the environment currently exists in the State of São Paulo can realize the crucial data for risk measurement. Some of the data and its relationship with the importance of subscription risks are listed in the following table

Technical information contained in the Environmental Environmental Operating License	Examples of relationships that can contribute to the analysis of risk in underwriting
Cuenca is located in the industrial unit subscription Object	A. Important information, among other reasons, for analysis around the plant to evaluate the environmental goods (water bodies, permanent preservation areas, Area Environmental Protection, Area Water source protection, protected areas, mangroves, etc) are present in the environment and the degree of vulnerability of the operation on the occurrence of pollution events that can overcome the physical boundaries of the property and environmental damage to the products concerned. This analysis contributes, for example, suitable for measuring and pricing risk when offered coverage that aims to support this type of exposure. B. Important information, among other reasons, for the analysis of the unit in industrial environments to assess what type of population occupation / industrial properties / commercial exist in the local surrounding risk analysis. This analysis contributes, for example, pricing is risk when offered coverage that aims to support this type of exposure

Hours of operation in industrial analysis	A. Important information, among other reasons, to assess whether the plant is kept in operation during the night. If this happens and the surrounding region is inhabited largely a case of environmental pollution that exceed the physical boundaries of the property will likely cause a greater chance of injury or property damage to third parties, since, in general, all afternoon residents are in their homes rest period
The technical requirements imposed by the environmental agency of the operation could be developed to mitigate and / or prevent the risk of harm to the environment	A. Such information, for example, can lead to environmental aspect predetermined subscriber may need to be more carefully evaluated others. B. They are also important to allow the additional data requested for risk analysis, for example, the efficiency level control air pollution in existing industrial operation. Below is an example of a technical condition of an operating permit withdrawal of the environment that supports this argument: "Operate and maintain appropriate systems for monitoring air pollution (fabric filter), installed at the factory, so that they are as efficient capture and storage of pollutants."

Table 01 - Information on the operating license of the environment and its role in underwriting

Means this issue, the importance of the request, the insurer, the environmental permit to operate a plant in the underwriting process for Environmental Responsibility.
It is also clear how much that is beneficial to the customer, as it clearly contributes to a correct identification of the environmental aspects of the operation, contributes to a good and fair price, and ultimately, enables the design of policy, including coverage offered, is fully aligned with the reality of the risk of the customer, making sure you are hiring a policy that reflects, in terms of financial protection, its actual exposure, including facilitating future negotiations for setting claims.

So, when the insurer requests, with the support of the insurance agent, sending operating environmental license, the customer benefits because it is evidence that the application process will be well supported and will result in a budget presentation aligned with client interests.

In addition to the aforementioned fundamental contributions, the Environmental Permitting legally established a relationship with the Environmental Liability Insurance. In what sense? This relationship is evident in the National Solid Waste (PNR) (Federal Law 12.305/10 / / Decree 7.404/10), specifically in Article 40 of the Law and Article 67 of Regulation. These devices are awaiting operational details to come through, a priori, to a resolution of CNSP (National Private Insurance Council). When arise also bring additional subscription Environmental Liability Insurance with the environmental licensing process.

4.3 Why insurance underwriting and environmental needs must consider the handling capacity of potentially polluting industrial solid waste?

In general, industrial solid waste management is developed in some important steps, namely: identification of the stages of the industrial process responsible for the generation of industrial solid waste, waste characterization, types of packaging, temporary storage vegetable waste transportation, industrial purpose solid / disposal of such waste and strategies for reducing waste generation, reuse, and also to explore ways to mitigate risks when your destination / disposal. Each of these steps has its importance for the culmination of a subscription right for the client and the insurer.

A prime example is the universe of subscriber data, sent indirectly by customers and / or collected directly inspections on the location of the temporary storage area of hazardous waste and their vulnerability to flooding, for example. Only a detailed subscription, understanding customer and technical support can also be properly evaluate this aspect of risk. Areas of temporary waste storage, located near rivers, for example, are the classic example for raising these types of exposures. The information alone that there is a temporary storage area on the ground and that this area is built on impermeable soil can be seen only the tip of the "iceberg" in the risk analysis process.
Ignorance, for example, the flow rate of the water body in the vicinity of existing focus area of the risks associated with environmental pollution and environmental damage, it shows a little rough. This aspect, along with another set, clearly can and should influence

the structure of politics, since the design of the franchise, through risk assessment, leading to the regulation of a possible accident. If the client is not aware of the flooding regime, is likely to also lack control measures associated risks.

Therefore, the areas of hazardous waste can be easily "washed" by flooding associated with heavy rainfall and, before that, we have the concrete risk of harm to the environment, affecting aquatic fauna, flora, sediments, water and finally set the risk involved environmental damage specific dimensions reflecting physical damage and property damage to third parties and, to meet the financial costs related to environmental remediation, recovery of fauna and flora, defense spending, among other possibilities coverage widely supported by environmental insurance.

The client runs the risk of not getting even the scope to include the "waste management" in politics. Or, if there is a negotiation, fatally technical conditions (premiums, deductibles, sub, etc) will be less extensive than the full potential of an environmental insurance clauses usually offer.

