

Country page: ARGENTINA

1. Population

According to the 2010 census carried out by the National Institute of Statistics and Census ("INDEC", for its Spanish acronym), Argentina has a current population of 40,117,096 inhabitants and almost 40% of them currently live in the Province of Buenos Aires.

Most Argentines are principally descendent of Italians and Spaniards. The indigenous population (Mapuches, Collas, Tobas) only represents a 0,5% of the total. Spanish is the official language in Argentina.

2. Political organization

Argentina is organized as a federal republic with a democratic political system. The National Constitution, adopted in 1853, provides for a government system consisting of an Executive Branch, headed by the President, a Legislative Branch and a Judiciary Branch.

The legislative power is vested in the Congress, which is composed by the Senate and the Parliament.

The Republic of Argentina is divided into 23 provinces and the autonomous Federal District (Capital Federal), the City of Buenos Aires.

Each province enacts its own constitution, elects its own governor and legislators and appoints its own judges to the provincial courts.

3. RIELA contact firm and person, website

Gabriel R. Macchiavello

Rattagan, Macchiavello, Arocena & Peña Robirosa

Av. de Mayo 701, Piso 18

C1084AAC, Ciudad Autónoma de Buenos Aires

Telephone: [54] (11) 4010-5002

Fax: [54] (11) 4010-5100

E-mail: grm@rmlex.com

Web: <http://www.rmlex.com.ar>

4. Does the constitution cover environmental rights?

Section 41 of the Argentine Constitution incorporates the right of all inhabitants to enjoy an environment which is healthy, balanced and suitable for human development. It sets forth the duty to correct any damage caused to the environment and restore it to its prior condition.

Section 43 of the Argentine Constitution provides an environmental injunctive relief known as "recurso de amparo colectivo", against any act or omission by the State or individuals, which may arbitrarily and unlawfully damage, restrict, alter or threaten the rights and guarantees granted by the Constitution, an international treaty or a Law. According to this section, once the environmental damage has occurred, the ones that have legal standing to file a lawsuit are: Federal, Provincial and Municipal governments, Ombudsman, NGO's and affected individuals.

5. Who is the environmental regulator?

The Secretariat of Environment and Sustainable Development ("SESD") is the federal department competent to consider, among others, environmental issues involving more than one provincial jurisdiction, exports and imports of waste, international treaties, and pollution in federal jurisdiction sites. There are also other federal agencies with jurisdiction over the environmental aspects of certain specific matters, such as electricity and hydrocarbons (Secretariat of Energy).

Additionally, there is an Environmental Federal Council, responsible for coordinating environmental policies among the Federal, Provincial and the City of Buenos Aires' governments.

Provinces, in turn, have their own environmental secretariats, with authority to enforce the law.

6. Overview of Legislation

The legal and institutional environmental model adopted in the 1994 Constitutional reforms was the cooperative federalism or "federal-state partnership." This model, developed in the United States, includes the concept of "federal minimum standards", which means that a province can set stricter environmental standards than the ones stipulated on a National level, but never less rigorous ones.

Section 41 of the Argentine National Constitution provides that the federal government will enact laws imposing certain minimum environmental standards, whilst provincial governments will enact supplementary regulations, as necessary. Federal laws cannot alter local jurisdiction.

On November 6th, 2002, the National Congress passed the General Environmental Act No. 25,675 ("GEA"), which sets forth minimum standards and outlines a general policy for the protection of the environment and the implementation of sustainable development. This Act establishes environmental principles that regulate the interpretation and implementation of environmental regulations.

The National Congress also passed, among others, the Federal Act No. 25,831 -which governs free access to public environmental information-, the Water Act No. 25,688, the PCBs Management and Elimination Act No. 25,670 and the Industrial Waste Act No. 25,612.

Additionally, most provinces have enacted their own environmental protection laws, which establish principles of provincial environmental policy. Provincial laws supplement the provisions of the GEA and should be in line with the minimum environmental standards established therein. For instance, the GEA of the Province of Buenos Aires (Act No. 11,723) seeks to protect, preserve, enhance and restore natural resources and the environment in the Province of Buenos Aires.

