

# LATIN AMERICAN REGION

ENVIRONMENTAL REPORT © 2012



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## NOTES FROM THE LATIN AMERICAN PRACTICE

Greetings from the Latin American Practice! We are pleased to provide our Latin American Region Environmental Report covering highlights from the third quarter (July-September) of the year. Please know that the Report is designed to capture major regulatory developments and emerging regional trends and is not intended to provide comprehensive coverage of all environmental initiatives.

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## ARGENTINA HIGHLIGHTS

### TWO BILLS TO BAN HYDROFRACKING INTRODUCED IN CHAMBER OF DEPUTIES

In September, two bills (*Proyectos de Ley* 6455-D-2012, 6640-D-2012; “Bills”) were introduced in the Chamber of Deputies that would impose a nationwide ban on the oil and natural gas well stimulation process known as hydraulic fracturing, or “hydrofracking.” Hydrofracking involves the pumping of fluids (commonly made up of water and chemical additives) at high pressure into a geologic formation in order to fracture the rock and release the oil or gas trapped inside. Both Bills would ban hydrofracking throughout Argentina. (Bill 6455, Art. 1; Bill 6640, Art. 1.) Both Bills would also require companies with current hydrofracking operations to immediately cease and investigate the potential environmental impacts of those activities. (Bill 6455, Art. 2; Bill 6640, Art. 2.) Under Bill 6640, holders of canceled permits would be eligible for government compensation for certain expenses incurred by them in connection with their current contracts (Bill 6640, Arts. 5-6); Bill 6455 does not provide for any such compensation. Both Bills have been referred to the Energy and Fuels, Natural Resources and Environmental Conservation, and Budget and Finance Committees.

#### **Reference Sources (in Spanish):**

- *Proyecto de Ley* 6455-D-2012 (*Cámara de Diputados*), September 13, 2012, available at [www.bdlaw.com/www.bdlaw.com/assets/attachments/ARG%20P%20de%20L%206455-D-2012.pdf](http://www.bdlaw.com/www.bdlaw.com/assets/attachments/ARG%20P%20de%20L%206455-D-2012.pdf)
- *Proyecto de Ley* 6640-D-2012 (*Cámara de Diputados*), September 19, 2012, available at [www.bdlaw.com/assets/attachments/ARG%20P%20de%20L%206640-D-2012.pdf](http://www.bdlaw.com/assets/attachments/ARG%20P%20de%20L%206640-D-2012.pdf)

### PRESIDENT ESTABLISHES ENVIRONMENTAL INSURANCE GUIDELINES AND ENVIRONMENTAL RISK ASSESSMENT COMMISSION

On September 6, Argentina’s president issued a decree (*Decreto* 1638/2012; “Decree”) authorizing the issuance of two types of environmental insurance in the country: an environmental surety policy and an environmental liability insurance policy. (Decree, Art.

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1.) The measure requires the Superintendency of Insurance (*Superintendencia de Seguros de la Nación*) to approve the issuance of such policies pursuant to guidelines set out in the Decree. (Art. 2.) It also contains rules regarding the parties that may enter into these policies (Arts. 3-4), the minimum amount of required coverage (Art. 5), and the reporting of environmental contamination (Art. 7), among others. In addition, the Decree creates a Technical Commission on Environmental Risk Assessment (*Comisión Técnica de Evaluación de Riesgos Ambientales*) to provide technical assistance on environmental-risk and insurance matters. (Art. 9 & Annex I.)

The Decree went into effect upon publication in the Official Bulletin on September 11, 2012. Its enactment marks a step toward implementation of Article 22 of the General Environmental Law (*Ley General del Ambiente*, Law 25,675), which requires that companies undertaking environmentally risky activities take out insurance sufficient to remediate any resulting environmental damage.

**Reference Sources (in Spanish):**

- *Decreto* 1638/2012 (*Poder Ejecutivo Nacional*), September 6, 2012 (published September 11, 2012), available at [www.bdlaw.com/assets/attachments/ARG%20Decreto%201638-2012.pdf](http://www.bdlaw.com/assets/attachments/ARG%20Decreto%201638-2012.pdf)
- *Ley* 25.675, *Ley General del Ambiente*, November 6, 2002 (enacted November 27, 2002), available at [www.bdlaw.com/assets/attachments/ARG%20LEY%2025-765%20GENERAL%20DE%20AMBIENTE.pdf](http://www.bdlaw.com/assets/attachments/ARG%20LEY%2025-765%20GENERAL%20DE%20AMBIENTE.pdf)

## WATERSHED ELECTRONIC WASTE BILL REINTRODUCED

A bill (*Proyecto de Ley* 4845-D-2012; “Bill”) to enact an Electrical and Electronic Waste Management Law (*Ley de Gestión de Residuos de Aparatos Eléctricos y Electrónicos*) was reintroduced in the Chamber of Deputies. The bill was originally introduced in May 2010 as *Proyecto de Ley* 2802-D-2010 but expired without having been passed under Argentina parliamentary rules.

The bill, like several companion proposals, would apply to a broad set of waste electrical and electronic equipment (“WEEE”). (Bill, Art. 2; Annexes I A, I B.) Under the Bill, producers and importers of WEEE would have to report to a national registry on such issues as product lifecycle studies, pollution characteristics of product components, and the feasibility of reuse or recycling. (Art. 5.) Producers would have significant responsibilities for the collection, treatment, and recycling of WEEE, and would be obligated to provide most of the financing for such efforts. (Arts. 6-10.) Provincial governments and municipalities, acting together with producers, would be required to establish collection systems for WEEE discarded by private households; WEEE discarded from other sources would be the sole responsibility of producers or their agents. (Art. 6.) The Bill would also require the national government to implement consumer-education efforts (Art. 11), create a registry of producers (Art. 13), and require the establishment of a Technology Assessment Committee (*Comité de Evaluación Tecnológica*) to evaluate the impact of changing technology on implementation of the law.

