

# Argentina

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## OVERVIEW

### 1. Please provide a brief overview of the environmental regulatory framework and authorities in your jurisdiction.

Argentina has a federal system of government, established by a national constitution. The provinces retain authority not delegated to the federal government and each has its own constitution. Therefore, there are two sets of statutory regulations on environmental law, and additionally, municipal governments can enact environmental rules in their own jurisdictions.

In many instances, these three levels of regulation, federal, provincial and municipal, co-exist. At the federal level, the main authority is the Secretariat of Environment and Sustainable Development (SESD) (*see box, The regulatory authorities*).

International treaties are also part of the regulatory system in Argentina, and have higher standing than federal law. One of the main treaties ratified by Argentina is the Kyoto Protocol.

### 2. To what extent are environmental requirements enforced by regulators in your jurisdiction?

In the last few years, the level of enforceability has increased considerably both at the federal and provincial level. Certain events have increased the enforcement of environmental statutes, such as the growth of mining activity and the potential adverse impact of certain mining procedures on water and air, and the controversy between Argentina and Uruguay about paper mills installed in Uruguay by the Uruguay River.

The SESD is the federal agency that enforces environmental international treaties and federal environmental issues, mainly relating to contamination in inter-jurisdictional rivers and contamination issues involving two or more provinces. Each province and the City of Buenos Aires have their own environmental agencies that enforce their own provisions.

### 3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active in your jurisdiction?

NGOs have been particularly active recently, especially in the controversy with Uruguay (*see Question 2*). The assembly of the residents of Gualaguaychú in Entre Ríos, one of the cities most affected by the paper mills in Uruguay, has been very active, and their former legal counsel is now the main officer of the SESD.

## PERMITTING OF EMISSIONS

### 4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

There is no integrated permitting regime. Because of the overlap among jurisdictions, there are separate environmental regimes for each type of emissions, and even several authorities governing the matter.

Companies have to apply for different permits.

### 5. If there is an integrated permitting regime, please provide a brief overview of it, in particular:

- What permits are needed and which regulator issues them?
- How long do permits last?
- Are there restrictions on transferring permits?
- What are the penalties for non-compliance?

There is no integrated permitting regime (*see Question 4*).

### 6. Please summarise the regulatory regime for water pollution (whether part of an integrated regime or separate). In particular:

- Are any activities prohibited (such as causing or failing to prevent water pollution)?
- What permits or other authorisations are required and which regulator issues them?
- Can the regulator require a polluter to clean-up or pay compensation for the water pollution?
- What are the penalties for non-compliance?

There are federal statutes containing regulations about water pollution that apply to the public water system. These contain certain concessions.

All industrial facilities located in the City of Buenos Aires, and several counties of the Province of Buenos Aires that are part of Greater Buenos Aires, must file an annual affidavit reporting liquid effluent discharge (*Decree 674/89, as amended*). After analysis of such affidavits, a discharge feasibility level is approved. After site inspections and analysis of samples of the waste discharge into water, a conditional discharge authorisation is granted. This conditional authorisation lasts for three years and must be renewed on expiry.

Decree 674/89, as amended, sets out three categories of industrial discharge:

- **Temporarily permitted.** These are discharges that must be converted so that they become non-contaminating. This is done by applying certain biennial reductions.
- **Prohibited.** These are discharges that are penalised with fines and, if a serious risk to public health is involved, closure of the source.
- **Unauthorised or unregistered discharges.** Polluting parties that fail to come within their authorised discharge limits must pay a tariff. The tariff is fixed through a formula that takes into account the amount of the excess discharge, its toxic effect, and the harm caused. The sampling is taken at least twice a year.

Provinces have specific statutes that establish similar practices to avoid water pollution. Certain areas such as the Matanza Riachuelo Basin have a specific regime to attempt to restore and remedy this water basin located in Greater Buenos Aires, where there is a high industrial concentration and which is heavily contaminated.

