

LATIN AMERICAN REGION

ENVIRONMENTAL QUARTERLY



APRIL 2010

NOTES FROM THE LATIN AMERICAN PRACTICE GROUP

Greetings from the Latin American Region Practice Group! We are pleased to provide you the first edition of our Latin American Environmental Quarterly for the year, covering major environmental developments in key Latin American jurisdictions through the end of March 2010. The start of the new year has already proved dynamic, setting the stage for what promises to be a busy spring and summer when many legislatures in the Region are their most active. For additional information about our practice group, please visit our website at <http://www.bdlaw.com/practices-122.html> or contact Madeleine Kadas at mkadas@bdlaw.com or Lydia González Gromatzky at lgromatzky@bdlaw.com.

Regional trends we saw in 2009 continue, with significant developments in virtually every media sector. This quarter we highlight:

- **Waste and Remediation.** In a historic development, **Brazil's** Chamber of Deputies passes a national waste policy law after nearly twenty years of debate; it has been sent to the Senate where it is being scheduled for hearings. The Brazilian state of **Minas Gerais**, FEAM publishes a list of 413 contaminated sites, identifying the "responsible party" in each case. **Argentina's** Chamber of Deputies considers a bill that would establish a national framework for the management of contaminated sites. The **Colombian** Ministry of Mines and Energy adopts new regulations to govern management of radioactive wastes. **Ecuador** moves closer to adopting a comprehensive rule package to impose new chemicals and waste management standards.
- **Water Usage and Quality.** **Chile** publishes two revised wastewater discharge standards for public comment and **Argentina** is considering novel proposals to combat desertification. **Peru** issues implementing regulations to its water law, a progressive measure that prioritizes water use for human consumption. The Brazilian state of **Rio de Janeiro** issues a law requiring facilities that discharge liquid pollutants into receiving water bodies to install inspection boxes at the outflow pipes or the connection to a public sewer system.
- **Climate Change.** **Uruguay** adopts a comprehensive strategic plan of action for the period of 2010-2015 to respond to the likely impacts of climate change in the country. **Brazil** appoints a Climate Change Working Group (*Grupo de Trabalho de Mudança do Clima*), a consultative body that will advise the Environment Minister.
- **Product Stewardship.** **Costa Rica** is moving closer to adopting legal reforms that would require mandatory take-back for a number of products, including most notably electronics and pharmaceuticals. The proposed **Ecuadorian** waste management regime would also require take-back for certain listed products, including electronics and batteries, among others. The Brazilian state of **São Paulo** begins to implement its State Solid Waste Policy Law, which imposes take-back requirements for listed products, including packaging.
- **Mining Standards.** Mining continues to be a focal point of regulation. **Colombia's** legislature adopts reforms to its Mining Code to ratchet up environmental impact requirements and **Mexico's** environment ministry adopts standards for managing barren

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mining solutions from gold and silver mining activities. **Ecuador** issues terms of reference for environmental impact studies required for eight categories of mining projects.

SAVE THE DATE -- LATIN AMERICAN REGION ENVIRONMENTAL ROUNDTABLE: SEPTEMBER 2, 2010 IN WASHINGTON, DC

Save the date for our annual Latin American Region (LAR) Environmental Roundtable, which will be held on September 2, 2010 in Washington, D.C. The LAR Roundtable is an annual event for clients to hear about key regional developments and share information and practice tips in an informal setting designed to promote dialogue and learning. CLE credit will be provided; the conference is free of charge. For additional information about the Roundtable, please contact Madeleine Kadas at mkadas@bdlaw.com. To RSVP to the event, please contact Janine Militano at jmilitano@bdlaw.com.