The Bill has been referred to the Natural Resources and Environmental Conservation, Industry, and Budget and Finance Committees. Significant pressure from environmental groups is being placed on the Argentine Congress to pass a comprehensive electronics waste law of some kind by the end of the year.

**Reference Sources (in Spanish):**

- *Proyecto de Ley* 4845-D-2012 (*Cámara de Diputados*), July 12, 2012, available at [www.bdlaw.com/assets/attachments/ARG%20P%20DE%20L%204845-D-2012.pdf](http://www.bdlaw.com/assets/attachments/ARG%20P%20DE%20L%204845-D-2012.pdf)



## BRAZIL HIGHLIGHTS

### NATIONAL DEVELOPMENTS

#### BRAZIL INITIATES REVERSE LOGISTICS RULEMAKING FOR MERCURY LAMPS AND PRODUCT PACKAGING

On July 3 and 4, 2012, Brazil's Ministry of the Environment (*Ministerio do Meio Ambiente*) published a pair of public notices requesting proposals for producer responsibility programs for two product categories: mercury lamps and "packaging in general." Each notice (known in Portuguese as an *edital*) invites manufacturers, importers, distributors and retailers of covered products to propose a plan to collect their end-of-life products from consumers and reuse, recycle or otherwise manage the collected products to an environmentally adequate final disposition. Brazil's 2010 National Solid Waste Policy Law (No. 12305; the "Law") imposes this "reverse logistics" (*logística reversa*) obligation on producers of various products, and a subsequent regulation (Decree 7404/2010) provides for the development of "sectoral agreements" (*acordos setoriais*) to define reverse logistics responsibilities for each product category. The proposals submitted in response to the two July notices will be eligible to be formalized as so-called "sectoral agreements" under the Law, and are expected to proscribe specific reverse logistics requirements for these products once final.

The notice regarding mercury-containing lamps was expected, as the Law expressly provides that such lamps are subject to reverse logistics requirements. In contrast, "packaging in general" is a newly designated category, and the reverse logistics obligation for this category has a potentially broad impact, as it appears likely to encompass the packaging used for the vast majority of consumer products. Consequently, a wide range of manufacturers, importers and other companies may be affected. The proposals requested in the notices are due after a period of 120 days for mercury lamps and 180 days for packaging.

#### **Reference Sources (in Portuguese):**

- Law No. 12305 of 2010, available at [www.bdlaw.com/assets/attachments/Law%20No%2012305%20of%202010.pdf](http://www.bdlaw.com/assets/attachments/Law%20No%2012305%20of%202010.pdf)
- Decree No. 7404 of 2010, available at [www.bdlaw.com/assets/attachments/Brazil%20Decree%207404%20of%202010.pdf](http://www.bdlaw.com/assets/attachments/Brazil%20Decree%207404%20of%202010.pdf)
- *MMA Edital No. 1* of 2012, available at [www.bdlaw.com/assets/attachments/MMA%20Edital%201-2012%20mercury%20lamps.pdf](http://www.bdlaw.com/assets/attachments/MMA%20Edital%201-2012%20mercury%20lamps.pdf)
- *MMA Edital No. 2* of 2012, available at [www.bdlaw.com/assets/attachments/MMA%20Edital%202-2012%20packaging%20in%20general.pdf](http://www.bdlaw.com/assets/attachments/MMA%20Edital%202-2012%20packaging%20in%20general.pdf)

#### NEW MINING AGENCY WITH BROAD REGULATORY AUTHORITY PROPOSED IN SENATE

Senate Bill No. 306 (the "Bill"), introduced August 16, 2012, would establish a new National Mining Agency (*Agência Nacional de Mineração*; "ANM") with a range of regulatory powers that far exceed those of the existing mining oversight agency, the National Department of Mineral Production (*Departamento Nacional de Produção Mineral*). The Bill sets forth a list of 38 specific authorities for the proposed ANM, including: the promulgation and enforcement of regulations; setting resource conservation and other environmental standards; requiring compliance with industry best practices; and granting and withdrawal of mineral rights.

#### **Reference Sources (in Portuguese):**

- Senate Bill No. 306/2012, available at [www.bdlaw.com/assets/attachments/Brazil%20Senate%20Bill%20306-2012.pdf](http://www.bdlaw.com/assets/attachments/Brazil%20Senate%20Bill%20306-2012.pdf)



## BILL WOULD EXPAND AMNESTY FOR PAST DEFORESTATION UNDER NEW FOREST LAW

A new proposal has extended the controversy over amnesty for illegal deforestation provided in Brazil's Law No. 12651/2012 (the "Law") on the Protection of Native Vegetation (*sobre a proteção da vegetação nativa*). When President Dilma Rousseff signed the Law on May 25, she vetoed certain provisions under her line-item veto power and issued Provisional Measure No. 571/2012 to replace certain of the vetoed sections. To widespread public criticism, the Law eliminates legal consequences for much past deforestation, as had several previous proposals in bills approved by significant majorities in both the Senate and the Chamber of Deputies. The version ultimately enacted provides for a process known as "regularization" (*regularização*), allowing for amnesty from both fines and replanting requirements for unpermitted clearing of properties of up to 400 hectares (988 acres) that occurred prior to July 22, 2008. The Law also provides amnesty for past cutting of "Permanently Preserved Areas" (*Áreas de Preservação Permanente*), which include riparian buffer zones, mangroves and slopes greater than 45 degrees.

