

PEREZ BUSTAMANTE & PONCE
ABOGADOS

**PREVENTION AND
RESPONSE TO
ENVIRONMENTAL
ACCIDENTS AND ITS LEGAL
CONSEQUENCES -
ECUADOR**

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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 and participate in benefits.
- Precautionary principle
- Strict liability
- Reversion of burden of proof
- Imprescriptibility of the action. No statute of limitation for nature damage repair

RESPONSIBILITIES OF INDUSTRY SUBJECT TO THE LAW

- Draw up Terms of Reference, to prepare Environmental Study and Management Plan (including contingency plans)
- Public consultations: Meetings, workshops, information centers, public hearings, web page, etc.
- Environment Ministry or Municipality issuance of Environmental License. Ex post licenses in case of projects under operation.
- Take up environmental and third party liability insurance. Compliance with Environmental Licence terms.
- Conduct environmental by-annual audits
- Permits for discharges, emissions and dumpings.
- Special permits for storage, transportation and disposal of hazardous substances.
- Obligation to remediate any environmental impact. Strict Liability

ACTIONS BY PRIVATE PERSONS

- Administrative Actions:
 - Before Ministries/ Municipalities/ Provincial Councils.
- Civil Actions:
 - Repair environmental damages
 - Indemnify damages
- Criminal Actions:
 - Through accusations or claims
 - Subject to public action.

ACTIONS BY THE STATE

- **Administrative Actions:**
 - Before Ministries/ Municipalities/ Provincial Councils.
 - Suspension /Cancelation of Environmental Licence
 - Temporary or Permanent Suspension of Activities
 - Fines
- **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.