

5. APPLICABLE LEGAL FRAMEWORK

According to its Constitution, Argentina is a Republican, Federal country.

This makes it necessary to consider, as regards the Institutional and Legal instruments regulating economic activities and the organization and development of the society, three functional levels and hierarchies of Governmental Authorities with their corresponding legislation frameworks. These are: the National level, the Provincial level (Federal States) and the Municipal or Local level.

In the case of legislation in force, laws and decrees are considered as having a global and sectorial scope, and Municipal Ordinances, a general and particular scope, such as CODES ON THE USE OF URBAN SOIL, BUILDING CODES, SANITATION CODES.

5.1 National Law on Dangerous Wastes

Law 24,051 was sanctioned in December 1991 and entered into effect during the first days of April 1992 (as per its Article 66). It rules on the generation, manipulation, transportation, treatment and final disposal of dangerous wastes.

Although it applies to wastes generated or located in the national jurisdiction, Article 67 "invites the provinces and the corresponding municipalities, in the area of their competence, to issue regulations of the same nature as the one herein, for the treatment of dangerous wastes".

In turn, decree 177/92 of the National Executive Branch, on appointing the authority of application of said law, entrusts it with coordinating its own tasks with those of the Provincial Governments.

This picture thus tends to homogenize the legislation in this matter, as well as its application:

- a) Through legislation applicable to the places of national jurisdiction where wastes are generated or when they have effect upon them or upon a different jurisdiction;
- b) Through the successive issue of similar laws in the provinces, as per Article 67;
- c) Because the authority of application, when it does not act in its own jurisdiction (either by virtue of the location or generation or of the interjurisdictionality of the effects) shall act as coordinator vis-à-vis the provincial or municipal authorities in this matter.

It must not be forgotten that dangerous waste is a very vast concept (which may be defined, as shall be seen below, as any substance or object produced by any activity, which may cause direct or indirect damage to live beings or contaminate the soil, water or air, or cause any other type of environmental damage). The national law and its authority of application shall be the true guides in environmental aspects, at least as regards current or potential pollution.

It is therefore evident that not only shall the Secretary of Natural Resources and Human Environment be the responsible authority for Laws 22421, 22428, 23922, 24020 and 24051, as stated in Decree 177/92, but that it is the "only authority of application, competent in all matters related to the natural resources and the environment" as politically defined by the fourth introductory clause of the same decree.

Finally, it should be taken into account that the fifth introductory clause of Decree 177 retains for the Executive Branch the power to decide on the application of the laws; and Law 24051 itself, in its Article 62, tends towards the unification of the responsible authority, creating an Interministerial Committee, formed by representatives of all the ministries whose sphere of action is related to that of the Secretary of Natural Resources and Human Environment.

5.1.1 The Definition of Dangerous Wastes

The law defines as dangerous wastes "anything which may cause damage, directly or indirectly, to live beings, pollute the soil, water, atmosphere, or the environment in general" (Art. 2).

This definition is supplemented by the Attachments to the law, which detail wastes considered dangerous "jure et