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ARGENTINA HIGHLIGHTS

CHAMBER OF DEPUTIES CONSIDERS LAND CONTAMINATION BILL

Argentina's Chamber of Deputies is considering a bill that would establish a national framework for the management of contaminated sites. The Bill, entitled *Presupuestos Mínimos para la Gestión Ambiental de Sitios Contaminados* (Minimum Measures for the Environmental Management of Contaminated Sites) would:

- establish a process for identifying and categorizing contaminated sites based on levels of risk;
- develop a national registry of contaminated sites;
- establish a framework for overseeing the rehabilitation of priority sites; and
- provide for a system to audit contaminated and potentially contaminated sites. (Art. 2)

The Bill identifies the Secretary of Environment and Sustainable Development as the lead National Authority, with responsibility for developing policy, drafting the technical norms for managing contaminated sites, and overseeing local implementation of the law through "local authorities of application." (Arts. 12-13)

The Bill lists a number of potentially contaminating activities (e.g., waste storage facilities, paper mills, petroleum refineries) that would fall under the proposed rehabilitation program. (Annex II) Title holders of facilities undertaking these listed activities would be responsible, within three years of the passage of the law, to present to the local authority a declaration on potential contamination at the site. (Art. 21) In situations where no clear title holder exists, the bill establishes a National Program of Environmental Liabilities for remediation of these sites. (Art. 15) The Secretary for Environment would oversee this program, which would, among other things, resolve the ownership of these sites in coordination with the local authorities. The Secretary would also oversee the operation of a fund to support remediation efforts on priority sites under the program. (Art. 16)

It is not clear whether the bill has enough support in the Chamber of Deputies to move forward. The fact that the Chamber is considering such a bill, however, provides further evidence of the continued efforts in the Latin American region to address historic contamination. This is particularly true in Argentina, where the Matanza-Riachuelo river clean-up has garnered significant public and political attention.

Reference Sources (in Spanish):

- Contaminated Sites Bill (PL 0101-D-2009), available at <http://www.bdlaw.com/assets/attachments/Argentina%20Contaminated%20Sites%20Bill.pdf>

If you do not wish to receive future issues of the LAR Environmental Quarterly, please e-mail jmilitano@bdlaw.com



MATANZA-RIACHUELO AUTHORITY ESTABLISHES COMPREHENSIVE PROGRAM FOR INDUSTRIAL REMEDIATION AND CONVERSION

Argentina's Authority for the Matanza-Riachuelo River Basin ("ACUMAR") has published two new Resolutions that provide further details on how ACUMAR will comply with its responsibilities under the June 2006 Supreme Court ruling to create a restoration program. As noted in our previous newsletter, ACUMAR established in late December a Registry for Contaminating Agents of the River Basin (Resolution 76/2009). Under a new Resolution 7/2009, ACUMAR has developed a detailed form (which has the legal effect of an affidavit), to be filled out by each facility in the Basin by April 29, 2010. (Art. 4) The form requires information on a number of areas, including operations, environmental due diligence (e.g., existence of an EIA), effluent discharges, water storage, waste management, air emissions, and historical contamination. (Annex 2) In addition to providing a database of useful information to support remediation efforts, the forms will be used by ACUMAR to guide future policy development regarding the prevention, control and monitoring of pollution from industrial sources in the Basin. (Art. 5)

A second Resolution (8/2009) establishes a *Programa de Reconversión Industrial* (Program for Industrial Reconversion), which is designed to not only address existing contamination, but also to improve the overall performance and environmental management of industrial facilities and services in the Basin. (Art. 2) The Plan is designed to include, if necessary, changes to industrial processes and operations to reduce adverse impacts. (Art. 1) All facilities in the Registry must prepare and present for approval Plans of Activities that address the objectives established in Annex IV of the Resolution, some of which not only address river-related pollution concerns, but also go beyond these to require a broad range of environmental improvements (e.g., implement energy efficiency measures). In conjunction with the submission of the Plans of Activities, facilities will have to provide a business plan for how they intend to achieve their stated environmental goals. (Art. 4) Facilities will also have to complete detailed application forms to begin the review process. (Art. 5)