President Rousseff's Provisional Measure No. 571 proposed to exempt small landholders (up to 400 hectares) from requirements to replant illegally deforested areas along small watercourses. In Congress' consideration of Rousseff's proposal, both houses agreed and expanded the exemption to properties up to 1500 hectares (3706 acres). Following its approval by the Senate on September 18, the revised Provisional Measure No. 571 returned to President Rousseff for further action.

### **Reference Sources (in Portuguese):**

- Law No. 12651 of 2012, available at [www.bdlaw.com/assets/attachments/Brazil%20Law%2012651%20of%202012.pdf](http://www.bdlaw.com/assets/attachments/Brazil%20Law%2012651%20of%202012.pdf)
- Provisional Measure No. 571 of 2012 (Senate version), available at [www.bdlaw.com/assets/attachments/Provisional%20Measure%20571-2012%20Senate%20version.pdf](http://www.bdlaw.com/assets/attachments/Provisional%20Measure%20571-2012%20Senate%20version.pdf)

## IBAMA EXPANDS BATTERY STEWARDSHIP REQUIREMENTS

Brazil's legislation on producer responsibility for batteries continues to evolve, with a new labeling requirement for common batteries and expanded reporting requirements for battery-containing products imposed in Normative Instruction No. 8/2012 ("NI 8"). The original measure, CONAMA Resolution No. 257/1999, required manufacturers and importers of certain batteries to establish take-back programs and set a schedule of content limits for cadmium, lead and mercury in alkaline and zinc-manganese batteries. This was replaced by CONAMA Resolution No. 401/2008, which expanded the scope to additional battery chemistries and added registration, testing, labeling and other requirements. Most recently, on September 4, 2012, the implementing agency, IBAMA (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais*), published NI 8, which requires labeling of all alkaline and zinc-manganese batteries with a "no dustbin" symbol, warning against disposal with municipal waste. NI 8 also expands the existing annual reporting requirement to encompass all import and manufacture of covered batteries and battery-containing products, itemized by product-type.

### **Reference Sources (in Portuguese):**

- CONAMA Resolution No. 401 of 2008, available at [www.bdlaw.com/assets/attachments/CONAMA%20Resolution%20401%20of%202008.pdf](http://www.bdlaw.com/assets/attachments/CONAMA%20Resolution%20401%20of%202008.pdf)
- IBAMA Normative Instruction No. 8 of 2012, available at [www.bdlaw.com/assets/attachments/IBAMA%20Normative%20Instruction%208%20of%202012.docx](http://www.bdlaw.com/assets/attachments/IBAMA%20Normative%20Instruction%208%20of%202012.docx)



## BRAZILIAN STATE DEVELOPMENTS

### PARANÁ INTRODUCES NEW PRODUCER RESPONSIBILITY PROGRAM COVERING NUMEROUS PRODUCTS

The State of Paraná has followed neighboring São Paulo's lead to develop a broad-based statewide producer responsibility program, although Paraná's program appears to be even more ambitious. On August 9, 2012, the State Environmental Secretariat (*Secretaria Estadual do Meio Ambiente e Recursos Hídricos*; "SEMA") issued a notice (*Editais de Chamamento* No. 1/2012) soliciting proposals for "reverse logistics" systems to manage a long list of products at their end-of-life. As under São Paulo's 2011 regulation (SMA Resolution No. 38) requiring the submission of management plan proposals, Paraná's list of covered items is segregated into products (e.g., batteries, electronics, and tires) and product containers (e.g., those used for food, drinks, pesticides, personal hygiene, cosmetics, and cleaning products). However, the scope of Paraná's program also includes such additional categories as cigarettes, automotive products, construction wastes, and medical products—many of which have no precedent in other Latin American producer responsibility programs.

Whereas São Paulo's program was aimed directly at companies, SEMA addressed its solicitation for proposals to industry associations that represent the various sectors. In the event that no adequate proposal is submitted for a particular class of products, SEMA has stated that it will impose reverse logistics requirements by regulation. Proposals were originally due October 8, 2012, but the deadline was later extended to November 23, 2012.

#### **Reference Sources (in Portuguese):**

- *Paraná SEMA Edital* No. 1 of 2012, available at [www.bdlaw.com/assets/attachments/Parana%20SEMA%20Edital%201-2012.pdf](http://www.bdlaw.com/assets/attachments/Parana%20SEMA%20Edital%201-2012.pdf)
- SMA Resolution No. 38 of 2011, available at [www.bdlaw.com/assets/attachments/Sao%20Paulo%20SMA%20Resolution%2038%20of%202011.pdf](http://www.bdlaw.com/assets/attachments/Sao%20Paulo%20SMA%20Resolution%2038%20of%202011.pdf)

### SMA AND IBAMA COORDINATE COLLECTION OF ENVIRONMENTAL TAX

On August 14, 2012, Brazil's Ministry of the Environment (*Ministerio do Meio Ambiente*) and São Paulo's State Environment Secretariat (*Secretaria do Meio Ambiente*; "SMA") signed a cooperation agreement unifying the environmental taxes charged by the federal and state agencies. Late in 2011, São Paulo enacted Law No. 14626, creating a state environmental registry and associated tax, mirroring the existing Federal Technical Registry of Potentially Polluting or Resource Consuming Activities ("*Cadastro Técnico Federal de Atividades Potencialmente Poluidoras ou Utilizadoras de Recursos Ambientais*"; "CTF") and its associated tax. São Paulo's action was justified under the federal law that created the CTF, Law No. 6938/1981, although the action required the further step of an agreement with the federal agency. In spite of initial concerns about Law No. 14626, the change should be invisible to companies subject to both taxes. The net effect of the agreement is that companies will continue to pay the existing CTF tax and that the agencies will apportion the revenue.

