

Alert | Energy & Natural Resources



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Mexico's Bill with Draft Decree to Amend and Add Various Provisions to the Hydrocarbons Law

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On March 26, 2021, by means of official letter number SG/UE/230/747/21, by instructions of the President in the exercise of power conferred by article 71, section I of the Political Constitution of the United Mexican States; based on the provisions of article 27, section XV of the Organic Federal Public Administration Law, the Bill with Draft Decree amending and adding various provisions to the Hydrocarbons Law (the "**Bill**") was sent to the Chamber of Deputies.

According to President, the Bill aims to promote and save energy, achieve greater production and use efficiency, and secure the supply of hydrocarbons and petroleum products, in order to safeguard national interests and security. The Bill addresses the following:

Minimum Storage of Petroleum Products

The Bill proposes an additional requirement to obtain the permit provided in Chapter I of Title Three of the Hydrocarbons Law¹ (the "**Law**"), stating that applicants will need to prove before the Energy Regulatory Commission ("**CRE**") or before the Ministry of Energy ("**SENER**"), as the case may be, that it has the storage capacity determined by SENER according to the applicable legal provisions. The

¹ This chapter regulates the permits granted by SENER for oil treatment and refining, natural gas processing, export and import of hydrocarbons and petroleum products, and the permits granted by the CRE for the transportation, storage, distribution, compression, liquefaction, decompression, regasification, commercialization and sale to the public of hydrocarbons, petroleum products or petrochemicals, and the management of integrated systems.

provisions referred to in the requirement are those established in the Public Policy for Minimum Storage of Petroleum Products published in the *Federal Official Gazette* on Dec. 2, 2017, amended by the agreement published on Nov. 29, 2018 (the "**Storage Policy**").

Denial by Default in Permit Processing Procedure

The "*afirmativa ficta*" (acceptance by default) provided in Article 52 of the Law is eliminated; instead, in case the authority does not respond to an assignment permit request, the "*negativa ficta*" (denial by default) will apply.

Revocation of Permits in the Event of Repeated Non-Compliance with Various Provisions Applicable to Hydrocarbons and Petroleum Products

Proposal to add a cause for revocation of permits through the Bill when repetition of the conduct indicated in paragraphs a) and h) of section II of article 86 of the Law² occur.

Fuel Trafficking

- The current basis for revocation of a permit set forth in Article 56, Section XI, related to hydrocarbons, petroleum products or petrochemicals acquired illegally, is amended to add the trafficking of such products.

Suspension of Permits Due to Imminent Danger to National Security, Energy Security or the National Economy

In addition to the SENER and CRE's powers to temporarily occupy or intervene in the permit holders' facilities to safeguard the national interest, the Bill adds the power to suspend the activities of permit holders. For the continuation of activities covered by the suspended permit, the authority may contract State production companies for the management and control of the suspended facilities.

The SENER and CRE are granted the power to suspend permits when an imminent danger to national security, energy security, or the national economy is foreseen, including the authority to take over the management and operation of the licensee, for the continuation of activities covered by the permit.

The following chart compares the articles subject to amendments and additions proposed in the Bill:

	Hydrocarbons Law in Force	Bill
Minimum storage of petroleum products.	Article 51.- The permits referred to in this Chapter shall be granted to Petróleos Mexicanos, to other productive enterprises of the State and to Private Parties, based on the Regulations of this Law. The granting of the permits shall be	Article 51.- The permits referred to in this Chapter shall be granted to Petróleos Mexicanos, to other productive enterprises of the State and to Private Parties, based on the Regulations of this Law. The granting of the permits shall be subject to the interested party

² Section II of Article 86 establishes the conduct that constitutes violations of the permits granted by the CRE. Such conduct is grouped in 10 subsections, listed from (a) to (j). According to the amendment proposed in the Decree, repetition of the first eight kinds of conduct, typified as violations, will cause the revocation of the permit. Repeated conduct that does not cause revocation of the permit is: the performance of regulated activities without a permit (item i) and any other violation to the third title of the Law and its regulatory provisions, as well as to the regulations, guidelines and administrative provisions under the jurisdiction of the CRE, when such violations are not included in the cases described in the first 8 items of section II of article 86.

	<p>subject to the interested party demonstrating that it has, if applicable:</p> <p>I. A design of facilities or equipment in accordance with applicable regulations and best practices, and</p> <p>II. Appropriate conditions to guarantee the adequate continuity of the activity purpose of the permit.</p>	<p>demonstrating that it has, if applicable:</p> <p>I. A design of facilities or equipment in accordance with applicable regulations and best practices,</p> <p>II. Appropriate conditions to guarantee the adequate continuity of the activity purpose of the permit, and</p> <p><u>III. The storage capacity determined by the Ministry in accordance with the applicable legal provisions.</u></p>
<p>Denial by default in the permit processing procedure.</p>	<p>Article 53.- ...</p> <p>The Ministry of Energy or the Energy Regulatory Commission, depending on the permit in question, must resolve the assignment request within 90 calendar days from the day following receipt of the request. If no resolution is issued by the Ministry of Energy or the Energy Regulatory Commission, depending on the case, within the established term, such resolution will be deemed to be favorable.</p> <p>...</p>	<p>Article 53.- ...</p> <p>The Ministry of Energy or the Energy Regulatory Commission, depending on the permit in question, must resolve the assignment request within 90 calendar days from the day following receipt of the request. If no resolution is issued by the Ministry of Energy or the Energy Regulatory Commission, depending on the case, within the established term, such resolution will be deemed to be <i>non-favorable</i>.</p> <p>...</p>
<p>Revocation of permits in the event of repeated non-compliance with various provisions applicable to hydrocarbons and petroleum products.</p>	<p>Article 56.- ...</p> <p>I. to X. ...</p> <p>XI. To carry out activities of Transportation, Storage, Distribution or Retail of Hydrocarbons, Petroleum or Petrochemicals, which are proven to have been acquired illicitly and have been determined by a final resolution of a competent authority; and</p> <p>XII. Any others provided for in the permit.</p>	<p>Article 56.- ...</p> <p>I. to X. ...</p> <p>XI. To carry out activities of Transportation, Storage, Distribution or Retail of Hydrocarbons, Petroleum or Petrochemicals, which are proven to have been acquired illicitly and have been determined by a final resolution of a competent authority; and</p> <p><u>XII. Repeating the conduct indicated in paragraphs a) and h) of section II of Article 86 of the Law; and</u></p>

