

PEREZ BUSTAMANTE & PONCE
ABOGADOS

**ECUADORIAN
ENVIRONMENTAL
CONSTITUTIONAL
PRINCIPLES**

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2008 CONSTITUTION PRINCIPLES

- Two kind of damages:
 - To the Environment
 - To third parties
- Nature is the subject of rights.
- Public action
- The citizens' active participation is guaranteed. Right to consultation.
- Precautionary principle
- Strict liability
- Reversion of burden of proof
- Imprescriptibility of the action

RESPONSIBILITIES OF INDUSTRY SUBJECT TO THE LAW

- Before commencing works or project, to draw up Terms of Reference to prepare Environmental Study and Management Plan
- Submit to consultation): Meetings, workshops, information centers, public hearings, web page, etc.
- Present to Environment Ministry or Municipality for approval or issuance of license, as the case may be. Ex post licenses in operation.
- Take up environmental and third party liability insurance.
- Conduct environmental audits on the facility or project and submit them for ministerial or municipal approval.
- Permits for discharges, emissions and dumpings.
- Obtain special permits for storage and transportation of hazardous substances.

ACTIONS BY PRIVATE PERSONS

- Administrative Actions: Before Ministries/ Municipalities/ Provincial Councils. Suspension of activities
- Civil Actions: Actions to repair environmental damages or to indemnify damages before civil judges.
- Criminal Actions: Through accusations or claims. These offenses are subject to public action. Criminal judges.

ACTIONS BY THE STATE

- Of judicial nature
 - » Civil actions: Actions to repair environmental damages.
 - » Criminal actions: Due to deliberate infringement of legal provisions.

THE ENVIRONMENTAL OFFENSE

What actions are deemed environmental offenses?

- Article 437, Criminal Code.
- Dumping of contaminating wastes beyond the limits established which alter the environment (1 to 3 years imprisonment). May be greater if human health is impaired (3 to 5 years).
- Possession, marketing or illegal use of toxic or radioactive waste.
- Criminal offenses against protected flora and fauna. Illegal cutting down of forests.
- If death of persons occur, it is considered involuntary manslaughter.