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Obstacles in Current Water Pollution Legislation

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[Dr. Payá analyzes the obstacles that exist in current water pollution legislation to achieving the sustainable use of this resource. He believes this analysis can be applied to other national environmental statutes, as well.]

The first inherent problem is jurisdictional. Under the recently reformed Argentine Constitution, the provinces have jurisdiction over their own natural resources and, therefore, the legal power to create standards to protect those resources. In fact, many provinces have some sort of water protection legislation that parallels legislation at the national level. As a result, a private company within the jurisdiction of any province is subject to both national and provincial regulations, which typically contain different standards and provide for oversight by different agencies whose activities are not coordinated.

The second type of problem found in these laws is the lack of any mechanism to govern the sustainable use of the particular resource that they protect. To illustrate this, Dr. Payá briefly discusses Argentina's legal system for preventing water contamination. According to Dr. Payá, no company may discharge polluted water without the authorization of the Department of Natural Resources and Human Environment. The Secretary of the Department establishes water quality standards called "permissible limits," which have to be observed by regulated industries. These standards differ,

depending on what type of water course is involved. Likewise, companies are required to present, each year, an affidavit establishing their output of pollutants, including daily volumes. If regulated companies exceed allowed volumes, they have to pay a fine to remedy the contamination. In addition, the Secretary has the authority to impose administrative and penal sanctions and to close any establishment that does not observe the standards.

According to Dr. Payá, an essential missing factor in this regulatory system is the existence of quality standards for each sector of the hydrological environment. Recently, Argentina adopted a system of water use classification under its hazardous waste law. This system establishes quality level guidelines for each class of water use and designates the Department of Natural Resources and Human Environment as the standard setting entity. Although this is an improvement with respect to standard setting, it represents another jurisdictional conflict between the provinces and the national government. Under this recent statute, the enforcement powers of the Department of Natural Resources conflict with the constitutional powers of the province where the water is located, since the provinces have legal authority over water resources within their boundaries. Several of the provinces have water quality standards and enforcement mechanisms of their own.

Therefore, according to Dr. Payá, in order to achieve efficiency and sustainability within the legal system, it is necessary to establish uniform quality standards, because companies producing water effluent in a particular waterbody do not know which water quality standard to follow for that particular body. Similarly, in order to achieve a sustainable use of this resource, it should be clear which agency is responsible for regulating water contamination so that established quality standards in those watersheds are protected. This agency, as well, should have the authority to restrict the addition of contaminated effluent in water streams where established standards are not being met.

In conclusion, Dr. Payá indicates that in Argentina there are serious jurisdictional conflicts, a lack of mechanisms for the sustainable application of quality standards, and a clear

need to coordinate pollution control activities with environmental impact procedures and land use laws. Argentina needs much more integration and coordination among its systems of environmental control and growth management.