

Mandatory environmental insurance on way

Buenos Aires, Argentina

Argentina is preparing to require that companies involved in pollution-prone activities take out insurance to cover potential environmental restoration costs—the first time a country has made such coverage mandatory, authorities here say.

Legislation establishing the requirement was approved by the Argentine Congress in 2002, but never took effect. However, as a result of Argentine Supreme Court debate about the matter, rule-making by the Environment Secretariat and what appears to be the emergence of environmental insurance in the private market here, officials say implementation is near.

"Though environmental insurance is very well developed in Europe and the United States and, within Latin America, in Chile... nowhere has it been mandatory," says Mariana Valls, head of the environmental regulations division of Argentina's Environment Secretariat.

The environmental insurance requirement was approved by Congress as part of the 2002 General Law of the Environment. Article 22 of that law states: "Every person, physical or juridical, public or private, who undertakes activities that pose risks to the environment, the ecosystems and their constituent elements must take out insurance with sufficient coverage to guarantee financing of the restoration needed to reverse damage that might occur."

Measure criticized initially

Green advocates originally argued the measure was unclear, overly broad and thus difficult to enforce. Meanwhile, no insurers came forward to offer such coverage, and the government did not press for compliance, effectively leaving the requirement in limbo.

Subsequently, however, the issue emerged in Argentine Supreme Court deliberations—once in a case involving oil-industry pollution of the Neuquén oilfields (See "Argentine ombudsman joins oilfield lawsuit"—EcoAméricas, July '07) and again in litigation involving contamination of the Matanza-Riachuelo river system.

At the same time, the Environment Secretariat launched—and recently concluded—a lengthy rule-making process aimed at putting the measure in place, a move applauded by green groups. And one local insurer, Prudencia Seguros, has announced it will offer environmental coverage, while other insurers here reportedly plan to follow suit soon.

The Environment Secretariat is now holding meetings throughout the country with business groups to explain the regulation and inform them compliance will be mandatory. Officials are saying the requirement will take force as soon as "multiple" insurers offer environmental coverage in the local market.

"This is the third leg of the stool," said Sergio Chodos, the agency's undersecretary of sustainable development promotion. "First, there was the law; then justice with the pronouncements of the Supreme Court; and now, the availability [of insurance] in the marketplace."

A key question addressed in rule-making was what activities would be considered risky for the environment. The answer has come in the form of a list that includes mining, food production, chemical manufacturing, auto-making and large infrastructure projects.

Another question concerned how coverage should vary according to the activity. It prompted the development of a formula that will be used to determine the degree of environmental complexity (NCA) of each industrial activity. The formula weighs five factors—a plant's activity; the nature of its liquid, gas and solid waste emissions; the plant's size in terms of the area it covers, its installed capacity and its workforce; its location; and the risk posed.

New insurance niche

The Environment Secretariat estimates companies will have to take out policies with coverage ranging from a minimum of 120,000 pesos (US\$40,000) for businesses with a low NCA to a minimum of 50 million pesos (\$17 million) for businesses assigned a high NCA. The requirement will likely create a sizable new niche in Argentina's insurance market. The country's insurance regulatory agency, the National Insurance Superintendency, says some 35,000 businesses nationwide will have to buy the environmental coverage.

Another issue has been defining proper environmental restoration. In the rule-making process, it was acknowledged that in some cases it is impossible to completely reverse the effects of pollution. In response, the Environment Secretariat ruled that the restoration must achieve "levels of risk that are acceptable for human health and for self-regeneration of the resources in such a way that the negative alteration ceases to be relevant."

Though green advocates welcome the greater definition given to the insurance regimen during rule-making, they assert certain features of the measure still need fixing.

"We're concerned that the only activities that must be insured are those with the potential to pollute water and soil, and that coverage of activities with impact on the atmosphere, the flora and the fauna have been excluded," says María Eugenia Di Paola, executive director of the green-advocacy group Environment and Natural Resources Foundation (Farn).

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Documents & Resources

Resolution 1398/2008, which establishes the minimum environmental-insurance levels: <http://infoleg.mecon.gov.ar/infolegInternet/anexos/140000-144999/144845/norma.htm>