Another aspect that is worth our reflection exercise that involves another type of risk that is connected to the construction site of a temporary storage area for the waste, which is the future potential for environmental damage, created cascading and cumulative, progressive and effects (damage) that occur over time.

It is a fact that the area of concentration of the waste is a potential source of pollution loads. The areas near bodies of water are generally areas where the groundwater level can occur near the surface and the contaminants, by percolating porous soils, for example, may negatively impact the quality of water when they reach the saturated zone or water table. The greater the distance between the pollution loads structures having these environmentally sensitive areas, less risk of future events accumulated environmental damage caused by any infiltrate gradually into waste areas.

Finally, the insurer, after analyzing this aspect (that goes for other things as well) and verify that there are sufficient conditions for the administration to take the risk under control, despite having the power to decide not to accept the risk, will Odd the opportunity to explain to the tenderer which has opportunities for improvement in the management of industrial solid waste until it can or should be taken.

First, the insurer will be busy in full by the tenderer, as can be shown that exposures are created due to the poor management of industrial solid waste and how these risks can affect the environmental quality of the site, its surroundings and also affect the financial health of the company in case of any unexpected and unforeseen event occurs.

The insurer may also help the applicant to find the best technical partner to implement a proper and safe management of hazardous industrial waste, access, in general, their networks of contacts with experts in environmental operations.

5 EFFECTIVENESS OF ENVIRONMENTAL INSURANCE AS AN INSTRUMENT OF ECONOMIC ENVIRONMENT PROTECTION

5.1 INTRODUCTION

Article 9 of Law 6938 of 1981 points, the environmental insurance as one of the economic instruments used for the implementation of the National Environment - PNMA in Brazil, contributing to the achievement of its objectives, including the preservation and restoration of environmental resources and taxation, the polluter and predator, the obligation to recover and / or any damage.

The concept that insurance can be used as collateral for environmental risks are not limited to Brazil. The European Directive 35 of 2004 also mentions financial guaranty insurance for operators of certain occupational segments assume environmental liability inherent in the operations they perform.

Despite the recognition of environmental insurance as an economic instrument exist a few years ago, the insurance contracts of this type in Brazil only began to take hold after 2011 when the Superintendency of Private Insurance - SUSEP created the specific branch of the risks of environmental responsibility. Since then, some insurers began to act more actively in this segment, offering new terms of engagement and increased insurance coverage. The objective is to analyze the main aspects related to insurance contracts covering risks that contribute to environmental insurance actually act as effective economic instrument in accordance with the NEP.

5.2 ECONOMIC SECURITY ENVIRONMENT AS A TOOL

The use of insurance as a tool of economic PNMA is only viable in a legal environment in which environmental damage is repaired, the burden is really necessary. Two important principles of environmental law, enshrined in law and public policy for the Brazilian corroborate this factor: the principle of full compensation and the polluter pays principle. The principle of full compensation is based on the obligation to make full reparation for the damage caused to the environment, regardless of any criminal sanction. It is based on Article 225 § 3 of the Federal Constitution and Article 14 § 1 of Law 6938 of 81 that are respectively:

The conduct and activities harmful to the environment shall subject the offenders, individuals and corporations, criminal and administrative penalties, regardless of repairing the damage.

Without prejudice to the penalties provided in this article, the polluter should, regardless of fault, to compensate or repair damage to the environment and third parties affected by their activities.

The polluter pays principle, the cause of environmental damage or polluter should bear the cost of repairs to the burden resulting from its operations, called negative externalities in environmental economics, not vested in the company not involved benefits in the polluter. This principle is based on Article 225 § 3 of the Federal Constitution, and Article 4, Section VII of the 6938 Act 81, which reads as follows:

The national political environment will focus ...) VI-taxation, pollution and the predator of the obligation to recover and / or any damage caused and the user's contribution to the use of environmental resources for economic purposes. "

According Milaré (2005), the polluter pays based on redistributive vocation Environmental Law and is based on the economic theory that social external costs that accompany the production process must be internalized, operators, ie must take them into account when making production costs and therefore taking.

Through the application of the two principles above will be proper accountability of polluters and the requirement that those who promote the repair of environmental damage and, therefore, will have to have the financial resources for this purpose. However, depending on the severity or extent of the damage, the costs involved in the repair exceeds the financial capacity of the head, making it unfeasible. In this context, the insurance policy of environmental pollution can act as an excellent resource for the repair of the affected area and guarantee the protection of the environment and compensate the injured party for the same event.

Insurance risk of contamination is not limited to small businesses, because when it comes to environmental impacts, the volumes of the damage can reach amounts that would compromise the ability to meet the commitments of the companies that have a capacity high economic.

The instrument can be a viable alternative for the management of environmental costs, including in activities that have the potential of medium and low pollution because these activities is the risk of occurrence of a pollution event. Therefore, when you purchase a policy, the company pays the insurance premium for the period specified, ie a particular expense, short walks, to replace the uncertain possibility of a loss of uncertain value, and may affect your financial health.

5.3 Characteristics Safe Environment

For sure it really works as economic instrument under NEP, it is important to hire security coverage they offer major environmental risks that the activity presents. For example, the sudden pollution coverage, given the policies of General Liability - RCG, ensuring only caused property damage and bodily discharge or release of pollutants that begins and ends within 72 hours and only for deposits or equipment located in in or on the soil surface and the water is limited to damage and / or body.

