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An Analysis of Argentine Environmental Law: Legislative, Administrative, Institutional, and Enforcement Aspects

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[Dr. Bec prepared an extensive analysis of Argentine environmental law for the Center for International Environmental Law in Washington, D.C. Her presentation is a summary of that analysis. She discusses three different aspects of the current environmental legal system.]

I. Legislative Aspects

At the national level, the environmental statutes do not proceed from the principle that the environment is a single system that is logically organized. Article 41, newly added to the Constitution, calls on the national legislature to establish minimum standards for protecting the environment, making it much more likely that federal statutes will approach environmental regulation more comprehensively and eliminate the current duplication of subject matter and administrative jurisdiction.

The constitutional reform establishes concurrent jurisdiction between the provincial and federal governments in the area of environmental protection. By recognizing that the provinces have principal jurisdiction over natural resources within their territory, however, the new Constitution intends to establish a balance in this area.

Further, the constitutional reforms require that particular attention be paid to the sustainable use and development of such natural resources. Previously, the legal system em-

phasized offsets among various types of natural resources. Under the new Constitution, sustainability is the measure of legal actions and this will require a healthy reorientation of the environmental protection regime.

Finally, since municipalities enjoy significant autonomy regarding environmental matters, it corresponds to the national legal system to provide for and emphasize the exchange of information and coordination of this highly decentralized system. There must be careful coordination of the policies, standards and functions of the municipal, provincial and national governments.

II. Administrative & Institutional Aspects

Until recently, five out of the eight departments of the federal government had some authority regarding the environment. This was improved by the formation of the Department of Natural Resources and Human Environment. Since its creation, the Department has been consolidating the environmental functions of federal agencies.

Although public participation regarding environmental policy and actions has been very limited, there is much more interest now in the subject engendered by greater media coverage of environmental controversies. There also has been an increase in the number of non-government organizations concerned with the environment. These trends are likely to be encouraged by the new federal statutes.

III. Enforcement Aspects

Argentina's performance has been very poor with respect to the enforcement of environmental laws. Many statutory provisions are ignored and seldom applied. This is due, in part, to the fact that they are too general, leaving much room for administrative discretion and interpretation. Despite these problems, there is no doubt that there has been a big advance in the application of environmental laws in recent years. This recent history has established a process of application that is more cooperative and less confrontational than in the United States and other developed countries. Thus, vi-

olations are usually resolved without the need for costly procedures or adjudications.