

## Compliance with Environmental Obligations and Implementation of Measures upon Suspension of Activities in light of COVID-19

### I. IMPORTANT AGREEMENTS PUBLISHED IN THE OFFICIAL GAZETTE OF THE FEDERATION.

#### A. CONTENT OF THE SEMARNAT RESOLUTION – 24/03/2020.

On March 24, 2020, the Ministry of Environment and Natural Resources ("SEMARNAT") published in the Federal Official Gazette ("DOF") the *Resolution whereby the general public is notified about the days that will be considered as non-business days, for purposes of the administrative acts and administrative procedures being processed by the Ministry of Environment and Natural Resources and its decentralized administrative bodies* ("SEMARNAT Resolution"),

SEMARNAT Resolution establishes that, due to the COVID-19 emergency, for purposes of all of the administrative acts and procedures being carried out by the administrative units of SEMARNAT and its decentralized administrative bodies, including, among others, the National Water Commission ("CONAGUA"), the Federal Bureau of Environmental Protection ("PROFEPA"), and the National Agency of Industrial Safety and Environmental Protection of the Hydrocarbons Sector, the following days of 2020, will be considered as non-business days, without implying suspension of work:

- March 23 to 27, 30 and 31; and
- April 1 to 3, 6 to 10 and 13 to 17.

Hence, during those days, the terms and deadlines of all administrative procedures before SEMARNAT will be suspended, which implies that the terms established by law, will not run for procedures, diligences, and actions in the procedures that are handled or should be handled before said authorities.

If any action, requirement, request or promotion is made before the administrative units, federal delegations or decentralized bodies of SEMARNAT, on any of the days considered as non-business days, their legal effects will start until the first business day following the end of the suspension period.

#### B. SCOPE OF THE RESOLUTION OF THE MINISTRY OF HEALTH – 31/03/2020.

On March 31<sup>st</sup>, 2020, the *Resolution establishing the extraordinary actions to address the health emergency generated by the virus SARS-CoV2* ("SS Resolution") from the Ministry of Health was published in the DOF. This Resolution includes, among others, the following measure to address said health emergency:

- The immediate suspension of all non-essential activities in the private, public, and social sectors from March 30<sup>th</sup> until April 30<sup>th</sup>, 2020. Essential activities, among others are those that are: (i) necessary to attend the public health emergency; (ii) public security; (iii) the ones related to the fundamental sectors for the economy; (iv) those directly related to the operation of government social programs; and (v) those necessary for the preservation, maintenance, and repair of critical infrastructure, which assures the production and distribution of essential services.

This guide includes the most relevant federal environmental obligations applicable in view of the need to suspend industrial activities or operations, in compliance to the SS Resolution.

#### C. PRESENTATION OF SUSPENSION NOTICES BEFORE THE COMPETENT AUTHORITY.

Depending on the corresponding industry and/or the specific activities being developed, companies must present a number of suspension notices before the competent environmental authorities. Given the current suspension of activities in all of SEMARNAT offices, we recommend that the corresponding notices are presented as follows:

- A written letter or attaching the format, if applicable, through e-mail addressed to the head of the competent administrative unit, federal delegation in the corresponding state, or decentralized body of SEMARNAT; or
- Under a more conservative approach, through a certified mail; however, we do not consider this to be necessary.

Additionally, any doubt regarding the presentation or follow-up of procedures managed by SEMARNAT, can be sent to the e-mail [atencion.ciudadana@semarnat.gob.mx](mailto:atencion.ciudadana@semarnat.gob.mx).

On the other hand, in case of an environmental emergency, it would be important to notify the Orientation Center for the Attention of Environmental Emergencies of PROFEPA, through the e-mail [coatea@profepa.gob.mx](mailto:coatea@profepa.gob.mx).

## II. MATTERS TO CONSIDER ON A FEDERAL LEVEL.

There are a number of measures and recommendations that companies must consider, in order to be able to comply with their environmental obligations derived from different authorizations they hold, as well as a result of the suspension of economic activities ordered in the SS Resolution.

#### A. ENVIRONMENTAL IMPACT

- Compliance of the Terms and Conditions of the Federal Environmental Impact Authorization ("AIA").*

According to the SEMARNAT Resolution and SS Resolution, the deadline for the compliance of obligations established in the terms and conditions of the AIA shall be understood to be suspended until April 30<sup>th</sup>, 2020, thus, it is advisable to resume the compliance of said obligations on the business day following that in which the suspension of economic activities is lifted.

The non-compliance of obligations established in the terms and conditions of the AIA, may result in the imposition of administrative sanctions; fines that go from MXN\$2,601.00 (USD\$130.05), up to MXN\$4,334,000.00 (USD\$216,700.00).

*b. Suspension of Economic Activities.*

It is important to analyze the scope of the AIA, in order to confirm if any type of measure and/or notice must be given upon the suspension activities or operations in compliance with the SS Resolution, given that the General Law of Ecological Balance and Environmental Protection ("LGE EPA") and its Regulations in Matter of Environmental Impact Evaluation do not expressly establish the obligation to give notice to SEMARNAT in these cases.