Such coverage is very limited since much of the environmental damage is greater than two hours and 72 are below the ground level. Moreover, for the effective protection of the environment, compensation for damage required by national law is not limited to property damages and should extend to damage to natural resources.

The coverage under specific policies covering risks of contamination, as classified SUSEP environmental liability risk, and provide adequate safeguards to broader environmental risks that the company is subject.

Besides the sudden pollution coverage, there is no guarantee gradual pollution including damage to natural resources, the essential purpose of coverage in a policy of contamination and / or pollution.

Since there are no physical boundaries or limits on the extent of environmental pollution - a plume of contamination at the site can start the insured and extend to third party sites, there is no option to contract coverage for property damage occurring in policyholders and third parties such as cleaning costs at these places, so that any contaminants can be removed. Considering that there are differences between products and extensions of coverage provided by an insurance company and another, or even different compositions of the same insurance coverage, it is important to know the conditions of the insurance clauses and collateral coverage that each deals The main risks confronting them with the company, in particular, presents.

Of course, the premium charged is always observed in deciding what policy will hire, but the cost of insurance should not be considered in isolation and / or have a role in the decision. In addition to factors that directly affect the award, as a franchise, and mandatory participation of the insured limits, you should make a careful analysis of the risks excluded in the policy. Sometimes you pay more for the coverage is not necessary and / or not to hire a coverage that is very important for the activity.

However, when it comes to roofing repair the damage, it is important that the available clauses clearly what types of repairs that are safety-protection. By law, compensation for environmental damage necessarily imply that it will make the "recovery" or "restoration" of the affected area, respectively defined by Clause XIII and XIV of Article 2 of Law 9. 985, 2000, such as:

Recovery: recovery of an ecosystem or a wild population degraded to undegraded condition, which may be different from their original state;
Restoration: the return of an ecosystem or a wild population gradient closest to its original state;

Due to the lack of availability of technology or cost very high, ie, a disproportionate cost of remediation in relation to the results obtained in some cases of contamination is impossible to reach the previous state and therefore make the recovery zone complete, will produce only what the law called restoration.

As presented above, the principle of compensation, the person responsible should promote full compensation for the damage, which is not achieved only with the restoration of the area. So, having been taken all reasonable steps to repair the environmental damage at the site by restoring natural and remain negative impacts, the head can be sentenced to promote other compensation provided by law: ecological compensation and financial compensation. The ecological compensation is the replacement of a well-which was not damaged and restored to its previous state, second, or performing the equivalent functions. Economic compensation occurs through the compensation of a sum of money under. It may be through the assignment of value to a fund managed by a Federal or State Councils Board involving prosecutors and community representatives, as required by Article 13 of Law 7347 of 1985, or the support implementation and maintenance of the conservation unit

complete set of protection under Article 36 of Law 9985 of 2000. There is no legal provision in relation to the environmental assessment method to be used to determine the amount to be compensated.

The insurance for the risks of environmental pollution should be clear about the type of repair to be guarantor. Coverage is limited to the restoration of the environment? There ecological compensation coverage? And, if the insured is sentenced to repair the damage by monetary compensation coverage agree?

This information is essential if the insured becomes aware of the protection that is acquiring the insurance contract and the insurer knows exactly what their exposure, since having an operation that is sustained over the long term, you must perform a risk analysis and pricing based on these factors.

5.4 Why the insurance environment is not an incentive to pollute?

The fact that environmental insurance provide a guarantee for the repair of damage may lead some to conclude mistakenly that instead of reducing pollution, insurance is increasing its probability of occurrence of the insured, be sure to invest in preventive measures and control, knowing they will be supported in a contamination event. However, this reasoning does not proceed for the following reasons:

1) Insurance companies underwrite risks for acceptance - the subscription is the decision process by which insurers select the risks that provide cover and define the terms, conditions and the premium to be charged for acceptance.

In this analysis we consider the numerous risks inherent to the insured as well as the management and controls used to minimize them. The more the insured invest in prevention and improvement of its environmental management system, the lower the cost of your insurance.

Furthermore, when the insured risk is managed well, can choose to use compulsory deductibles or higher stakes, as it believes that the facts are less frequent and less severe, significantly reducing the insurance premium.

Note that the insurance only covers uncertain future events or negative environmental impacts have not known under the policy. The history of the insured is used to define the percentage and the minimum value of the reporting obligation and to establish the conditions for the acceptance of risk.

A good technique is essential for the subscription, in any way, the insurer assumes certain risks or risks with a high probability of contamination events.

Whereas the vast majority of accidents risks of environmental pollution have high severity and long latency, ie time delay between the event triggering and manifestation or discovery actual damage, there's no room for amateurism in this subscription form.

For operation of the insurer is sustainable and has the ability to pay all claims and achieve positive results in the long term, the subscription must necessarily be based on solid information and be conducted by professionals with extensive knowledge in the area to be

measured potential risks and make an assessment based on technical criteria. 2) Imposing restrictions - an insurance contract does not relieve the insured of its obligations to maintain the high level of maintenance and upkeep of the facilities and equipment, as well as effective management of risk. Instead, such obligations may be contained in detail in the text of the policy as necessary conditions for activation. Therefore, only the insured to fulfill their obligations in relation to the prevention of environmental pollution events, legal requirements and other determinations of politics is to make the protection of workers insurance.