7. Environmental Impact Assessment / Environmental Assessments

Under the General Environmental Act (GEA), all works or activities that may negatively affect the environment must follow an environmental impact assessment (EIA) procedure before they are conducted.

Each province has enacted its own laws that govern the EIA procedure, establishing which works and activities are subject to EIA procedures.

For example, the Industrial Zoning and Environmental Classification Act of the Province of Buenos Aires (Act No. 11,459) provides that, once an industrial facility has been classified, the interested party must submit an EIA whenever that project or facility has or may have a negative impact on the environment or the natural resources. Such EIA is analyzed by the Enforcement Authority, which can either approve it, point out

aspects to be reformulated and/or elaborated on, or reject it altogether. Approval of the EIA results in the emission of a Certificate of Environmental Compliance, which will remain in force for two years. In order to obtain its renewal, an interested party must submit, among other things, an environmental audit report.

8. Permitting (Air / Water Taking / Water Disposal / Waste)

Environmental laws establish permits for the operation of industries, discharge of waste waters, air emissions and hazardous waste management.

In short, environmental permits are associated with industrial activities; therefore, it is always required to obtain a permit in order to operate a facility. Permits may be transferred together with the ownership of the property or the plant.

The Industrial Zoning and Environmental Classification Act of the Province of Buenos Aires (Act No. 11,459), however, provides that an application which involves a change in ownership will be approved upon submission of the documentation evidencing such change. For the purposes of this Act, the new owner of an industrial facility will be regarded as a successor to the previous owner, and will have the same rights and obligations as his predecessor.

9. Transportation of Dangerous Goods

The national government has enacted several resolutions through the Secretariat of Transport, in order to regulate transportation of dangerous goods.

Some of these regulations are: (i) Act No. 24,449, National Traffic Act; (ii) Decree No. 779/95, which regulates Act No. 24,449 and sets forth the General Regulations for Road Transportation of Hazardous Goods; (iii) Decree No. 646/95, which establishes a Technical Mandatory Inspection for all vehicles; (iv) Act No. 24,653, which sets forth regulations for national and international vehicular load transport.

Regarding hazardous wastes, the Federal Hazardous Waste Act No. 24,051 imposes the generators' liability for their hazardous wastes and covers every phase of waste management: generation, storage, transport, treatment and disposal. Under this Law, the authority is the SESD.

The transporters are in charge of collecting and transporting the hazardous wastes from their point of origin to the treatment or final disposal site. The Federal Act requires that all transporters must enroll in the Federal Registry of Generators, Operators and Transporters of Hazardous Wastes.

10. Waste Management and Recycling

The Federal Hazardous Waste Act No. 24,051 defines hazardous waste as any type of waste that may directly or indirectly damage living beings or pollute the soil, water, atmosphere or the environment generally. In particular, the Act provides that any type of waste is hazardous if included in the lists of categories subject to control under, or that exhibit the hazardous characteristics established in, the Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal. Act No. 24,051 applies to waste generated or located in territories subject to federal jurisdiction, where hazardous waste is transported outside of a province, and when –in the Enforcement Authority's opinion– any such waste may negatively affect the environment beyond the boundaries of a given province.

On the other hand, Federal Act No. 25,612 establishes certain minimum standards with regards to comprehensive management of waste derived from industrial and service activities. This Federal Act defines as industrial waste any element, substance or material, whether solid, semi-solid, liquid or gaseous, obtained as a result of an

industrial process, a service activity, or an activity directly or indirectly related thereto, including emergencies or accidents, which the owner, producer or generator cannot use, dispose of or is under a legal obligation to dispose of.

Household, pathological and radioactive waste, and waste derived from regular vessel operation are governed by special laws and international treaties. For example, at a federal level, Act No. 25,916 sets forth minimum standards regarding household waste management.

Additionally, it is worth mentioning that in the year 2005, the Government of the City of Buenos Aires passed Act No. 1,854 for the Integrated Management of Urban Solid Wastes. An ambitious waste management framework is established under this law, since it aims to progressively reduce urban solid waste disposal to 75 percent of the 2004 levels by 2017, with a total ban on the landfilling of recyclable and compostable waste by 2020.