#### **Reference Sources (in Portuguese):**

- São Paulo Law No. 14626 of 2011, available at [www.bdlaw.com/assets/attachments/Sao%20Paulo%20Law%2014626%20of%202011.pdf](http://www.bdlaw.com/assets/attachments/Sao%20Paulo%20Law%2014626%20of%202011.pdf)
- São Paulo Decree No. 57547 of 2011, available at [www.bdlaw.com/assets/attachments/Sao%20Paulo%20Decree%2057547%20of%202011.pdf](http://www.bdlaw.com/assets/attachments/Sao%20Paulo%20Decree%2057547%20of%202011.pdf)
- Federal Law No. 6.938 of 1981, available at [www.bdlaw.com/assets/attachments/Brazil%20Law%206938%20of%201981.pdf](http://www.bdlaw.com/assets/attachments/Brazil%20Law%206938%20of%201981.pdf)



## SÃO PAULO REQUESTS FEDERAL RULE TO STIMULATE USE OF ETHANOL

São Paulo's State Environmental Council (*Conselho Estadual do Meio Ambiente*; "CONSEMA") has petitioned Brazil's federal government to enact policies to increase the use of ethanol in vehicle fuels. CONSEMA Motion No. 3 (the "Motion"), issued July 17, 2012, requests that the requisite quantity of ethanol in gasoline be raised from 20% to 25%; further, it requests the creation of unspecified financial incentives for use of biofuels in general. The Motion's preamble cites an approximately 50% decline in the proportion of ethanol in vehicle fuel consumed in São Paulo from 2009 to 2012 and associated increases in emissions of CO<sub>2</sub>, sulfur oxides and volatile organic compounds. The Motion also expresses concern for the increase in São Paulo's greenhouse gas emissions profile, which the state has committed to reduce by 20% as of 2020, under its State Climate Change Policy (*Política Estadual de Mudanças Climáticas*). As most recently-built passenger cars in Brazil can operate on either gasoline or ethanol, the decline in ethanol consumption is due in large part to the higher price of ethanol relative to gasoline.

### Reference Sources (in Portuguese):

- CONSEMA Motion No. 3 of 2012, available at [www.bdlaw.com/assets/attachments/CONSEMA%20Motion%203-2012.pdf](http://www.bdlaw.com/assets/attachments/CONSEMA%20Motion%203-2012.pdf)

## CHILE HIGHLIGHTS

### DRAFT STRATEGIC ENVIRONMENTAL ASSESSMENT REGULATIONS PROPOSED

Chile has proposed a draft Strategic Environmental Assessment Regulation (*Reglamento Para la Evaluación Ambiental Estratégica*, the "Draft Regulation"). The Draft Regulation requires government agencies to assess environmental factors (via "Strategic Environmental Assessments") when developing policies in areas which the President deems to have an impact on the environment or in areas which touch on matters specifically enumerated in Chile's Environmental Bases Law (*Ley 19.300, Ley Sobre Bases Generales del Medio Ambiente*, the "Law") such as urban development, coastal zoning or riverbed management. (Law, Art. 7 bis; Draft Regulation, Art. 2.)

Among other things, the Draft Regulation sets forth the process and requirements for the design, approval, public consultation, completion and amendment of Strategic Environmental Assessments. (Draft Regulation, Title II, III, IV.) It also outlines the type of information that must be included in the various reports that form part of the Strategic Environmental Assessment and delineates the manner in which different governmental agencies shall participate in the process. (Draft Regulation, Art. 16, 22, 32, 45.) Pursuant to the Draft Regulation, ultimate responsibility for the Strategic Environmental Assessment process remains with the administrative agency enacting the relevant policies. (Draft Regulation, Art. 3.) The public comment period concluded on August 31, 2012.

### Reference Sources (in Spanish):

- Draft Regulation, *Reglamento Para la Evaluación Ambiental Estratégica*, available at [www.bdlaw.com/assets/attachments/Reglamento%20Para%20La%20Evaluacion%20Ambiental%20Estrategica.pdf](http://www.bdlaw.com/assets/attachments/Reglamento%20Para%20La%20Evaluacion%20Ambiental%20Estrategica.pdf)
- Law 19.300, available at [www.bdlaw.com/assets/attachments/Law%2019.300.pdf](http://www.bdlaw.com/assets/attachments/Law%2019.300.pdf)

### CHILEAN CONGRESS APPROVES AMENDMENT TO GASOLINE PRICE STABILIZATION LAW

On September 12, 2012, the Chilean Congress approved an amendment to Chile's oil price protection law (*Ley Num. 20.493*, the "Gasoline Price Protection Law") to strengthen measures to stabilize the price of gasoline (*Ley Num. 20.633*, the "Gasoline Law Amendment"). The



Gasoline Law Amendment was introduced in the Congress by Chile's executive branch to protect gasoline users from fluctuations in the international price of oil. (Gasoline Law Amendment, Art. 1.) The amendment modifies the Gasoline Price Protection Law to limit the allowable price variability of gasoline to no more than a value of 10% above and below a specified reference value (the previous allowable variability was 12.5%). (Gasoline Law Amendment, Art. 5.) A press release by Chile's Finance Ministry (*Ministerio de Hacienda*) states that these price fluctuation limits will be accomplished through government subsidies. The Gasoline Law Amendment was published in Chile's Official Gazette on September 13, 2012.