3) Select Risk - As already mentioned, the conditions currently granted in Brazil in the policies of environmental pollution are very large relative to the scope of coverage. For insurers continue to operate to provide such guarantees maintenance of the good results in the long term is essential to ensure all risks carefully select those that will be accepted in its portfolio.

Several bills have been submitted to mandatory environmental insurance in Brazil, however, if this were to materialize, it would be impossible for insurers to maintain coverage of today always complex, because not all businesses meet the criteria minimum risk management required to purchase insurance.

To Pulido (2005) compulsory insurance would make the insurance market conservatively positioned, creating a reduced coverage or even symbolic so only to attend a specific legal requirement, but no insurer is required to any Insurance in Brazil . The possible requirement might encourage the abandonment of preventive measures normally expected or required, which increases the risk considerably.

So, not only by hiring mandatory environmental insurance can perform proper risk selection and coverage consistent with the specific grant of environmental damage that can be caused by each insured.

5.5 Conclusion

For the environmental risk insurance actually act as effective economic instrument according to the NEP is necessary that the polluter is responsible as accurately and precisely as the guiding principles of total compensation and the polluter pays. The coverage provided must match the principal risks of contamination of the company due to the activities carried out by it and the insurance conditions should clearly indicate the type of remediation that are compatible with the policy or not. The subscription is carried out in a technical, imposing restrictions on risk management and risk factors are extremely relevant selection for employment insurance as a tool for preventing environmental damage.

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Working Group (NWG) Insurance Environment AIDA / Brazil. Their demands are duly registered in each subitem text.
2 - Lawyer in the area of Environmental Law and Insurance. LLM / UFSC. Environmental Law Specialist / UFSC. Member of the International Association of Insurance Law and Chair of Environmental Insurance GNT - AIDA / Brazil. University professor (undergraduate and graduate). Author and contributor to books and articles on Environmental Law and Insurance Law.

3 - Actuary in Sao Paulo. Environmental Security Member GNT - AIDA / Brazil. Liability Insurance Underwriter at Itaú Seguros and Environmental Coordinator 4 - 4-4 - RC Environment Subcommittee National General Insurance Federation (FenSeg). Environmental Security Member GNT - AIDA / Brazil

5 - Underwriter responsibility. Formed in Environmental Management at USP, with an MBA in Management and Environmental Technologies - USP. Environmental Security Member GNT - AIDA / Brazil.

6 - By Pery Saraiva Neto.

7 - This statement implies that strict liability in the facilitation of action in favor of the environment is in the idea that "the adoption of the theory of risk activity, giving rise to the liability, has consequences so important to have a duty to indemnify: a) research dispensability fault b) the lack of relevance of the legality of the activity, c) the non-application of the causes of exclusion of liability. " (Milaré, 2005, p. 834).
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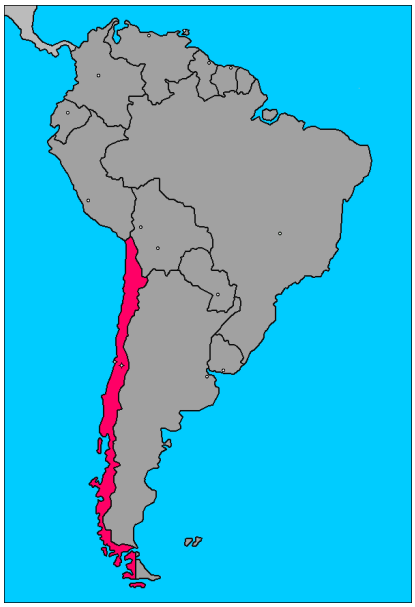
CHAPTER III

REPUBLIC OF CHILE

Ricardo Peralta Larrain



CIVIL LIABILITY - ENVIRONMENTAL DAMAGE

ENVIRONMENTAL DAMAGE

. Concept

e) Environmental Damage: The name to any loss, diminution, or impairment significant detriment to the environment or inferred one or more of its components; Civil-Environmental Damage Indirect-Concept. Environmental Damage Collective - Direct-Concept

The law does not distinguish between direct and indirect, is answered for all: Article 3. - Without prejudice to the penalties provided by law, anyone who willfully negligent or harmful to the environment, is obliged to repair it materially, at your expense, if it is possible, and compensate him in accordance with law.

Article 51. - Whoever willfully negligent or environmental harm will respond the same in accordance with this law.

. Characteristics of environmental damage

The law does not provide the features that the damage will be, but some of the same assumptions:

Article 52. - Is presumed legally the responsibility of the author of the environmental damage, if any violation of the standards of environmental quality, emission standards, plans of prevention or decontamination, to special regulations for environmental emergency or the rules on protection, conservation or environmental conservation, established by this law or other laws or regulations. However, there will only rise to compensation in the event, if acreditare causal relationship between the breach and the damage.