11. Sector-Based Regulations:

11.1 Mining

The National Congress, in 1995, passed Act No. 24,585 for the protection of the environment in the mining industry. According to this law, a company must conduct an Environmental Impact Assessment prior to initiating exploration or exploitation activities.

Mining companies are liable to restore any damage caused to the environment as a result of their activities. Once damage is caused, the enforcement authority shall determine the remediation measures to be taken which depend on the magnitude of the harm produced to the environment. Furthermore, the law outlines various penalties and sanctions in the event that the company fails to comply with the applicable regulations.

In 2010, the Chamber of Senators passed Act No. 26,639 of Minimum Standards for the Protection of Glaciers and Periglacial Environment, which prohibits performing certain activities on the glaciers –such as mining and oil exploration and exploitation-, based on the fact that they could result on damages to those areas –which are defined as “public goods”.

This law establishes that all the activities that will be carried out in these environments must previously carry out an EIA, along with a Strategic Environmental Assessment. Also, its regulatory decree -National Decree No. 207/2011- empowered the federal government, as opposed to the Provinces, to create a national inventory of the country’s glaciers.

Many Provinces are currently challenging this bill at the National Supreme Court, arguing that -as stipulated by section 124 of the National Constitution- the decision on how to manage their natural resources is under their jurisdiction.

11.2 Oil and Gas

The national government has enacted several resolutions and procedures in an effort to control pollution created by the exploration and exploitation of hydrocarbons. Some of these procedures include the submission of an EIA prior to the beginning of activities related to oil and gas production and the subsequent maintenance of the equipment and working sites, so as to minimize any adverse effects on the environment.

In this sense, Act No. 17,319 sets forth regulations for liquid and gaseous oilfields, establishing specific obligations for the permit holders, while Resolution No. 105/92 of the Secretariat of Energy approves the “Rules and procedures that regulate the

environmental protection during oil exploration and exploitation activities”, imposing the obligation to perform EIAs.

Also, Resolution No. 3587/06 approved the “Minimum Argentine Regulations for the Environmental Protection in the Transport and Distribution of Natural Gas and Other Gases through pipelines” (NAG 153), requiring the approval of an EIA prior to the construction of gas pipelines and associated installations.

11.3 Power Generation

The national government has also enacted various regulations in order to facilitate the protection of the environment from activities connected with the generation of electricity. Some of these regulations set forth manuals and operating procedures that will ultimately provide a comprehensive framework for the reduction of adverse environmental impacts created by the electrical industry. Other resolutions establish guides for the management of the environment and the prevention of emergencies.

For instance, Act No. 15,336 regulates the generation of electrical energy, including activities related to the generation, transformation and distribution of electricity within the National jurisdiction. Also, Act No. 24,065 sets forth obligations for producers, transporters and distributors of electricity.

12. Contaminated Sites

Section 41 of the Constitution provides that environmental damages result primarily in an obligation to remediate. Likewise, Section 28 of the GEA provides that whoever causes environmental damage must remediate it, and where that is not technically feasible, they must pay compensation to be determined by court, payable to the Environmental Compensation Fund.

Therefore, and although the GEA does not establish a specific obligation to report pollution or environmental contingencies, it does force polluters to carry out remediation work.

Whilst the GEA does not provide that its application is retroactive for historical pollution, the trend is for courts to force companies to take remediation steps where the impact of pollution extends over time and continues to the present date. In a number of cases, the courts have decided that there is no statute of limitations for environmental damages.

At a federal level, Annex II to Resolution No. 185/99, enacted by the SESD, sets forth the administrative and technical requirements to obtain approval of remediation actions. Those requirements include: a written description of the operations to be carried out; estimated environmental impact and related mitigation actions; amount of waste and its nature; specific environmental monitoring plans, etc.

13. Climate Change

Argentina ratified the Convention on Climate Change and the Kyoto Protocol by Acts No. 24,295 and 25,438. And in the year 2002, by Executive Order No. 2213, the President of Argentina appointed SESD as the authority charged with the administration of the Kyoto Protocol.