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**7. Please summarise the regulatory regime for air pollution (whether part of an integrated regime or separate). In particular:**

- **Are any activities prohibited (such as discharging certain substances into the air without a permit or causing air pollution)?**
  - **What permits or other authorisations are required and which regulator issues them?**
  - **Can the regulator require the polluter to clean-up or pay compensation for the air pollution?**
  - **What are the penalties for non-compliance?**
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Federal Law No. 20,284 (Air Resources Preservation Act) is a federal statute on which several provinces have modelled their air-protection statutes.

The Air Resources Preservation Act establishes maximum levels of pollution for fixed sources of contamination. For mobile sources (vehicles and aeroplanes), it recommends that maximum levels be set by the national health department which, until now, has failed to fix them.

Enforcement is delegated to federal or provincial authorities that have jurisdiction over the contaminating party. If the air con-

tamination covers more than one jurisdiction, the Air Resources Preservation Act allows the federal government and the affected provinces to set up an inter-jurisdictional committee, to regulate and remedy the contaminating activity.

The Air Resources Preservation Act requires pollution sources to obtain permits from the relevant federal or provincial health authority. It created a Pollution Source Registry to be kept by the national health authority, and allows each local health authority to establish a Prevention Plan for Critical Air Pollution Situations. This plan sets out three stages of contamination levels, according to the hazard posed to human health. If a local area reaches the critical stage, the local health authority can limit or prohibit the activity in that area.

Under the Air Resources Preservation Act, penalties range from civil fines to closure.

In the Province of Buenos Aires, Provincial Law 5965 establishes the general framework for air contamination in this jurisdiction. Provincial Decree 3395/06 regulates air emission permits. The authority issuing these permits is the Secretariat of Environmental Policy (*see box, The regulatory authorities*) but it can delegate its authority to municipal governments. Permissions must be granted or denied within 60 administrative days from the application, and they must be renewed every two years.

The Secretariat of Environmental Policy can inspect an industrial facility at any time. If there is non-compliance, it can impose fines and can also order partial or total closure for serious infringements.

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**8. Please provide a brief overview of emissions trading schemes in your jurisdiction, including any national targets and carbon allowances systems. Is your jurisdiction party to international agreements on this issue and how have they been implemented into your national law?**

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Argentina has ratified the Kyoto Protocol. The general guidelines of the Kyoto Protocol are applicable in Argentina. Under the Argentine Constitution, International treaties have higher standing than federal statutes. In 1994, the SESD executed a bilateral co-operation agreement with France in relation to the Clean Development Mechanism set out in Section 12 of the Kyoto Protocol.

## ENVIRONMENTAL IMPACT ASSESSMENTS

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**9. Please provide a brief overview of the requirements to carry out environmental impact assessments (EIAs) for certain projects (for example, construction of an oil and gas facility). In particular:**

- **What type of projects and impacts are covered?**
  - **Are permits or other documents required before the project can start and which regulator issues them?**
  - **What are the penalties for non-compliance?**
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Any activity in Argentina that is likely to significantly degrade the environment or part of it, or affect the quality of life, is subject to

an EIA before it is started (*Federal Law No. 25,675*). EIAs in Argentina are carried out at the provincial and municipal levels. Additionally, certain activities have specific EIA regulations, such as:

- Mining.
- Oil and gas.
- Electricity transmission.
- Hazardous wastes disposal and handling.
- Public investment projects.

The EIA procedure starts by submitting an affidavit showing that the works or activity will affect the environment. EIAs must contain at least:

- A detailed description of the works or activities to be carried out.
- Identification of the consequences for the environment.
- Remedial activities proposed to mitigate any adverse effect.

Most provincial or specific industry statutes related to EIAs set out penalties for non-compliance with recommendations of the regulatory body, ranging from fines, to revocation of operating permits and closures.