**Reference Sources (in Spanish):**

- Gasoline Price Protection Law, *Ley 20.493*, available at [www.bdlaw.com/assets/attachments/Ley%2020.493.pdf](http://www.bdlaw.com/assets/attachments/Ley%2020.493.pdf)
- Gasoline Law Amendment, *Ley 20.633*, available at [www.bdlaw.com/assets/attachments/Ley%2020.633.pdf](http://www.bdlaw.com/assets/attachments/Ley%2020.633.pdf)

## COLOMBIA HIGHLIGHTS

### BILL TO PHASE OUT MERCURY PROPOSED IN CHAMBER OF DEPUTIES

A brief bill (the "Bill") to reduce and phase out mercury in productive processes over ten years has been introduced in Colombia's Chamber of Deputies. To achieve this goal, the Bill would first establish a Registry of Sources of Mercury to which anyone using or emitting mercury would be required to subscribe. The Bill would then delegate to various relevant Colombian environmental ministries the authority to regulate imports of mercury and products using mercury; promote clean and alternative technologies; regulate the use, transportation, storage, marketing, labeling and disposal of mercury from productive processes; ban location of plants processing gold extracted with mercury compounds in populated areas; and provide financial incentives to the mining industry for using gold in extraction activities. The brief Bill would need substantial implementing regulations and interministerial coordination and oversight. The chances for passage are as yet unclear; its introduction, however, reflects a growing regional trend to regulate chemical substances of concern.

**Reference Sources (in Spanish):**

- *Proyecto de Ley No. \_\_\_\_\_ Por Medio de la cual Se Establecen Disposiciones para la Comercialización y el Uso de Mercurio en los Procesos Productivos y Se Fijan Incentivos Para su Erradicación Gradual y Se Dictan Otras Disposiciones*, available at <http://www.andi.com.co/Archivos/file/Vicepresidencia%20Desarrollo%20Sostenible/PROYECTOMERCURIO2012.pdf>

### MINISTRY ADOPTS MANUAL FOR BIODIVERSITY IMPACTS MITIGATION

In August 2012, the Colombian Ministry of the Environment and Sustainable Development (*Ministerio de Ambiente y Desarrollo Sostenible*) made final its manual for calculating compensation for the loss of biodiversity. The manual, entitled the *Manual para la Asignación de Compensaciones por Pérdida de Biodiversidad*, is to be used in the preparation and review of environmental impact studies required for obtaining an environmental license for certain major activities in the following industrial sectors: oil and gas; mining; electric and nuclear energy; maritime and ports; international airports; highway and railroad construction; and public works, among others.

The manual is not focused on financial compensation for biodiversity, but outlines procedures for determining when and how to compensate for impacts to biodiversity with an emphasis on prevention, mitigation, correction and ultimately, off-setting or compensation of biodiversity losses. The manual was developed in coordination with the Nature Conservancy.



**Reference Sources (in Spanish):**

- *Resolución No. 1517 (August 31, 2012), por la cual se adopta el Manual para la Asignación de Compensaciones por Pérdida de Biodiversidad*, available at <http://www.andi.com.co/Archivos/file/Vicepresidencia%20Desarrollo%20Sostenible/res1517.pdf>

**COLOMBIA REVISES PRODUCER AND IMPORTER TAKE-BACK RULES FOR PESTICIDES**

Following a suite of take-back rules authorized under its hazardous waste Decree 4741/2005, the Ministry of Environment and Sustainable Development (*Ministerio de Ambiente y Desarrollo Sostenible*) has proposed revisions to its rules on pesticides take-back (the “Resolution”). The new rules would require importers as well as manufacturers and registrants of active ingredients or formulated pesticide products to take back pesticide wastes, containers, and packaging for pesticides used in agriculture, industrial, veterinarian, domestic or public health. (Art. 2.)

The new rules would also revise the take-back program to be consistent with others being developed, for example batteries and computers. Central to the new requirements is submission of a management plan by manufacturers and importers for approval by the National Authority of Environmental Licenses (ANLA) that would describe the take-back system. (Art. 5.) The proposal would maintain phased-in collection quotas, with a maximum of 75% collection for industrial use pesticides and 70% collection for consumer use pesticides by 2019. (Art. 7.) Take-back activities would be free of charge, at the cost of producers and importers. (Art. 12(f).) The Resolution would also repeal the current pesticides take-back regulation, Resolution 693/2007.

**Reference Sources (in Spanish):**

- *Resolución No. \_\_\_\_\_ Por la cual se establecen criterios y requisitos para la presentación, implementación y seguimiento de los Planes de Gestión de Devolución de Productos Posconsumo de Plaguicidas, de acuerdo con lo establecido en los artículos 20, 21, 22 y 23 del Capítulo IV del Decreto 4741 del 30 de diciembre de 2005*, available at <http://www.andi.com.co/Archivos/file/Vicepresidencia%20Desarrollo%20Sostenible/proyectomodres693.pdf>

**GROUNDWORK FOR DEVELOPING COLOMBIAN SITE REMEDIATION PROGRAM OUTLINED**

The Colombia Ministry of the Environment and Sustainable Development (*Ministerio de Ambiente y Desarrollo Sostenible*) has published a national plan for addressing site contamination. The country lacks a framework remediation law, unlike other countries in the region, and efforts to address site contamination have been generally piecemeal and somewhat sporadic. Although not legally binding, the plan outlines a comprehensive program for cataloguing degraded areas in Colombia and designating them for restoration. The plan points to several possible avenues for funding restoration activities, but concludes that economic and regulatory requirements will likely be necessary for permanent operation of the program in the longer term.