. Legal Framework

Law 19300, and the regulations

. Commented Jurisprudence

In Chile there is not, because the newly settled Environmental Courts in March 2013

ENVIRONMENTAL DAMAGE LIABILITY

. Strict liability regime

In Chile the regime is subjective Responsibility

See Article 3 transcript.

Liability regime applicable to the Environmental Law Collective

It basically consists of an action governed by Rule 53. - Produced environmental damage, action is granted for the repair of the damaged environment, which does not prevent the exercise of ordinary compensatory action by the directly affected. No such action to obtain compensation for the damaged environment who committed the damage when successfully implemented a repair plan approved by the Superintendency of the Environment.

Article 54. - The holders of environmental action mentioned in the previous article, and for the sole purpose of obtaining compensation for environmental damage, natural or legal persons, public or private, who have suffered the loss or damage, municipalities , by the events in their respective districts, and the State, through the State Defense Council. Inferred demand by one of the owners mentioned, may be brought not the other, which is without prejudice to its right to intervene as third parties. For the purposes of Article 23 of the Civil Procedure Code, it is presumed that the municipalities and the state have an interest in the outcome of the current trial.

Any person may request the municipality within which to develop activities that cause environmental damage to it, on its behalf and on the basis of the record that the applicant must provide, deduct the respective environmental action. The demand in the municipality within 45 days, and if no solution can do, within the same term issue a decision based that notify the applicant by registered letter. The lack of delivery of the municipality in the term

indicated the will jointly liable for the damages thereby incur the fact reported to the plaintiff.

Article 55. - When those responsible for emission sources subject to prevention plans or decontamination, or special regulations for emergency situations, as applicable, show that they be giving full and complete effect to the obligations under such plans or regulations, fit only ordinary action for damages lodged by the person concerned, unless the damage comes from causes not covered by the respective plan, in which case the provisions of the preceding article.

. Scope of recomposition. Comparison Recomposition environmental damage and compensation for civil damages.

Born of different legal actions, the recomposition: From action Art53 purpose of reparation is governed by the Civil Code regulating general, 1857.

. Security and Environmental Restoration Fund

Is governed by rules and (insurance) and the law (the fund that operates in practice. Article 66. - The Ministry of Environment will be responsible for managing a hedge fund Environmental, whose purpose will be fully or partially finance projects or activities designed to protect or restore the environment, sustainable development, preservation of nature and the conservation of environmental heritage Article 68. - The Environmental Protection Fund shall consist of:

a) Inheritances, legacies and donations, whatever its origin. In the case of donations, they are exempt from process of insinuation;

b) Resources allocated for this purpose in the Budget Law of the Nation;

c) Funds allocated to it in other laws, and d) any other contribution from public or private, national or foreign, in whatever capacity.

. Risky activities that must take out insurance for Environmental Damage None in particular, the only distinction made in Art 67 is by no amount of projects by type of activity to

Article 67. - Projects or activities referred to in the preceding article, an amount not to exceed five hundred equivalent to UF, will be selected by the Secretary for the Environment, as general bases defined purpose.

When projects or activities exceed the amount specified, the selection process should be carried out through public tender and subject to the general rules mentioned in the previous paragraph, having heard the Advisory Council referred to the fourth paragraph of Title Final.

. Environmental Damage and State Responsibility. Rules of State Responsibility towards the environment

Article 64. - The permanent control of compliance and conditions on the basis of which have been approved or accepted Studies and Environmental Impact Statements, measures and instruments that establish Prevention Plans and decontamination of quality and emission standards, as well as management plans established in this law, as applicable, will be made by the Superintendency of the Environment in accordance to what is stated by the law. Law 20,417

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D.O. 26/01/2010

Article 65. - Notwithstanding the provisions of the second paragraph of Article 5 of Law No. 18.695, Organic Constitutional Municipalities, and other legislation, municipalities will receive the complaints made by the citizens for breach of environmental standards and shall notify the Superintendent of the Environment to give them this year. Law 20,417 The municipality shall require the Superintendent of Article FIRST Environment No. 60 for further information on the procedure given aa) termination. Copies of this and the report will be sent to OJ 26.01.2010 the respective Regional Ministerial Secretariat of Environment. With the merit of the report, or in the absence of it within thirty days, the city will put the background knowledge of the Ministry of Environment Environment.

. State agencies responsible for ensuring Environment

Article 69. - Create the Ministry of Environment, as a State Secretariat to work with the President in the design and implementation of policies, plans and programs on the environment, as well as the protection and conservation of biodiversity and renewable

natural resources and water resources, promoting sustainable development, the integrity of environmental policy and regulation

This ministry was created in 2008

. Commented Jurisprudence

There are to date.

CHAPTER IV

REPUBLIC OF PERU

Miryam Aragon Espejo

AIDA Peru

LIABILITY FOR DAMAGE TO THE ENVIRONMENT

INTRODUCTION:

In recent decades, the man driven to some extent by environmental disasters that have manifested in marine pollution, the extinction of animal and plant species, predation of forest that has been warming the earth's atmosphere and changes causing climate, torrential rains, overflows, floods, crop failures, disease, pests etc., has become aware that their interventions can influence the future of Earth and humanity. This new concept is linked to a recognition and appreciation of our planet, originated in the fact that today you can see the earth in space, like a solitary island in which we live and which we can not escape, a unique and beautiful island in the solar system in which it is possible that human life can be developed. Costs that environmental degradation has on humanity, can be felt in the short and long term and are manifested primarily as health conditions, productivity and recreational values.