The Resolution also establishes a detailed process for reviewing and approving Plans of Activities. An Interjurisdictional Industry Committee will review submitted forms and Plans of Activities and call for further clarification or corrections or recommend their approval to an Executive Committee. (Art. 6) Approved Plans must be commenced immediately. (Art. 9) Once a Plan of Activities is completed, the Industry Committee can recommend that an industrial establishment be taken off of the Registry of Contaminating Agents. (Art. 14)

The Riachuelo process continues to set new precedent for large-scale clean-ups not only within Argentina, but also for the rest of Latin America. Notable in these new developments is that ACUMAR has gone beyond simply requiring remediation to also requiring industrial facilities to alter their operations to address a wider range of environmental issues. Given the high profile of Riachuelo, this new approach will likely be viewed in other jurisdictions as a potential model for how to address complex pollution remediation scenarios.

Reference Sources (in Spanish):

- Resolution 7/2009, available at <http://www.bdlaw.com/assets/attachments/Argentina%20Resolution%207.pdf>
- Resolution 8/2009, available at <http://www.bdlaw.com/assets/attachments/Argentina%20Resolution%208.pdf>



CHAMBER OF DEPUTIES DEBATES BILL ON ENVIRONMENTAL MEASURES TO COMBAT DESERTIFICATION

The Argentine Chamber of Deputies is considering a bill (PL-0866-D-2010) that would establish a comprehensive authorization process for “sustainable economic activities” conducted in zones identified as arid, semi-arid or dry sub-humid. The bill would establish a National Program of Action on Desertification that would be implemented by the Secretary for the Environment and Sustainable Development. (Arts. 3 and 5) Within a year, the Secretary would be tasked with mapping those regions that meet the definitions for arid, semi-arid and dry sub-humid. (Art. 6) Any person seeking to undertake a “sustainable economic activity” in these regions would be required to seek authorization by submitting to the Ministry for approval a Sustainable Management Plan. (Art. 10) Persons seeking authorization to perform any “clearing” activities would be required to present for approval a Plan for the Change of Use of the Soil. (Art. 11) Persons undertaking either “sustainable economic activities” or “clearing” activities would also be required to provide an environmental impact assessment in accordance with the requirements in the bill. (Art. 15) The bill includes a section on penalties and would establish a national registry of offenders, which would be made publicly available. (Arts. 30 and 27)

The bill, known as the *Ley de Presupuestos Mínimos de Protección Ambiental para la Lucha contra la Desertificación* (Law for Minimum Measures of Environmental Protection for the Fight Against Desertification) is very ambiguous regarding what persons would fall within the categories of “sustainable economic activities” and “clearing.” If read broadly, there is the potential that this bill would impact a wide range of economic activity (possibly beyond agriculture) in these regions.

Reference Sources (in Spanish):

- Desertification Bill (PL-0866-D-2010), available at <http://www.bdlaw.com/assets/attachments/Argentina%20Desertification%20Bill.pdf>

BRAZIL HIGHLIGHTS

NATIONAL DEVELOPMENTS

FEDERAL GOVERNMENT ADOPTS SUSTAINABILITY REQUIREMENTS FOR PURCHASING

On January 21, 2010, Brazil’s Ministry of Planning, Budget and Management published rules on environmental sustainability criteria for federal government contract bids and purchasing (*Ministério do Planejamento, Orçamento e Gestão, Secretária de Logística e Tecnologia de Informação: Instrução Normativa No. 1, de 19 de Janeiro de 2010*, Normative Instruction No. 1 of 2010 or the “Rule”). This “green procurement” rule, which went into effect on February 20, 2010, requires federal agencies to meet environmental specifications, including minimizing packaging and the European Union’s Restrictions on Hazardous Substances (“RoHS”) Directive.