Also, by Executive Order No. 822/98, the President of Argentina created a Bureau for the Clean Development Mechanism (“CDM”), which reports to the SESD and includes a Climate Change Unit created by Resolution No. 56/03.

In December 2009, the SESD created the Climate Change Governmental Committee, in order to elaborate a National Strategy on Climate Change and an Action Plan with

short, medium and long-term aims. The Committee finally prepared the "*National Strategy on Climate Change: Structure. Precedents. General and specific objectives*", which was ratified by hierarchical authorities on October 2010.

The National Strategy established the following general objectives: (i) promoting measurements against climate change; and (ii) developing politics, measurements and actions that may contribute to limit the emission of Greenhouse Gases, without compromising the sustainable development of the country.

In order to achieve these general objectives, the National Strategy pointed out several measures that should be carried out in Argentina, such as institutional strengthening, generation of tax, financial, economic and legal resources, education on climate change impacts and the creation of specific legislation in order to fulfill the international commitments.

14. Chemical and Hazardous Substance Registration

According to Executive Order No. 1095, amended by Executive Order No. 1161, whoever manufactures, produces or performs any transaction involving chemicals listed in Lists I and II of Annex I, must enroll in the registry that carries the National Secretariat for the Prevention of Drug Addiction and Struggle against Drug Trafficking (SEDRONAR, for its Spanish acronym).

This Order requires obtaining a certificate which must be renewed annually. It also establishes the obligation to maintain the records of each chemical and keep track movements of these substances. Finally, it states the obligation of submitting an affidavit regarding the transportation of such chemicals.

15. Liability Scheme (Civil, Administrative, Criminal)

There are several kinds of liability which may arise where there is a breach of environmental laws and/or permits.

(i) Environmental Liability: Section 27 of the GEA defines environmental damage as any relevant alteration that negatively affects the environment, natural resources, the ecosystems' balance, or collective goods or values. The Act stipulates strict liability for anyone who causes environmental damage; they will be under an obligation to restore the environment to its previous condition. When that is not technically feasible, the polluter must pay compensation in an amount to be established by the Court, payable into the Environmental Compensation Fund.

(ii) Civil Liability: As set forth in the Argentine Civil Code, it arises from damages caused to third parties as a result of pollution. Section 1113 of the Argentine Civil Code imposes strict liability on the owner or custodian for harm resulting from the risks or defects of a good. This section does not define "risky or defective goods", but the language has been widely interpreted in case law to include pollution and toxic substances resulting from industrial activities.

On the other hand, Section 2618 of the Argentine Civil Code imposes liability for nuisance caused by smoke, heat, smell, light, noise, vibrations and the like, arising from activities in neighbouring areas. Liability arises when normal tolerance levels are exceeded as a result of such disturbances, taking into account the nature of the place, even if an administrative permit exists.

(iii) Administrative Liability: The exercise of the Government's environmental policing is expressed through legislative acts, executive orders and resolutions that establish requirements subject to which the authorities will issue concessions, consents, permits, certificates, etc. These laws and regulations, in turn, establish certain obligations, and

non-compliance may result in several penalties imposed by administrative bodies with jurisdictional powers. The enforcement authority may impose on violators a number of penalties, such as warnings, fines, closure of facilities, etc.

(iv) Criminal Liability: Pursuant to the provisions of Section 55 of the Hazardous Waste Act (Act No. 24,051), criminal liability exists whenever hazardous waste pollutes the soil, water, air or the environment in a way that jeopardises human health. There are two types of criminal liability, depending on whether the person convicted acted willfully or negligently, and the resulting penalties differ. These provisions are currently in force, in spite of the enactment of Act No. 25,612 which governs industrial and service waste, because of the Presidential veto imposed through Executive Order No. 1343/02.

16. Reporting Obligations

The GEA does not establish a specific obligation to report pollution or environmental contingencies, but it does force polluters to carry out remediation work.

Section 14 of Executive Order No. 831/93, which implemented the provisions of Hazardous Waste Act No. 24,051, provides that any corporation which, as a result of its acts or of any process, operation or activity, produces waste regarded as hazardous in an unplanned or accidental manner, must notify the SESD within a term not exceeding 30 business days after the date upon which the event took place.