## WASTE

### 10. Please provide a brief overview of the regulatory regime for waste. In particular:

- **What activities are prohibited (such as storing or disposing of waste without a permit)?**
- **What permits or other authorisations are required and which regulator issues them?**
- **Do operators need to meet certain criteria (such as having sufficient financial means to operate landfills and other waste disposal sites)?**
- **Are there special rules for certain types of waste (such as hazardous waste or electrical equipment)?**
- **What are the penalties for non-compliance?**

#### Regulatory framework

The import of hazardous waste, potentially hazardous waste or radioactive waste into Argentina is banned (*section 41, Federal Constitution*).

Law 24051 of 1992 (Hazardous Waste Act) regulates the generation, transport, treatment, storage, and disposal of hazardous waste. Hazardous waste is defined as waste that poses direct or indirect harm to human beings or that may pollute soil, water, the atmosphere, or the environment in general.

The Hazardous Waste Act only applies to hazardous waste that is produced or deposited in the federal jurisdiction, or that may affect people or the environment beyond a single province, or that is transported through provincial boundaries. Most provincial jurisdictions have similar laws that regulate hazardous waste in their jurisdiction.

The Hazardous Waste Act requires that parties involved in the generation, transport, treatment, storage, and disposal of hazardous waste must be registered with the National Registry of Hazardous Waste Generators and Operators of the SESD, and pay the Annual Environmental Fee. Penalties for violating the law range from fines to removal from this National Registry.

#### Liability

The Hazardous Waste Act has a special system to attribute liability that modifies the general liability system of the Civil Code. The generator is responsible for damage caused by the hazardous waste it produces, in its capacity as owner of it (*Hazardous Waste Act*). This liability continues, irrespective of delivery of the waste to third parties.

Additionally, the owner or custodian is not excluded from liability, even after showing the negligence of a third party for which he is not liable, if the damage could have been avoided by him exercising due care.

In relation to the statute of limitations, it is part of the system of liability extending from “cradle to grave”.

#### Penalties

Penalties for violating the administrative rules of the Hazardous Waste Act range from fines to suspension and cancellation of registration with the National Registry of Hazardous Waste Generators and Operators. For repeat offenders, penalties are increased and if committed by legal entities, corporate officers are jointly and severally liable. The statute of limitations for these penalties is five years from the date of the infringement. Claims for damages are subject to a two-year statute of limitations, although in certain cases courts have ruled that the applicable statute of limitations is ten years.

Criminal liability applies to conduct that endangers human health, poisons, pollutes and contaminates the environment in general. If such acts are followed by death, the liable party is subject to imprisonment of ten to 25 years. If the act is caused by negligence, inexperience or failure to observe the law, the term of imprisonment is one month to two years. If it results in illness or the death of a person, this term rises to six months to three years. If these acts are attributable to a legal entity, the penalties are imposed on the participating officers.

#### PCBs

Federal Law 25670 regulates the management of polychlorinated biphenyl (PCB), polychlorinated terphenyl (PCT) and related substances. It prohibits the installation of equipment containing PCBs in Argentina, and the import into Argentina of PCB and equipment containing PCBs.

Manufacturers, traders and any person that owns, handles, transports or uses PCBs or devices containing PCBs must be registered with the National Registry of PCBs Holders, unless the aggregate volume involved is less than one litre.

PCBs users must obtain civil liability insurance, or a surety bond, bank guarantee, repair fund or similar guarantee, to ensure that any potential environmental damage will be remedied.

PCBs should be gradually eliminated by 2010. If holders of equipment that contains PCBs want to keep it in operation, they should decontaminate the equipment before 2010. All decontaminated equipment should be labelled, indicating that it has been treated and that it previously contained PCB.

Sanctions for breaching Federal Law 25670 range from warnings and fines, to business closure. In the case of second offenders, penalties are doubled.

Provinces have enacted similar statutes.

## ASBESTOS

**11. Please provide a brief overview of the regulatory regime for asbestos in buildings. In particular:**

- What activities are prohibited?
- What are the main obligations (such as investigating the presence of asbestos and risk assessments for employees) and who is liable to carry them out?
- What permits or other authorisations are required and which regulator issues them?
- What are the penalties for non-compliance?