**Reference Sources (in Spanish):**

- *Plan Nacional de Restauración*, available at <http://www.andi.com.co/Archivos/file/Vicepresidencia%20Desarrollo%20Sostenible/PLANNACIONALRESTAURACION.pdf>

**COSTA RICA HIGHLIGHTS**

**PRESIDENT ADVANCES MARINE MANAGEMENT MEASURES**

President Laura Chinchilla Miranda issued an executive decree and introduced two bills to





advance her administration's "blue agenda" of strengthening Costa Rica's marine resource management.

The executive decree (*Decreto Ejecutivo No. 37212-MINAET-MAG-SP-MOPT*; "Decree") creates a cabinet-level National Marine Commission (*Comisión Nacional Marina*) to coordinate marine management and conservation policy. (Decree, Art. 3.) The Commission includes the president and representatives of MINAET and other relevant ministries. (Art. 2.) A Technical Secretariat (*Secretaría Técnica*) will carry out the decisions of the Commission and provide technical support. (Art. 5.)

The first bill (Proyecto de Ley No. 18.512; "Navigation Bill") would create the nation's first comprehensive Aquatic Navigation Law (*Ley de Navegación Acuática*). Title V (Articles 165-74) of the Navigation Bill addresses marine pollution-prevention measures. The bill would prohibit vessels from dumping garbage, hazardous waste, petroleum products and other materials into Costa Rican waters, and would require permits for certain authorized dumping activities. (Navigation Bill, Arts. 165-66.) Ports would be required to be capable of receiving, processing, and disposing of wastes (including petroleum wastes, chemicals, and other potential pollutants) and preventing and mitigating water pollution in their areas of operation (Art. 167), and would also have to develop contingency plans to respond to potential pollution incidents (Art. 173). The bill would also authorize a government agency, the Navigation and Safety Directorate (*Dirección de Navegación y Seguridad*), to inspect and detain noncompliant vessels (Art. 168) and would give the country's Environmental Administrative Tribunal (*Tribunal Ambiental Administrativo*) jurisdiction over administrative violations of the law (Art. 171). The bill has been introduced in the Legislative Assembly and is under consideration.

The second bill (*Proyecto de Ley No. 18.511*; "Vice Ministry Bill") would create a Vice Ministry of Waters and Seas (*Viceministerio de Aguas y Mares*) within the Ministry of Environment, Energy and Telecommunications (*Ministerio de Ambiente, Energía y Telecomunicaciones*; "MINAET"). The new vice ministry would be responsible for promoting the sustainable use and protection of the nation's marine, costal, and other water resources. (Vice Ministry Bill, Art. 2.) The bill is under consideration in the Legislative Assembly.

#### **Reference Sources (in Spanish):**

- *Proyecto de Ley No. 18.512, Ley de Navegación Acuática (Asamblea Legislativa)*, introduced July 27, 2012, available at [www.bdlaw.com/assets/attachments/CR%20P%20DE%20L%2018.512%20NAVEGACION%20ACUATICA.pdf](http://www.bdlaw.com/assets/attachments/CR%20P%20DE%20L%2018.512%20NAVEGACION%20ACUATICA.pdf)
- *Proyecto de Ley No. 18.511, Creación de la Rectoría de aguas y mares y del Viceministerio de aguas y mares dentro del Ministerio del Ambiente y Energía (Asamblea Legislativa)*, introduced July 27, 2012, available at [www.bdlaw.com/assets/attachments/CR%20P%20DE%20L%2018-511%20WATERS%20AND%20OCEANS.pdf](http://www.bdlaw.com/assets/attachments/CR%20P%20DE%20L%2018-511%20WATERS%20AND%20OCEANS.pdf)
- *Decreto Ejecutivo No. 37212-MINAET-MAG-SP-MOPT*, July 17, 2012 (published August 3, 2012), available at [www.bdlaw.com/assets/attachments/CR%20DECRETO%20EJ%2037212%20MARINE%20COMMISSION.pdf](http://www.bdlaw.com/assets/attachments/CR%20DECRETO%20EJ%2037212%20MARINE%20COMMISSION.pdf)

## **MEXICO HIGHLIGHTS**

### **MEXICAN ENERGY AGENCY PROPOSES CO<sub>2</sub> EMISSIONS REDUCTIONS IN AUTOMOTIVE ENGINES**

Citing to its Climate Change Law, General Environmental Law, and Law on Energy Development and Sustainability, Mexico's Energy Secretariat proposed CO<sub>2</sub> emissions standards applicable to new light automotive vehicles less than 3857 kilograms. The standard applies to all corporations that market such vehicles in Mexico. (Art. 2.) The standard proposes to phase in emissions reductions over time, with an average corporate observed rate of 14.34 g CO<sub>2</sub> e/km



for passenger cars and 58.62 g CO<sub>2</sub> e/km for light trucks by the year 2016. Compliance with the norm would require certification, beginning with vehicles marketed beginning 2013.