There are also other rules that govern certain specific areas of industry and impose an obligation to report environmental contingencies. Thus, the Secretariat of Energy Resolution No. 1102/04 (hydrocarbons) sets forth that any person or corporation that stores, distributes or markets fuels and hydrocarbons in bulk and compressed natural gas, whose facilities are affected by leaks or spills which may result in pollution of the soil or groundwater, must report any such event to the Secretariat of Energy within 24 hours.

When an obligation exists to report pollution incidents, there is also an obligation to look into the matter by means of studies and monitoring. Governmental authorities will demand a report on the outcome of any such research work or risk assessment, as well as a remediation proposal. Likewise, since the GEA establishes a general obligation to remediate environmental damages, before any remediation work actually starts, a site investigation must be conducted.

In addition, and whilst there is no specific obligation on a seller to disclose to a buyer unknown environmental problems of the company or real property being sold, failure to do so will expose the seller to the risk that the buyer may terminate the sale agreement and seek damages.

Section 2176 of the Argentine Civil Code provides that where a seller is or should be aware of the hidden defects in an item sold and fails to disclose them to the buyer, in addition to the redhibitory action provided by Section 2174 of the Civil Code, the buyer will be entitled to monetary compensation for damages.

17. Environmental Incentives (for conservation or clean energy)

Argentina as most of the Latin American countries, has adopted a "command and control" approach. Hence, the Argentinean government created specific obligations and generally relies upon the negative incentives of civil and criminal penalties to motivate individuals or organizations to comply with those obligations. Therefore, the environmental legal framework in Argentina does not incorporate the new generation

of “market-based” or “incentive-based” regulations which typically creates an opportunity rather than (or in addition to) an obligation, offering the positive incentive of increased profits (or reduced costs) in the hope of eliciting the desired behavior.

Although Argentina generally lacks of environmental incentives, there are two acts that provide incentives for the generation of renewable energy.

In this sense, Act No. 25,019 declares wind and solar energy generation as of national interest and establishes an additional payment per generated kWh over market price. It also grants tax exemptions for a period of 15 years since the law's promulgation.

Act No. 26,190, which amended Act No. 25,019, declares that the generation of electricity from any renewable source, with the aim of providing a public service, will also be considered as of national interest. Under this act, an 8% target for renewable energy consumption in the period of 10 years is stated.

18. Financial Assurance

Section 22 of the GEA establishes an obligation for anyone engaged in environmentally hazardous activities to take sufficient insurance to ensure remediation of environmental damage.

Through several regulations issued, the SESD established rules to Section 22 of the GEA. Among them, it set forth regulations for insurance policies and it listed the activities included in the regulation and the categorisation of said activities in accordance with their environmental complexity level. An Evaluation of Environmental Risk Unit (“UERA”), created by this regulation within the SESD area, will determine the minimum amounts of coverage, update the list of activities included in this regulation, and decide the approval of remediation plans.

The SESD and the Secretariat of Finance (area where the insurance supervisory authority depends) passed the Joint Resolution No. 98 and 1973/2007 that approves the Basic Guidelines of Contractual Conditions for Insurance Policies on collective environmental damages. This Resolution establishes the different types of insurance allowed (liability insurance and bond insurance), the scope of coverage (sudden or gradual collective environmental damage), the extent of remediation activities, etc. The possibility of performing an Initial Assessment of Environmental Situation (“SAI”) to exclude pre-existing damages from the coverage is also regulated by this Joint Resolution.

In April 2011, the SESD approved minimum mandatory amounts of coverage through Resolution No. 481/11.

In July 2011, the National Insurance Superintendency authorized the first environmental insurance policy with risk transfer.

Finally, it is worth noting that the Argentine insurance market traditionally -and currently- includes in the comprehensive liability insurance policies coverage for damages to the environment, soil and water, if such damages arise from an unexpected and accidental event. This particular insurance coverage is not based on GEA rules (collective environmental damage), but only in the Civil Code.