Asbestos is mainly regulated by labour statutes. Resolution 577/1991 of the Ministry of Labour regulates the use, manipulation and disposal of asbestos within labour premises, and states that no worker can be exposed to high concentrations of asbestos. It includes labelling rules, information on asbestos effects, and protection for workers from asbestos exposure. New use of asbestos is categorised as hazardous waste.

Regarding the existence of asbestos in the workplace and use within authorised concentrations, the Ministry of Labour is the regulatory authority. Fines are the main penalties but by the application of other statutes, such as those regulating hazardous waste (see *Question 10*), additional penalties may apply.

## CONTAMINATED LAND

**12. Please provide a brief overview of the regulatory regime for contaminated land. In particular:**

- Which regulator is responsible and which legislation applies?
- In what circumstances can a regulator require the investigation and clean-up of contaminated land?
- What are the penalties for non-compliance?

In relation to contamination of land, it should be established whether the contamination involves hazardous or industrial waste, or other kinds of contamination such as erosion.

The Hazardous Waste Act covers contamination of land, as does Law 25612, which covers all industrial waste, hazardous or not (see *Question 9*). It regulates the obligations resulting from generation, storage, transportation, treatment and disposal of industrial waste. Local authorities must identify waste generators and maintain registries of generators, transporters and operators of industrial wastes. They can also conduct investigations and inquiries.

Lack of compliance with this legislation can lead to various sanctions (see *Question 9*).

**13. In relation to liability for contaminated land:**

- Which party is liable for carrying out or paying for environmental investigation and clean-up?
- Can an owner or occupier who has not caused contamination be liable for investigation and clean-up of contamination on their land?
- Can previous owners or occupiers be liable for contamination they have caused in the past?
- Are there limits on liability or ways for a party to limit its liability?

In cases in which contamination issues fall within the Hazardous Waste Law or Law 25612, the owner or occupier of the land is liable for contamination and liability is regulated by special principles (see *Question 9*).

**14. Can a lender incur liability for contaminated land and is it common for a lender to incur such liability? What steps do lenders commonly take to minimise such liability?**

In general, lenders are not liable for contaminated land. However, in major projects, lenders demand an adequate due diligence process.

**15. Can a private individual bring legal action against a polluter, owner or occupier (for example, for damage caused by the movement of contamination onto his land)?**

Under most statutes, a private individual has legal standing to bring legal action against a polluter, owner or occupier.

## TRANSACTIONS

**16. In what circumstances can a buyer inherit pre-acquisition environmental liability in:**

- An asset sale?
- The sale of a company (share sale)?

In general, a buyer can only inherit pre-acquisition liability if it causes contamination that accrues before the acquisition.

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**17. In what circumstances can a seller retain environmental liability after disposal in:**

- An asset sale?
  - A share sale?
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In an asset sale, in cases where contamination of land falls within the hazardous or industrial waste regimes, the special liability regime applies, so the seller can retain liability (see *Question 10*).

The same occurs in share sales, with the additional issue that in a share sale, title to the land does not change. The registered owner continues to be the same legal entity and only its shareholders change.

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**18. Does a seller have to disclose environmental information to the buyer in:**

- An asset sale?
  - A share sale?
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A seller must disclose environmental information to the buyer in both an asset and a share sale.

Several environmental statutes set out disclosure obligations. The main disclosure issues relate to emissions, hazardous and industrial waste, PCBs, and potential contamination of effluents, as well as any remedial actions undertaken.

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**19. Is environmental due diligence common in an asset sale or a share sale? If yes:**

- What areas are usually covered?
  - What types of environmental assessments are available?
  - Are environmental consultants usually used? If so, what issues should be covered in an engagement letter (for example, limit on consultant's liability)?
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**Areas covered**

The areas covered in due diligence include emissions, hazardous and industrial waste contamination and issues about PCBs.

**Types of assessment**

Assessment includes legal and technical assessments.

**Environmental consultants**

Environmental consultants are retained. Issues covered in engagement letters may generally include a limitation of liability.