If an obligation to give notice is not established in the AIA, it is advisable to present a letter to SEMARNAT notifying the suspension of activities, in accordance to that indicated in subsection C. of section I. of this guide. This notice would later serve as a justification for any extemporaneous compliance of the terms and conditions that must be complied before April 30<sup>th</sup>, 2020.

If the facility is the construction stage and/or during an authorized expansion or modification, the notice will serve as a justification to, if necessary, request and justify an extension of the term to complete the construction stage.

**B. UTILIZATION OF NATIONAL WATERS**

*a. Compliance of the Terms and Conditions of the Water Concession Title.*

Obligations established in a concession title for the use of national waters, as well as the National Waters Law ("LAN") and the LAN Regulations that must be complied with on or before April 30<sup>th</sup>, 2020, must be now complied with the business day following that in which the suspension of activities is finished. Please note that this suspension does not apply to the compliance of fiscal obligations on matters of national waters.

Notwithstanding, it is advisable to continue compliance with those obligations which can be filed through CONAGUA's electronic system. Also, the following obligations must be timely complied with regardless of the suspension of terms and activities:

- Pay the fiscal rights for the use and exploitation of national waters, promptly; and

- Present the statements of the payment of rights, through the Declar@gua electronic system, in accordance with the meter readings, even if the consumption for the corresponding quarter is "zero".

Failure to comply with the obligations indicated in the concession title, the LAN, and its Regulations, may result in the imposition of administrative sanctions, with fines that range from MXN\$17,376.00 (USD\$869.00) up to MXN\$1,737,600.00 (USD\$86,680.00), as well as a the suspension of the wells, and the works or outlets for the extraction or utilization of national waters.

On the other hand, the lack of prompt payment of the rights of utilization of national waters, for more than one fiscal year, will be motive enough for the suspension and the revocation of the concession for the case of repeated offenders.

*b. Partial use of the volume of water authorized under a concession title due to the suspension of operations.*

The lack of use (totally or partially) of the volume of water authorized under a concession title two consecutive years, is a cause of extinction of the concessions when, for this reason CONAGUA declares the partial or total elapsing (*caducidad*) of the concession title. However, when the lack of water use is the result of an act of God or a force majeure, such as the suspension of non-essential economic activities, in light of the COVID-19 emergency, the total or partial elapsing of the concession title will not apply, provided that a "notice to request the interruption of the expiration of the water rights regarding non-used volumes of water" is filed with CONAGUA, within the 15 business days following the day in which the suspension becomes effective<sup>1</sup> and pursuant to the guidelines included in subsection C. of section I. of this guide.

The notice must include: (i) the form of application No. CNA-01-019 ([www.gob.mx/cms/uploads/attachment/file/170982/CNA-01-019\\_.pdf](http://www.gob.mx/cms/uploads/attachment/file/170982/CNA-01-019_.pdf)), duly completed; (ii) the valid official document which proves the legal status of the entity; and (iii) the evidence which proves the act of God or Force Majeure, which in this case would be the SS Resolution.

In this sense and within the following 15 business days to the day in which the assumption of force majeure ceases, a written notice of said situation, must be presented before CONAGUA.

*c. Measures to implement, in the assumption of a closing of the water wells.*

In the event that a closing of the water wells is necessary due to the suspension of economic activities, requirements established in Official Mexican Standard NOM-004-CNA-1996 "Requirements for the protection of aquifers during the maintenance and rehabilitation of wells of extraction of water, and for

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<sup>1</sup> Which happened on March 31<sup>st</sup> of 2020, day in which the SS Resolution was published.

the closing of wells in general” must be complied with, in order to protect the quality of the water of the aquifers during the closing of the wells, whether in a temporary or definitive way.

### C. WASTEWATER DISCHARGES

#### *a. Compliance with the terms and conditions of the Wastewater Discharge Permit.*

In accordance with the SEMARNAT Resolution and SS Resolution, the terms to comply with the obligations established in the discharge permit, as well as in the LAN and its Regulations, are understood to be suspended until April 30<sup>th</sup>, 2020; it will be necessary to resume compliance with obligations, the business day following that in which the suspension of economic activities is lifted.

Notwithstanding, it is advisable to continue compliance with those obligations which can be filed through CONAGUA’s electronic system. Also, tax obligations must be timely complied with regardless of the suspension of terms and activities including the filling of declarations of payment of rights for the use of national assets as receiving bodies of wastewater discharges, through the Declar@gua electronic system.

The lack of compliance with the obligations established in the discharge permits, the LAN, and its Regulations, may result in the imposition of administrative sanctions, with fines that range from MXN\$17,376.00 (USD\$869.00), up to MXN\$1,737,600.00 (USD\$86,680.00), as well as the suspension of the activities that generate the wastewater discharge.

