

CUBA'S ENVIRONMENTAL LAW

B. Ralph Barba and Amparo E. Avella

Environmental considerations were largely ignored in Cuba for almost 200 years. Only in the last decade, with the enactment of Law 33 on January 10, 1981, have environmental laws and regulations begun to play a very small role in guiding the development of natural resources exploitation and the ecology of the island.

Law 33 is a very short document of only 25 pages. It supposedly covers all the regulations from the "principles of the Cuban Communist Party concerning the environment," to the protection and use of Cuban national resources. Law 33 has a good dosage of political "garbage," including a section that compares the "wise use of natural resources by communist countries versus the indiscriminate use of natural resources by the capitalistic world."

BACKGROUND

As a guide for drafting Law 33, the Cuban Government claims they relied on legislation enacted by some former socialist countries such as the German Democratic Republic, Bulgaria, Hungary and Russia. In addition, they claim to have examined laws and regulations from Colombia, Mexico, Sweden and Venezuela together with materials from the United Nations Program for the Environment, even though it is known that some countries like Mexico had practically no environmental laws at that time. It is also common knowledge that the ecological situation of Russia is a complete disaster; therefore, that country's environmental laws were very lax or were never applied.

The "Comisión Nacional de Protección del Medio Ambiente y Conservación de los Recursos Naturales

(COMARNA)" was responsible for developing Law 33 and its regulations, but the Academy of Sciences of Cuba was in charge of defining the technical terminology included in the Law.

Thus, the Law on Environmental Protection and the Rational Use of Natural Resources (Law 33) was passed in order to "establish the basic principles to conserve, protect, improve and transform the environment and the rational use of natural resources, in accordance with integral development policies" of the Cuban government, and "with the objective of the best utilization of the national productive potential".

Law 33 requires the application of these objectives to all investment projects and to regional planning. Environmental assessment measures carried out and approved by governmental institutions must be included in all projects.

Law 33 is divided into four main chapters. Chapter one covers the main concepts of the Law. Chapter two covers specific areas of the Law and the fundamentals for the use, protection and rehabilitation of water, soil, mineral resources, etc. Chapter three covers the organization of the government entity responsible for the Law: the Comisión Nacional de Protección del Medio Ambiente y Conservación de los Recursos Naturales. The last chapter, chapter four, is an attempt to legislate a system of fines for violating the Law including a mechanism to insure that they are obeyed.

KEY PROVISIONS OF LAW 33

Key provisions of the Law 33 can be summarized as follows:

Chapter I: General Provisions

This chapter, which consists of 21 Articles, includes the goals of the Law, the adopted definitions of terms used in the Law, and the obligations of all national or foreign investors regarding the treatment and final disposal of generated waste.

Article 17 establishes the regulations to produce, store, transport, use, generate and dispose of hydrocarbons, chemicals, biological and radioactive substances, waste, and other materials. Other Articles establish the duties of governmental institutions and enterprises concerning environmental protection services.

Chapter II: Specific Areas of Environmental Protection and the Use of Natural Resources

This section of the Law has nine sections. Key provisions of each of the nine Sections of the Law are:

Section I. Water. This Section establishes the definition of territorial waters: underground, aboveground, thermal and medicinal waters. It also deals with planning for the use and development of fisheries resources in rivers, lakes and lagoons; establishes the need for rational use of water and the utilization of treatment water technologies in all new projects; the prohibition of water discharges before treatment and the prohibition to locate any project in areas designated as source aquifers.

Section II. Soils. Article 42 establishes that all persons dedicated to mining activity, road construction and/or another economic activity affecting the soils must adopt the necessary programs to replace or rehabilitate the construction site. The cost of rehabilitating the site must be included as part of the investment.

In order to prevent soil contamination, the following is prohibited:

- Disposal and/or underground injection or storage of contaminants without a permit.
- Use of contaminated water for irrigation.

- Use of chemical products in the agricultural industry without a permit.

Section III. Mineral Resources. This Section deals with the preservation of mining resources and establishes rules to promote the controlled development of mining areas. Prior to any mining investment, a favorable environmental assessment is required on each site.