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**THE REGULATORY AUTHORITIES**
**Secretariat of Environment and Sustainable Development (Secretaría de Ambiente y Desarrollo Sustentable)**

**Main responsibilities.** This is the federal regulatory authority.

**W** [www.ambiente.gov.ar](http://www.ambiente.gov.ar)

**Secretariat of Environmental Policy for the Buenos Aires Province (Secretaría de Política Ambiental (Provincia de Buenos Aires))**

**Main responsibilities.** This is the environmental regulatory authority of the Province of Buenos Aires, which is the main economic district of Argentina.

**W** [www.spa.gba.gov.ar](http://www.spa.gba.gov.ar)

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**20. When are environmental warranties and indemnities usually given and what issues do they usually cover in:**

- An asset sale?
  - A share sale?
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In both asset and share sales, representations and warranties may be made, usually covering issues such as:

- The status of the land.
- Non-existence or otherwise of land spills.
- Emissions.
- PCBs.
- Any administrative or judicial claims related to environmental matters.

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**21. Are there usually limits on environmental warranties and indemnities, for example, time limits or financial caps?**


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Limits on environmental warranties and indemnities are usually negotiated. It is usually commercially agreed to establish time limits lower than the applicable statutory limitations and financial caps.

## REPORTING AND AUDITING

### 22. Do regulators keep public registers of environmental information (for example, of environmental permits or contaminated properties)? What is the procedure for a third party to search those registers?

Regulators keep environmental information and, unless a file is kept from public access because of a confidentiality request, such files are public documents accessible by third parties.

Federal Law 25831 guarantees free and public access to environmental information. The federal government, a public utility company or independent government body, that holds environmental information must make such information available to any person who requests it within 30 working days from the request.

### 23. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

Companies can carry out environmental audits and should report any infringements to the appropriate regulators. As a matter of public relations, if companies have a good compliance track record, they may choose to report it to the public.

### 24. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

Companies must report environmental incidents to regulators, and this generally involves submitting remediation plans, in addition to any applicable penalties.

### 25. What powers do environmental regulators have to access a company's documents, inspect sites, interview employees and so on?

Usually regulators have power to inspect sites and request information and documents during their activities.

## INSURANCE

### 26. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it usually obtained in practice?

SESD has enacted several rules requiring environmental insurance to be held by individuals or legal entities doing activities that carry environmental risks. SESD Resolution 177/2007, as amended, sets out:

- An objective listing of activities deemed risky.

- The method for categorising industries and companies, which is based on the level of environmental risk associated with them. A polynomial formula is used to calculate this, which takes into account a variety of factors, such as the type of industrial activities involved, the levels of effluent and waste produced, and so on.
- That cover is limited to collective damage caused to the environment.
- The creation of the Evaluation Unit of Environmental Risks. This determines the minimum expected amounts for incurable environmental damage to ensure insurance cover is sufficient. It also determines the method for assessing the environmental condition at the time when the insurance is taken out, and for certifying when environmental damage has been caused. This entity also audits and approves remediation plans, and the recommended contents of insurance policies and requirements for self-insurance.
- The authorisation of self-insurance, as long as the holders of risk activities have economic and financial means.

Joint Resolution 178/2007 and 12/2007 of the SESD and the Finance Secretary of the Ministry of Economy and Production creates the Advising Committee on Environmental Financial Guarantees.

## TAX

### 27. What environmental taxes apply in your jurisdiction (for example, tax on waste disposal, carbon tax and tax breaks for carrying out clean-up of contaminated land)? For each tax, please briefly state how it is calculated, who pays it and the tax rates.

There are certain industrial promotion regimes that grant tax breaks to certain activities carried out in specific geographical areas. Among the factors considered are environmental protection issues.

## REFORM

### 28. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

Some of the main reform proposals relate to contamination of water basins and air by mining activities, and deforestation and paper mills.

The Supreme Court resolution that ordered remediation by federal, provincial and municipal authorities of the highly contaminated Matanza Riachuelo Basin has been a major development in the last year, and has marked the start of more comprehensive activities to resolve environmental problems.