#### *b. Notice of suspension of operations of the Wastewater Treatment System.*

If it is necessary to suspend the operation of the wastewater treatment system, even temporarily, due to the current suspension of activities, CONAGUA must be notified by filling the form of application CONAGUA-01-017 ([www.gob.mx/cms/uploads/attachment/file/181973/CONAGUA-01-017.pdf](http://www.gob.mx/cms/uploads/attachment/file/181973/CONAGUA-01-017.pdf) ) or by a written notice which must contain the information indicated in the format. In strict sense, the notices must be filed in advance to the suspension of the system, however, under the current circumstances, it would be justified if done after the effective suspension of operations.

There is no cost associated to the filling of the notice, and no response is required; in case you have an electronic signature (*e-firma*), it is possible to file your notice online at the next link [www.gob.mx/conagua](http://www.gob.mx/conagua) > Acciones y Programas > Trámites de la Comisión Nacional del Agua > Trámite electrónico (Right Bar Menu).

In case the portal does not work due to the suspension of activities determined by SEMARNAT’s Resolution, or the suspension of activities enacted by SS Resolution, we recommend that you submit the notice in accordance with the provisions of subsection C. of section I. of this guide.

### D. AIR EMISSIONS

*a. Notice of Suspension of Activities.*

In accordance with the provisions set forth in the Regulations of the LGEEPA in Matter of Prevention and Control of Atmosphere Pollution ("RMPCCA"), those who are responsible of stationary sources of air emissions under federal jurisdiction and have a Comprehensive Environmental License ("LAU") issued by SEMARNAT, are obligated to inform, in advance, about scheduled suspension of activities and, immediately in case the suspension of activities is circumstantial.

There are no costs associated to the filling of said notice, and it must contain at least the following information:

- Business or corporate name;
- LAU information; and
- Reasons for the suspension of activities.

In view of the above, we recommend to file before SEMARNAT, the notice of suspension of activities due to COVID-19, in accordance with the provisions of subsection C. of section I. of this guide.

Notwithstanding the foregoing, we recommend to also comply with any special conditions that may be established in the LAU, in relation to the suspension of the activities of the stationary sources of air emissions under federal jurisdiction.

*b. Comprehensive Environmental License.*

In accordance with the RMPCCA and the Regulations of the LGEEPA on Matters of Emission and Transference of Contaminants, the Annual Emissions Inventory ("COA") needs to be filed annually during the months of March to June. In this regard, we recommend filling the COA on a regular basis through the SEMARNAT electronic platform (<https://sinatec.semarnat.gob.mx/>).

The lack of compliance with the filing of the COA may result in the imposition of administrative sanctions, with economic penalties ranging from MXN\$2,601.00 (USD\$130.00), up to MXN\$4,334,000.00 (USD\$215,977.00); however, the validity of the LAU should not be affected, unless there is a repetitive non-compliance to the obligation to timely file the COA.

E. HAZARDOUS WASTES

*a. Notice of Suspension of Generation of Hazardous Wastes.*

In accordance with the Regulations of the General Law for the Prevention and Integral Management of Wastes ("RLGPGIR"), there is no article that establishes the obligation to file a notice to inform about the temporary suspension of generation of hazardous waste, however, it is recommended to file a written

notice before SEMARNAT, notifying about the suspension of operations, in accordance with the provisions of subsection C. of section I. of this guide.

*b. Extension of the Term for Temporary Storage of Hazardous Wastes*

Pursuant to the Law for the Prevention and Integral Management of Wastes ("LGPGIR"), the temporary storage of hazardous waste on site cannot be longer than 6 months from the day in which the wastes are generated; said maximum period may be extended for an additional 6 months by means of a request submitted before SEMARNAT.

According to the RLPGIR, those who require the extension of 6 additional months for the storage of hazardous wastes, must file the request at least 20 business days before the expiration date of the original term, which must contain:

- Form FF-SEMARNAT-036 (<https://www.gob.mx/tramites/ficha/prorroga-de-almacenamiento-de-residuos-peligrosos/SEMARNAT283>);
- Corporate name and registration number or authorization; and
- Technical justification, economic or administrative situation for which it is necessary to extend the storage period.

In this sense, if there is risk of having to exceeding maximum 6 months hazardous waste storage limit as a result of the suspension of activities enacted by the Ministry of Health, we recommend to file the notice at any time during the suspension period using the electronic portal of SEMARNAT.

Said request must be resolved by SEMARNAT within a maximum period of 10 business days; in case SEMARNAT does not give an answer, we must understand that the extension was authorized.

In accordance with the LGPGIR, failure to comply with the obligations regarding hazardous waste may result in the imposition of administrative sanctions, with economic penalties ranging from MXN\$2,601.00 (USD\$130.00), up to MXN\$4,334,000.00 (USD\$215,977.00), as well as the total or partial closure of the source of production of hazardous wastes.

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