Section IV. Marine Resources. This Section applies to coastal areas, estuaries, beaches, dunes, barriers, coral reefs, fish and wildlife, and regulates the dumping of all types of materials into marine waters. It prevents and/or restricts the dumping of materials adversely affecting human life, the marine ecosystems, or the economy.

Along with the goals to preserve the marine resources, the following is prohibited:

- Unauthorized use of mangrove forests in coastal zone.
- Exploitation of marine sand without a permit.
- Dumping of any kind of shipping waste, petroleum products, industrial waste and/or municipal waste.
- Unauthorized construction of any building or structures in coastal zones.

The Law also established some protected areas in order to protect marine resources.

Section V. Flora and Fauna. This Section seeks to preserve endangered and threatened species. It establishes the National System of Protected Areas and procedures to exploit the forests. It outlines the considerations to maintain, preserve and manage the forests and wildlife.

Section VI. Atmosphere. The major provisions of this Section are intended to set goals for cleaner air and the establishment of permits for industrial emissions levels. It also outlines the responsibilities of all national or foreign investors to limit the levels of contaminant emissions. In the case of new industrial projects, approval of construction in a proposed loca-

tion depends on standards related to human settlement, climatic conditions and topographic relief.

Section VII. Agricultural Resources. Law 33 defines agricultural resources as follows: all classes of crops, different types of cattle and all installations dedicated to protect, develop and the reproduction of cattle. For export and import purposes, a sanitary certification is required.

Section VIII. Human Settlements. Article 105 establishes regulations related to the location of industries near human settlements, including the requirement of a buffer zone around industrial developments. The collection, transportation, disposal and recycling of urban waste must be done with adequate technology.

Section IX. Landscape and Tourism Resources. The Law prohibits the construction of any type of development in coastal zones without authorization. The zones dedicated to foreign tourism have a special administrative status issued by the Council of Ministers. Tourist developments located in areas within the National System of Protected Areas have special regulations.

Chapter III: The System of Environmental Protection and the Use of Natural Resources

Law 33 created the “National System of Environmental Protection and the Rational Use of Natural Resources.” The functions of the National System are:

- Coordination and control of the established policies for protection of the environment and the rational use of natural resources.
- Creation of rules and regulations to protect the environment.
- Elaboration and control of environmental contingency plans.

Chapter IV: Violations of Standards and Provisions

Actions and/or omissions which violate standards and provisions for environmental protection and the use of natural resources established by the Law will

be subject to penalties through different procedures established by the Council of Ministers.

COMMENTS CONCERNING THE CUBAN ENVIRONMENTAL LAW

The main problem of Law 33 is the lack of consideration for the environment. Article 2 establishes that the “environment is a system integrated by biotic, abiotic and socioeconomic elements, which is in interrelationship with the humans,” But the Law does not include any parameters to measure or quantify any of these indicated factors.

Environment means many different things to different people. To some, it means a pleasant suburban neighborhood, quiet campus, woodlands, scenes with fresh, clean air and pristine waters, threatened species, etc. Actually, the environment is a combination of all of these concepts and includes not only the areas of air, water, plants and animals, but also other natural and human-modified features which constitute the totality of our surroundings.

Thus, transportation systems, land-use characteristics, community structures, and economic stability all have one thing in common with carbon monoxide levels, dissolved solids in water, contamination by hydrocarbons products and lead in blood: they are all part of the environment. The environment must also include aesthetic, historical, cultural, economic and social aspects.

Law 33 seems more like political propaganda, or a glossary of terminology, than a Law. It reads like a document not intended to be taken seriously by anyone reading it. Who the Cuban authorities pretend to mislead with this simplistic document is not clear. It cannot be aimed at foreign companies because it pales in comparison to existing international laws. It does not make much sense for internal use either because the Cuban Government is responsible for all the industries and is therefore the principal, if not the only, polluter and consumer of natural resources.

Let us give a specific example of the crudity of Law 33. Chapter II, Section I, Article 29 states: “Residual substances created as a result of economic and social activities need to receive proper treatment before being dumped in the environment in order to protect

surface and groundwater.” What is the meaning of proper treatment? Where is it defined?