This situation has led to the emergence of new trends in the field of legal liability of those who as a result of the production, use polluting technologies, undermining the environment and thereby impairing the right of the community, which is recognized ownership of a diffuse interest. However, if we recognize the existence of a diffuse interest, it is also necessary to determine the existence of diffuse responsibility corresponding to all operators that contribute to the development of productive activities to pollution and environmental stresses. Where several tortfeasors is not easy to determine the extent of their participation in the production of damage, so also indispensable legal standing passive tortfeasors, in defense of their participation.

Although first impressions may seem unfair to impose this passive solidarity community should be analyzed that this is a way of protecting the interests of those affected, they do not have at their disposal to identify technical resources among many, the real or most important tortfeasor. In this sense the law has chosen to protect the interests of the majority at the expense of transient interests of a minority who benefit financially from the exercise of an activity that causes or may cause harm to a community.

Also, together with severally liable to cause environmental damage, the modern legal systems have been incorporated as a compulsory guarantee of compliance, the establishment of a security deposit or an insurance policy covering civil liability for damage to ambient environment, it produces significant benefits for both the insured and for the diffuse interest holder is protected, the latter ensuring that the damage will be repaired (insofar as possible) and transferred to the insurer responsible risk expense for this asset that would take him only the consequences of their actions.

Being multiforme pollution phenomenon that occurs in many different forms, can be defined as the destruction or the attack on the physical integrity of living organisms or inert substances, caused by external agents transmitted by air, water or soil; since this view, not only contaminate soil or degrade, also contaminated by pouring liquids, gases and all that

causes damage to anything tangible animal, vegetable or mineral environment, and it is when it comes to degradations visible, durable and irreversible, attributable to an entity with its conduct produces some form of pollution or environmental degradation, which generates liability in such entity or agent thereof, and responsibility arising forces the agent to answer for damage, it may consist of economic repair or reconstruction of the affected environment. To produce civil liability for environmental damage, must necessarily exist environmental damage, an agent that causes responsible with their behavior, but this is irrelevant whether or not he wanted to cause damage, or know how dangerous this behavior, it suffices that such conduct has caused, which would be essential to establish the time of such conduct as a crime. We then noted that civil liability for environmental damage is objective.

The theory of liability arising as a result of the review mentioned above and is based on the social and economic reality that inspires. This doctrine, also called risk theory ignores the culpability of the agent but rather the result of drift material behavior, ie the damage. The obligation to indemnify only requires the existence of an injury to another, for the conduct of the author. It's called risk doctrine, because the absence of guilt, the obligation to indemnify is based on the idea that any person conducting an activity creates a risk of harm to others, if that risk materializes harming another logical whoever created it should compensate the injured person, whether or not guilty of the accident, and that this is caused by the risk created and not by the specific act that causes it.

In Peru, the General Environmental Law, Law No. 28,611 is the regulatory framework for the sustainable management of the environment and adequate. Contains basic rules and guidelines to ensure effective environmental management and to ensure the exercise of the right to a healthy and balanced environment.

This Act provides that the National Environmental Policy is the set of guidelines, objectives, strategies, goals, programs and instruments of public, which is intended to define and guide the actions of the national government agencies, regional and local, and private sector and civil society, on the environment. This part of the standard must be agreed-with Supreme Decree 012-2009 begin_of_the_skype_highlighting 012-2009 end_of_the_skype_highlighting - MINAM by approving the National Environmental Policy, in its Article 2, the Ministry of Environment responsible development, management, supervision and enforcement.

Also, due to the reformulation of environmental institutions and the creation of the Ministry of Environment (MINAM), Legislative Decree No. 1013, it absorbed the National Environment Council (CONAM), becoming the new National Environmental Authority. In Article 7 provides that the MINAM is responsible for directing the National Environmental Management System, which is concordant with the mandate of Article 14 ° of the General Environmental Law which also indicates:

The National Environmental Management System is established on the basis of state institutions, bodies and offices of various ministries, decentralized government agencies and public institutions at national, regional and local powers and functions exercised on the environment and natural resources; well as Regional and Local Systems of Environmental Management, with the participation of the private sector and civil society.

As General Environmental Law states in Article 57 °, the provisions set by MINAM sectoral in scope, subject to the specific functions by sectoral authorities, regional and local authorities. That is, the MINAM proposed environmental regulations that should be noted and it is the duty of each sector adapt their procedures and regulations. At this point, it must be remembered that at the sectoral level implementation and the provision of resources to develop and implement the Environmental Management System derives Sector in Sector highest authority, which is responsible:

1. Ministry of Agriculture:

General Directorate of Agricultural Environmental Affairs (DGAAA)
Legal basis: Article 5 Title II Regulation of Environmental Management approved the agricultural sector through Supreme Decree No. 019-2012-AG

2. Ministry of Production:

MSE and Industry

General Directorate of Environmental Affairs

Legal basis: Article 112 ° and 113 ° Rules of Organization and Functions of the Ministry of Production.