		XIII. Any others provided for in the permit.
Fuel trafficking.	<p>Article 57.- Regarding the permits referred to in this Law, the issuing authority may carry out temporary occupation or intervention, in order to guarantee the national interest, with the understanding that the rights of third parties shall be safeguarded.</p> <p>For continuity in the operation of activities covered by the permit, the authority may contract state productive companies or third parties with the technical capacity to manage and control the occupied or intervened facilities.</p>	<p>Article 57.- Regarding the permits referred to in this Law, the issuing authority may carry out <i>temporary occupation, intervention or suspension</i>, in order to guarantee the national interest, with the understanding that the rights of third parties shall be safeguarded.</p> <p>For continuity in the operation of activities covered by the permit, the authority may contract State productive companies <i>or third parties, with technical capacity</i> for the management and control of the occupied, intervened or <i>suspended</i> facilities.</p>
Suspension of permits due to imminent danger to national security, energy security or national economy.		<p>Article 59 Bis.- <i>The Ministry of Energy and the Energy Regulatory Commission may, within the scope of their respective authority, suspend the permits issued under the terms set forth in this Law, when an imminent danger to national security, energy security or to the national economy is foreseen.</i></p> <p><i>The issuing authority will integrate and process the file for temporary or definitive suspension of the permit, to state the reasons for which the suspension is deemed appropriate, as well as the effect that could occur in the event that the acts covered by the permit continue.</i></p> <p><i>The authority that has issued the permit will be in charge of the administration and operation of the Permittee, for the continuity of the operation of activities covered by the permit, in order to guarantee the interests of end users and consumers, keeping the rights</i></p>

		<p><i>of third parties safe. For such purpose, it may use the Permittee's existing workers, hire a new operator or a combination of both.</i></p> <p><i>The suspension period will be determined by the authority.</i></p> <p><i>The Permittee may request that the authority that issued the permit terminate the suspension, when it demonstrates that the causes of the suspension have been corrected or eradicated or have disappeared, as long as the cause does not originate from an illegal act in the commercialization and/or transportation or alteration of the fuel components.</i></p>
<p>Revocation of permits in the event of repeated non-compliance with various provisions applicable to hydrocarbons and petroleum products.</p>	<p>Article 86.- ...</p> <p>I. ...</p> <p>a) to e)</p> <p>II. ...</p> <p>a) to j) ...</p> <p>III. and IV. ...</p>	<p>Article 86.- ...</p> <p>I. ...</p> <p>a) to e)</p> <p>II. ...</p> <p>a) to j) ...</p> <p><i>In the case of the infractions foreseen in paragraphs a) and h) of this section, in case of repeated infractions, in addition to the penalties set forth in this Law, the respective permit will be revoked.</i></p> <p>III. and IV. ...</p>

The Third Transitory Article of the Bill states that permit holders that could be affected may request, within the framework of the corresponding regulations, payment of corresponding damages.

This provision is logical only if interpreted as referring to permit holders that could be affected by the legal consequences of the Decree approved in terms of the Bill. Since it cannot refer to unlawful acts, the payment referred to in this transitory article cannot be understood as a damage indemnity. Nor can this transitory article refer acts as provided in the Expropriation Law, since such acts would have to be preceded by a declaration of public utility issued by the Federal Executive.

The Fourth Transitory Article establishes that the competent authority will revoke the permits that, by the date the Decree becomes effective³, do not comply with the storage requirements⁴ determined by the Ministry of Energy in accordance with the applicable legal provisions.

Failure to comply with the Storage Policy is not classified in the Law as a reason to revoke the permit, although the permit itself could include such failure as a cause for revocation.

If the permits that, as of the date of entry of the Decree proposed in the Bill, are not revocable for non-compliance with the Storage Policy, they must be subject to an individual analysis to determine whether the revocation is appropriate.

Likewise, according to the provisions of the Sixth Transitory Article, as of the effective date of the Decree, permits that do not comply with the corresponding requirements and violate the provisions of the Hydrocarbons Law will be revoked.

In this regard, it should be considered that only non-compliance or infractions typified in the Law as such constitute grounds for revocation of a permit.

If the Bill is approved, affected individuals could potentially exercise suitable defense means to protect their rights according to their particular situation, to forestall the effects of the Hydrocarbons Law amendment and seek its annulment, either through national or international proceedings.

** This GT Alert is limited to non-U.S. matters and law.*

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³ The day after its publication in the Federal Official Gazette.

⁴ This requirement refers to the SENER's Storage Policy.

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