The Rule establishes different sets of environmental requirements for public works projects, purchases of goods, and contracts for services. The requirements for public works are particularly rigorous, and include the minimization of energy and water consumption as well as the adoption of technologies and materials that reduce the project’s environmental impact. (Art. 4) When purchasing goods federal agencies are required to use sustainability criteria, although the Rule leaves ambiguity as to whether the particular criteria it lists are mandatory or optional. (Art. 5) The new federal procurement rule follows recent moves by Brazil’s two largest states, São Paulo and Minas Gerais, to impose similar requirements on their own purchasing.



Reference Sources (in Portuguese):

- Ministry of Planning, Budget and Management, Normative Instruction No. 1 of 2010, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Normative%20Instruction%20No.%201%20of%202010.pdf>

CONAMA BATTERY RULE MODIFIED AND IMPLEMENTED

Both of Brazil's major federal environmental entities – the policy-setting National Environmental Council (“CONAMA”) and the policy-enforcing Brazilian Environmental Institute (“IBAMA”) – acted early in 2010 to implement CONAMA Resolution 401/2008 (*Resolução CONAMA No. 401, “Estabelece os Limites Máximos de Chumbo, Cádmio e Mercúrio para Pilhas e Baterias,”* the “Resolution”), Brazil's recently enacted rule on battery contents and stewardship. The Resolution restricts the proportions of mercury, cadmium and lead allowed in certain types of batteries sold in Brazil, whether sold separately or contained in other products. The Resolution also contains a general requirement for manufacturers and importers to collect used batteries for reuse, recycling or environmentally adequate disposal. (Arts. 4-6)

First, on March 18, 2010, CONAMA voted to revoke a paragraph of the Resolution that would have required the Brazilian customs service to enforce labeling requirements. Both IBAMA and industry objected to the requirement, in part on the grounds that it would be impractical to open packages and disassemble products in transit to inspect their batteries.

Second, on March 30, 2010, IBAMA issued Normative Instruction No. 3 of 2010, providing guidance on many details of the Resolution's requirements – specifically, on manufacturer and importer registration, annual reporting, management plans, product testing, and labeling. With the publication of Instructional Norm No. 3, manufacturers and importers of batteries and battery-containing products are immediately subject to many of the Resolution's progressive environmental requirements.

Reference Sources (in Portuguese):

- CONAMA Resolution No. 401 of 2008, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20CONAMA%20Resolution%20401%20of%202008.pdf>
- IBAMA Normative Instruction No. 3 of 2010, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20IBAMA%20Normative%20Instruction%20No.%203%20of%202010.pdf>

HOUSE PASSES SWEEPING WASTE POLICY BILL

On March 10, 2010, Brazil's Chamber of Deputies passed the National Solid Waste Policy Bill (*Política Nacional de Resíduos Sólidos*, PL 203/1991; “Omnibus Waste Bill” or the “Bill”) after twenty years of debate. If passed by the Senate and signed by the President in its present form, the Bill would affect a host of Brazilian industries and impose new requirements on certain manufacturing sectors to minimize and manage the wastes associated with their products and operations. Brazil has no national framework solid waste law, though its Congress has debated versions of the Omnibus Waste Bill intermittently since at least 1989. The original predecessor to the current Bill was introduced in 1991, though it has been amended, modified, and replaced with revised texts approximately one hundred times in the intervening years.

The Bill would impose extended producer responsibility for a number of end-of-life products, using the term “reverse logistics” (“*logística reversa*”) to imply that the commercial distribution network for a given product is to be used in reverse as a conduit for producer “take-back” of post-consumption wastes. The reverse logistics system would bring intensive waste management obligations for manufacturers, importers, distributors and merchants of several product



categories, most notably electronics and fluorescent bulbs. Other significant provisions of the Bill would require: that all product packaging be both minimized and designed to be reused (Art. 22); that all industrial facilities, mining operations, and many other public and commercial establishments submit detailed waste management plans (Art. 20); and that the management plans be implemented and monitored through a duly authorized technical professional, reported regularly to a new national waste management information service, and integrated into the environmental licensing process (Arts. 22-24).