Fisheries:
General Directorate of Mining and Fish Production for direct human consumption Legal Base: Article 63 and 64 º Rules of Organization and Functions of the Ministry of Production.

3. Ministry of Transport and Communications:

General Directorate for Environmental Partner

Legal basis: Article 73 and 74 Rules of Organization and Functions of the Ministry of Transport and Communications approved by Supreme Decree No. 021-2007 begin_of_the_skype_highlighting 021-2007 end_of_the_skype_highlighting - MTC

4. Ministry of Housing, Construction and Sanitation:

Housing:
National Housing

Legal basis: Article 27 k) Rules of Organization and Functions of the Ministry of Housing, Building and Housing approved by Supreme Decree No. 002-2002-HOUSING

Urbanism:
National Directorate of Planning

Legal basis: Article 28 h) Rules of Organization and Functions of the Ministry of Housing, Building and Housing approved by Supreme Decree No. 002-2002-HOUSING

Construction:
National Construction
Legal basis: Article 31 ° h) Rules of Organization and Functions of the Ministry of Housing, Building and Housing approved by Supreme Decree No. 002-2002-HOUSING

Sanitation:
National Sanitation

Legal basis: Article 32 j) Rules of Organization and Functions of the Ministry of Housing, Building and Housing approved by Supreme Decree No. 002-2002-HOUSING

5. Ministry of Foreign Trade and Tourism:

National Tourism

Legal basis: Article 63 ° and 64 ° Rules of Organization and Functions of the Ministry of Foreign Trade and Tourism approved by Supreme Decree No. 005-2002-MINCETUR

6. Ministry of Energy and Mines:

Energy:
Directorate General for Energy Environmental Affairs – DGAAE

Legal basis: Article 90 ° and 91 ° f) Rules of Organization and Functions of the Ministry of Energy and Mines approved by Supreme Decree No. 031-2007-EM

Mines:
General Directorate of Mining Environmental Affairs

Legal basis: Article 106 ° and 107 ° g) Rules of Organization and Functions of the Ministry of Energy and Mines approved by Supreme Decree No. 031-2007-EM

7. Ministry of Health:

Environmental Health Directorate – DIGESA

Legal basis: Article 48 ° a) and d) Rules of Organization and Functions of the Ministry of Energy and Mines approved by Supreme Decree No. 023-2005-SA

The General Environmental Law, in Articles 16 °, 17 ° and 18 ° describes the environmental management tools such as environmental land management, environmental impact assessment, closure plans, contingency plans, environmental certification and others that aim implementation of environmental policy.

In this framework, the National Environmental Impact Assessment (SEIA Article 24 °) is one that monitors all activity likely to cause significant environmental impacts of character. Through Law No. 27446 develops SEIA policy framework and, through Supreme Decree No. 019-2009-MINAM, adopted its regulations in section 8 describes the functions of each National Competent Authority Sector, ie the addresses listed above.

The regulations of the National System of Environmental Impact Assessment is the first step in preserving the environment because, as stated in Article 1 ° to the preservation, prevention of negative environmental impacts. Furthermore, prior to start enabling any investment project as articles 15 °, 16 °, 17 °, 22 ° is indicated.

Also to facilitate access to information on the activities subject to the SEIA was approved the first update of the Inclusion List of Investment Projects through Ministerial Resolution No. 157-2011-MINAM, and was brought to the competent authority issue the certification, distinguishing between regional governments and local governments ..

Furthermore, within the provisions of the General Environmental Law, in addition to providing in its Preliminary Title Principle of Prevention (Article VI), the Precautionary (Article VII), the Environmental Liability (Article IX), in paragraph on the liability regime for environmental damage, the guarantees in Article 148 ° points:

148.1 In the case of environmentally hazardous or dangerous activities, the sectoral

competent authority may, at the proposal of the National Environmental Authority, a warranty that covers the compensation for environmental damage could result.

148.2 Environmental Investment commitments are guaranteed to cover the costs of rehabilitation measures for the periods of closing, post-closing, constituting guarantees in favor of the competent authority, by one or more of the methods referred to in Law of the Financial and Insurance Systems and Organic Superintendency of Banking and Insurance or others established by law on the subject. Completed rehabilitation measures, the competent authority must, under responsibility, to the release of the guarantees.

That is, to be proposed by the MINAM, sectoral environmental authority may require a guarantee scheme to cover the damage to the environment, to respect the guarantees that are defined in Law No. 26702, Law of the Financial System, System of Insurance and of the Superintendence of Banking and Insurance are bank security cards, insurance policies or surety insurance policies Liability and trusts that can be considered a guarantee. The procedure and requirements that each evaluator by sector of economic activity requires applicants for a license or permit to carry out a certain economic activity, are set by the regulations approved by the competent authorities of each sector.

To illustrate the context we can observe the regulations in the Ministerial Resolution No. 515-2006-MEM-DM Regulation adopted to evaluate and accept the Trust on "FIP" * to secure compliance with the Mine Closure Plan, which can grant mining investor also holds a forestry investment. This regulation, states in Article 3 that the proposed trust must be submitted by the holder of mining during the evaluation procedure Closure Plan or amendment, having the minimum value of forest investment reaching U.S. $ 3 '000, 000. - and the trust can not be established by a value greater than 50% of the amount of security required and should the holder of the investment cover the other 50% with other guarantees.

