

ENVIRONMENTAL CHALLENGES OF THE MEXICAN ENERGY REFORM

HUMBERTO CELIS AGUILAR ÁLVAREZ*



It is unquestionable that the Energy Reform brings environmental challenges and legal, economic, social and political implications that need to be considered prior and within the planning of the projects that are being carried out or that will be developed in Mexico.

With regards to the legal implications, several important challenges have been raised, as the implementation of a new regime regarding permits, licenses, authorizations, contracts, as well as the enforcement issues.

In this sense, the Law of the National Agency of Industrial Security and Environmental Protection for the Hydrocarbons Sector establishes that all necessary environmental applications for permits for energy projects, must be submitted before and obtained from the National Agency of Industrial Security and Environmental Protection for the Hydrocarbons Sector (hereinafter Agency), which is innovative, as it was an attribution of the Ministry of Environment and Natural Resources (hereinafter SEMARNAT) before the reform.

Nevertheless, due to the lack of a clear implementation and

financial budget, it is presumed that the Agency will come to an agreement with SEMARNAT, to establish that the first projects will be evaluated by the latter, until the aforementioned obstacles are retrieved.

Furthermore, related to enforcement issues, it is necessary to determine if the competent authority prior the reform (the Environmental Protection Federal Agency PROFEPA), will enter into a similar agreement with the new Agency or define what will happen in the practice.

LIABILITIES

Another relevant challenge is the application of the new regime regarding environmental and legal liabilities for upstream and downstream projects; private companies in charge of these projects will have to know clearly the scope and consequences of the civil, administrative, environmental and penal liabilities, they can be subject to, for the noncompliance of the legal environmental framework.

Moreover, they will need comprehensive strategies regarding

environmental planning, to identify all the environmental paradigms they will face while developing their projects, as well as the role of the social participation, class actions as a mechanism for the restitution of environmental damages, the social impact evaluation, and also the required permanent communication among the three levels of government and society.

As the third legal challenge, is setting mechanisms that limits environmental liabilities of the parties in a project, through entering into contracts with clear and precise clauses, particularly in those projects that requires the existence of previous soil contamination, and so the recovery of mature fields.

Finally, an exhaustive analysis of all the environmental aspects, a comprehensive strategy regarding due compliance, a company's plan to comply with social and environmental liabilities and of course, contractual provisions, will guarantee successful projects before the implementation of the new legal framework resulting from the Energy Reform in Mexico.

**The author is Partner at Celis Aguilar Álvarez y Asociados.*