**Reference Sources (in Spanish):**

- *Proyecto de Norma Oficial Mexicana PROY-NOM-163-SEMARNAT-ENER-SCFI-2012, Emisiones ed bioxido de carbon (CO2) provenientes del escape y su equivalencia en terminos de rendimiento de combustible, aplicable a vehiculos automotores nuevos de peso bruto vehicular de hasta 3857 kilogramos*, available at [www.bdlaw.com/assets/attachments/Proy-NOM-163-SEMARNAT-ENER-SCFI-2012.pdf](http://www.bdlaw.com/assets/attachments/Proy-NOM-163-SEMARNAT-ENER-SCFI-2012.pdf)



## NEW STANDARD FOR MONITORING AIR EMISSIONS GOES FINAL

After more than four years in the making, Mexico's environmental agency, the *Secretaría de Medio Ambiente y Recursos Naturales* (SEMARNAT) has issued standards for designing air quality monitoring systems by local governments, municipalities and industries (*Norma Oficial Mexicana NOM-156-SEMARNAT-2012, Establecimiento y operación de sistemas de monitoreo de la calidad del aire*). The NOM does not itself impose requirements for designing or operating those systems, nor does it establish air quality standards, which are set forth under Mexico's general environmental law, regulation and standards regulating the atmosphere (see *Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Prevención y Control de la Contaminación de la Atmósfera*, its implementing *Reglamento* and NOMS). Issuance of the standards represents an important step in the evolution of Mexico's air quality program and will greatly enhance the country's current efforts to collect and monitor its air quality. Those data will likely serve, over time, as the basis for strengthening existing standards and increase enforcement efforts. The standard, which draws from a host of international technical documents, will go into effect in July 2012.

**Reference Sources (in Spanish):**

- *Norma Oficial Mexicana NOM-156-SEMARNAT-2012, Establecimiento y operación de sistemas de monitoreo de la calidad del aire*, available at [www.bdlaw.com/assets/attachments/MEXICO%20NOM-156-SEMARNAT-2012.pdf](http://www.bdlaw.com/assets/attachments/MEXICO%20NOM-156-SEMARNAT-2012.pdf)

## MEXICO UPDATES PHYTOSANITARY RULES FOR WOOD PACKAGING

Mexico has revised its phytosanitary rules regulating wood packaging used for packaging goods in international trade. The new rules revise existing standards set forth in Mexican Official Norm NOM-144-SEMARNAT-2004 and are intended to correspond to the 2009 revisions to the International Norm on Phytosanitary Measures (No. 15), issued pursuant to the International Convention on Phytosanitary Protection. The rules generally are intended to prevent introduction of foreign pests from the import of products in untreated wood packaging.

**Reference Sources (in Spanish):**

- *Norma Oficial Mexicana NOM-144 SEMARNAT-2012 Que establece las medidas fitosanitarias reconocidas internacionalmente para el embalaje de madera que se utiliza en el comercio internacional de bienes mercancías*, available at [www.bdlaw.com/assets/attachments/nom%20144%20semarnat%202012%20wood%20packaging.docx](http://www.bdlaw.com/assets/attachments/nom%20144%20semarnat%202012%20wood%20packaging.docx)



## PERU HIGHLIGHTS

### BILL PROPOSES CREATION OF AGENCY FOR CERTIFICATION OF SUSTAINABLE INVESTMENTS

On August 27, 2012, a bill (*Propuesta Legislativa No. 1461/2012.PE*, the “SENACE Bill”) proposing the creation of the National Service of Environmental Certification of Sustainable Investments (*Servicio Nacional de Certificación Ambiental par las Inversiones Sostenibles*, “SENACE”) was introduced in the Peruvian Congress. The SENACE Bill, referred to Congress by the Peruvian President, would create SENACE as a sub-agency of the Ministry of the Environment (*Ministerio del Ambiente*, “MINAM”) charging it with the principal function of reviewing and approving environmental impact studies. (SENACE Bill, Art. 1.)

Under the bill, SENACE would have sole authority to certify and approve environmental impact studies except for studies conducted on projects that are specifically excluded from SENACE’s jurisdiction by Peru’s Council of Ministers (*Consejo de Ministros*). (SENACE Bill, Art. 1.) In addition, SENACE would maintain a national registry of environmental consultants and a public registry of all national or multi-regional environmental certificates. (SENACE Bill, Art. 3.) SENACE’s board would be presided over by the Minister of the Environment and would be constituted by the Minister of Economy and Finance, the Minister of Agriculture, the Minister of Energy and Mines, and the Minister of Production and Health. (SENACE Bill, Art. 6.) SENACE would also have a technical consultative board consisting of five specialists with experience in the field of project finance and development. (SENACE Bill, Art. 10.) If enacted, the Bill would enhance Peru’s efforts to ensure environmental sustainability. It reflects the government’s desire to strengthen MINAM as a national environmental body.

#### **Reference Sources (in Spanish):**

- SENACE Bill, *Proyecto de Ley*, available at [www.bdlaw.com/assets/attachments/SENACE%20-%20Proyecto%20de%20Ley.pdf](http://www.bdlaw.com/assets/attachments/SENACE%20-%20Proyecto%20de%20Ley.pdf)

### ENVIRONMENTAL QUALITY STANDARDS AND MAXIMUM ALLOWABLE LIMIT STANDARDS UPDATED

On August 28, 2012, the Minister of the Environment issued a ministerial resolution approving a plan to update Peru’s environmental quality standards (“EQS”) and maximum allowable limit standards (“MAL”) for the period 2012-2013. (*Resolucion Ministerial 225-2012-MINAM*, “Resolution”.) The EQS and MAL are parameters that allow environmental authorities to track, inspect and control polluting activity. EQS metrics are indicators of environmental quality that measure physical, chemical and biological parameters relating to, among other things, the air, noise, water or ground. (Resolution, Annex 2.) MAL sets forth maximum permissible limits for various characteristics of emissions or effluents from human activity, including activity in the agricultural, energy, mining, fishing, transport, communications, industrial, health and housing sectors. (Resolution, Annex 2.) The Resolution sets forth specific “priority actions” that are to take place in updating Peru’s EQS and MAL, such as developing ECA for subterranean waters and developing MAL for the steel industry. (Resolution, Art. 2.) The Resolution sets no deadline for the revision of EQS and MAL.