Another example of margin requirements is found in the ground transportation of hazardous materials and wastes, in this respect, the regulation governing this activity provides in Article 21 ° of all train vehicle or used in land transportation of materials and / or hazardous waste, from receipt of shipment to its delivery to the addressee, you must have an insurance policy covering the expenses for personal injury, material and environmental effects resulting from an accident generated by the load, occurred during that operation. The characteristics of that insurance policy is regulated by article 22 of this rule, which provides that it shall be an annual, national coverage for transport by road or rail, unlimited annual care number of claims, coverage must include control and no application shall be automatically and immediately, without requiring prior ruling authority.

As for the minimum coverage of environmental damage, the rule states the sum of 50 Units

Tax Tax, currently equivalent to approximately U.S. $ 180,000. Additionally, the regulations require the submission and approval of a contingency plan.

The implementation time for recruitment and the insurance policy with the aforementioned characteristics was six months from the time of Regulation, anticipating that in the meantime, carriers of this kind of load should have a policy of liability insurance for damages, resulting from the charge, which at maturity should be replaced by the insurance policy indicated by the regulation.

However, the revisions to the List of Products Marketed Peruvian Insurance System, which collects all the same products that the Superintendent has registered in its Register of Insurance Policies and Technical Notes, it is noteworthy that we found no model insurance policy or insurance Liability Surety registered, granting guaranteed compensation or reparation for the damage to the environment in its various forms of pollution, poisoning, pollution, noise or other similar predation. What it shows is that usually these risks are expressly excluded from liability policies reviewed.

Conclusion:

From the discussion in this document, we can infer that it is for the Environmental Sector Competent Authority, to determine the requirements or, where applicable, the guarantees required to lessen the potential environmental damage involving the realization of different projects investment related to its manufacturing sector.

On the other hand, it is important to note that prevention of environmental damage and environmental preservation while starts with EIA and ends with the issuance of the Environmental Certification can also be observed in other stages of development investment project, for which the Environmental Authority Competent Sector has not provided the administrative procedures and the provision of guarantees for environmental remediation, such as the case of the trust to ensure the Mine Closure Plan.

While there are various types of security requirements that traders who engage in risk can provide, in terms of liability policies for damage to the environment, it should be noted that so far, domestic insurance companies have registered any product that covers this risk. Note that the revisions to the "List of Marketed Products" published on the website of the Superintendency of Banking and Insurance, we can say that although there are products that provide Liability coverage for damages to third parties for accidents in any business or industrial exploitation of the insured, only cover personal and property damage to third parties certain, occurred "accidentally", due to the operation of the business, which is materially different from civil liability for environmental damage, in which Affected are a community and the damage is not accidental, but occurs as a result of the voluntary and conscious realization of economic activities that generate profits for agents who perform, but to cause environmental deterioration, are detrimental to the interests of a particular community.

GENERAL CONCLUSION

In the Mercosur region, there is a new consensus environmental institutional setting. A legal level each member country of the Southern Common Market, has adopted an environmental policy framework.

With respect to environmental policies, we are facing a transformation path leading from one type of traditional political paradigm characterized by a basically doomed to prevent the development of processes of production and consumption to a new kind of more active policies provide for the protection of the environment within the framework of sustainable development.

Regarding the current situation of each country into the context of a globally integrated world, in Argentina advances of Environmental Law show significant progress, both in environmental legislation and the implementation thereof.

The most notable changes have been incorporated in the constitutional field of "Environmental Preservation", laying the foundations for the development of environmental law.

Moreover, the measures taken by the Executive and the Superintendent of Insurance of the Nation, have altered policies d and Surety Insurance Required Mandatory Insurance Liability for Environmental Damage Collective Advocacy. The policy of liability for environmental damage, it would be a compensation contract against the occurrence of an event that constitutes a direct loss.

Consequently, this would not be an insurance policy in the conditions classified Liability. With respect to Brazil, several projects have been submitted to the Mandatory Environmental Insurance, however if it would be impossible to materialize maintain insurance coverage today, as not all companies comply with the minimum standards for the management forced to risk insurance.

The environmental risk insurance acts as an effective economic tool, based on the guiding principle that the polluter is responsible and the polluter pays.

In relation to the Republic of Chile, the liability regime applied to the Environmental Law Collective, is basically a measure enacted by the standard, environmental damage occurred, is given an action to obtain compensation for the damaged environment, nevertheless the directly affected may exercise ordinary action for damages.

Environmental Insurance is regulated by law and Restoration Fund in the regulations, the restoration fund operates not on facts.

Finally, the Republic of Peru also has an environmental management system based on state institutions, agencies and offices of the various ministries and agencies that have responsibility for the environment and natural resources. While there are various types of security requirements that traders who engage in risk can provide, in terms of liability policies for damage to the environment, it should be noted that so far, domestic insurance companies have registered any product that covers this risk
In conclusion, we believe that in all countries of the Mercosur, will be once again the spirit of the legislation which should prevail in achieving the right to a healthy and Environmental Preservation.