Article 29 is so vague and imprecise it makes no sense and could never be implemented legally. For example: What are residual substances? Industrial wastes? Agricultural wastes? or Household Wastes? Assuming it were the latter, how should household wastes be treated? Incineration? Landfill? Recycling? What constitutes surface and groundwater that needs to be protected? There is no provision in the law defining fresh water and brackish water or establishing the salinity of the water, as determined by the Total Dissolved Solids concentration. What are the levels of contamination established by the Law? Or more important, what are contaminants? Are naturally-occurring minerals such as zinc, copper, chromium and lead classified as contaminants? It is known that lead, arsenic and cadmium, to name a few, are hazardous to human health in large quantities, but those values need to be quantified and some parameters need to be established.

Since Law 33 is so vague and no parameters have been specified, foreign investors could be forced, at the convenience of Cuban authorities, to do extensive clean-up costing million of dollars.

Chapter IV covers the fines to be imposed for violating the Law in only two pages. Article 127 indicates that violating the Law could result in fines and restitution of damages caused to the environment. Article 128 assigns to the Council of Ministers the responsibility for imposing the fines and restituting damages. Article 129 defines two types of fines:

- Personal fines, which will be collected from the individual's pay check at a rate of one-fifth (1/5) of the salary.
- Institutional fines, which will be collected at once.

Once again, this portion of the Law could be very damaging to foreign companies investing in Cuba. If a Cuban working for a foreign enterprise (let us say a hotel in Varadero) is found guilty of contaminating the environment, he could be fined at the rate of one-fifth of his monthly salary, which is approxi-

mately 20 pesos a month. At 20 pesos a month, it will take several lifetimes to collect the expenses to remediate a contaminated site. However, “institutional fines” are to be paid at once. Therefore, it is very possible that the foreign enterprise employing the Cuban national could be found responsible for the contamination and ordered to pay the clean-up costs immediately.

Under Law 33, environmental regulations do not have a major effect on the economy of Cuba. In practice, environmental regulations are seldom applied and a majority of decisions are being taken without any consideration of environmental effects.

An environmental impact study is the logical first step before any construction because it represents an opportunity to consider the positive and negative effects of human actions. The Cuban government requires foreign investors in the mining industry to submit a report on the environmental consequences of the proposed mining activities. However, the Cuban environmental regulations never took into consideration this analytical process for the most important projects developed by the present government.

The common theme of all environmental considerations is that good environmental quality is beneficial for the economy in the long run. Unfortunately, the current economic problems in Cuba forced the government philosophy that “any environmental problem occurring today will be corrected tomorrow.” In other words, the Cuban government is presently giving priority to the economy and not the environment.

Another reason Law 33 is not being applied is because the Cuban population has not yet developed an “environmental awareness” and the realization of the dependence of human beings and the long-term viability of the environment for sustaining life. Similarly, the Cuban government does not have the “new ethic” regarding the conservation of natural resources that is present in most countries.

Finally, the areas most likely to affect the environment in the future are the new revisions to the Cuban foreign investment law, the size of foreign partic-

ipation, and the contracting of Cuban workers (see Cuba News April 1995).

In spite of the business world's increasing recognition that sustainable development and production can, indeed, be good for business, efforts to reduce waste, recycle waste materials, control pollution, and conserve resources have been overlooked in order to maintain low production cost. Serious environmental problems that have surfaced since the collapse of the totalitarian regimes of eastern Europe are vivid examples. The disclosure of environmental problems of this region and of the former Soviet Republics has

revealed the extreme environmental degradation brought about by the use of improper technology.

Cuba is not an exception. Recently, the President of the Cuban Council of Ministers, Lionel Soto, declared in an interview that Russia has a debt with Cuba as a result of natural resources exploitation and environmental contamination created by the Russians. According to Mr. Soto, the amount of the debt is between 20 and 25 millions dollars. This statement by a high-level Cuban official confirms that the Cuban Government plans to use the environment and Law 33 as political tools for its own convenience and for its own benefit.