#### **Reference Sources (in Spanish):**

- *Resolucion Ministerial 225-2012-MINAM*, available at [www.bdlaw.com/assets/attachments/Resolucion%20Ministerial%20225-2012-MINAM.pdf](http://www.bdlaw.com/assets/attachments/Resolucion%20Ministerial%20225-2012-MINAM.pdf)



## PUERTO RICO HIGHLIGHTS

### BILL TO BAN NONBIODEGRADABLE, DISPOSABLE ‘TYPE T’ PLASTIC BAGS PASSES HOUSE OF REPRESENTATIVES

On June 25, a bill (*Proyecto de la Cámara 3809*; “Bill”) that would ban nonbiodegradable “type T” (or “T-Shirt”) plastic bags was approved by the House of Representatives. The Bill would apply to “any bags designed to be used once and produced from nonbiodegradable materials derived from petroleum, including synthetic polymers such as polyethylene or polypropylene, regardless of their shape, size, capacity or color.” (Bill, Art. 2.) The use, manufacture, importation, distribution, and sale of such bags in the territory of Puerto Rico would be prohibited. (Art. 1.) Type T bags that are biodegradable under anaerobic conditions would not be subject to the ban. (Art. 1.) Within two years of the Bill’s enactment, all public and private entities subject to the law who wish to provide type T bags to consumers and users would be required to provide biodegradable type T bags. (Art. 3.) Violators would be subject to monetary penalties, not to exceed \$5,000. (Art. 5.) The Bill has moved to the Senate, where it is now in committee.

#### **Reference Sources (in Spanish):**

- *Proyecto de la Cámara 3809 (Cámara de Representantes)*, approved by House of Representatives June 25, 2012, available at [www.bdlaw.com/assets/attachments/PR%20P%20DE%20LA%20C%203809%20PLASTIC%20BAGS.pdf](http://www.bdlaw.com/assets/attachments/PR%20P%20DE%20LA%20C%203809%20PLASTIC%20BAGS.pdf)

### SENATE PASSES BILL TO CREATE AGRICULTURAL PESTICIDE EVALUATION COMMITTEE

The Senate has passed a bill (*Proyecto del Senado 2536*; “Bill”) that would create an Agricultural Service Advisory Committee for the Evaluation of Agricultural Pesticides (*Comité Asesor del Servicio Agrícola para la Evaluación de Plaguicidas de uso Agrícola*, the “Committee”). The Committee would be composed of representatives from various commonwealth agencies as well as the University of Puerto Rico’s Agricultural Extension Service (*Servicio de Extensión Agrícola*). (Bill, Art. 2.) It would advise the governor and other agencies on measures to prevent pesticides and toxic chemicals from presenting an unnecessary risk to human health and the environment. The Committee would also monitor compliance with Puerto Rico’s Pesticide Law and carry out various other tasks related to the implementation of pesticide policy. (Art. 2.)

Notably, the final Senate version of the Bill excluded two features that appeared in the original version: (1) provisions that would have regulated the management of pesticide and toxic-chemical containers and (2) a provision requiring the establishment of a registry of pesticide holders. The Bill has moved to the House of Representatives, where it is now in committee.

#### **Reference Sources (in Spanish):**

- *Proyecto del Senado 2536 (Senado)*, approved by Senate June 24, 2012, available at [www.bdlaw.com/assets/attachments/PR%20PE%20DEL%20S%202536%20PESTICIDES.pdf](http://www.bdlaw.com/assets/attachments/PR%20PE%20DEL%20S%202536%20PESTICIDES.pdf)



## URUGUAY HIGHLIGHTS

### URUGUAYAN PRODUCER RESPONSIBILITY PLAN IMPLEMENTS 2004 PACKAGING LAW

On September 11, 2012, Uruguay's Ministry of Housing, Zoning and Environment (*Ministerio de Vivienda, Ordenamiento Territorial y Medio Ambiente*) and Chamber of Industries (*Cámara de Industrias*), along with two other agencies, signed an agreement adopting the "Montevideo Management Plan for Recovery of Non-Returnable Packaging Wastes" (*Plan de Gestión de Montevideo para la Recuperación de Residuos de Envases no Retornables*; the "Plan"). The Plan enables Uruguay's consumer product sector to comply with the the 2004 Law of Packages (*Ley de Envases*; Law No. 17849), the first national law in Latin America to expressly require all companies that use packaging to have a management plan for post-consumer packaging. Under the Plan, on behalf of over 1500 participating companies, the Chamber of Industries will establish a collection infrastructure for used packaging and construct and operate four recycling plants for an initial period of two years, subject to renewal. The Plan anticipates modest success in its first year: 10% public participation and 60% effective coverage of Montevideo—Uruguay's capital city and major metropolitan center, home to approximately 40% of the national population.

#### **Reference Sources (in Spanish):**

- Uruguay Law No. 17849 of 2004, available at [www.bdlaw.com/assets/attachments/Ley%2017.849.pdf](http://www.bdlaw.com/assets/attachments/Ley%2017.849.pdf)
- Uruguay Packaging Take-Back Agreement - Convenio Montevideo, available at [www.bdlaw.com/assets/attachments/Convenio%20Montevideo.pdf](http://www.bdlaw.com/assets/attachments/Convenio%20Montevideo.pdf)

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