Following passage by the Chamber of Deputies, the Bill moved to the Senate, where the current level of support is unclear. While the Bill has finally gained some momentum after two decades of debate, its future as a law remains uncertain.

Reference Sources (in Portuguese):

- Omnibus Waste Bill, PL 203 of 1991, approved by Chamber March 2010, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Omnibus%20Waste%20Bill%20PL%20203%20of%201991.pdf>

ENVIRONMENT MINISTRY CREATES CLIMATE CHANGE WORKING GROUP

On February 2, 2010, Brazilian Environment Minister Carlos Minc issued Portaria No. 24 to create the Climate Change Working Group (*Grupo de Trabalho de Mudança do Clima*), a consultative body that will advise the Minister on issues related to climate change. The Working Group will be composed of representatives of various agencies and departments within the Environment Ministry. Its principal assignments are to assist the Ministry in the development of Brazil's various climate change policies, particularly the national policy (*Política Nacional sobre Mudança do Clima*) outlined in the December 2009 Law No. 12.187, and the international negotiations in which Brazil has participated actively in recent years.

Reference Sources (in Portuguese):

- Environment Ministry Portaria No. 24 of 2010, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Environment%20Ministry%20Portaria%20No.%2024%20of%202010.pdf>
- Law No. 12.187 of 2009, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Law%20No.%2012187%20of%202009.pdf>

BRAZILIAN STATE DEVELOPMENTS

SÃO PAULO ISSUES NEW REQUIREMENTS FOR STATIONARY SOURCE EMISSIONS MONITORING PLANS

On January 12, 2010, São Paulo's environmental enforcement agency CETESB issued Decision No. 10 of 2010, Technical Guidance for the Preparation of Air Emissions Monitoring Plans (*Termo de Referência para Elaboração do Plano de Monitoramento de Emissões Atmosféricas*), required for all stationary sources. The substance of the guidance document was developed through a collaborative process between CETESB and the São Paulo Federation of Industries (*Federação das Indústrias do Estado de São Paulo*, "FIESP") initiated by CETESB Resolution 36 of 2008. The guidance document accounts for various federal and state laws and regulations governing industrial air emissions, and provides a format and specifications for the contents of Air Emissions Monitoring Plans. The preparation of such a plan is a requirement of the licensing process in São Paulo, for both new operating licenses and renewals.

Reference Sources (in Portuguese):

- CETESB Decision No. 10 of 2010, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20CETESB%20Decision%20No.%2010%20of%202010.pdf>



SÃO PAULO REQUIRES MANUFACTURER TAKE-BACK OF VARIOUS CONSUMER PRODUCTS

On March 30, 2010, São Paulo's Environment Minister Francisco Graziano Neto issued Resolution SMA-024 (*Resolução SMA-024, Estabelece a Relação de Produtos Geradores de Resíduos de Significativo Impacto Ambiental*, the "Resolution"), implementing Article 19 of the State Solid Waste Policy Regulation (Decree 54645 of 2009). Article 19 imposed on some manufacturers, importers and distributors the obligation to take responsibility for the post-consumption wastes that their products generate. The product categories covered by the Resolution are:

- automobile oil filters;
- automobile oil containers;
- fluorescent bulbs;
- automobile batteries;
- tires;
- electro-electronic products; and
- primary, secondary and tertiary packaging of:
 - foods and beverages,
 - personal hygiene products,
 - cleaning products, and
 - durable consumer goods. (Art. 3)

Manufacturers, importers and distributors of the covered products will be required, either individually or in partnerships: to maintain collection posts for used products; to inform consumers of the need to return end-of-life products; to meet collection quotas; to report on the quantities collected; and to ensure that collected products are recycled, burned for energy, or otherwise disposed in a manner approved by CETESB. (Art. 4) The State Solid Waste Management Commission is directed to establish the collection quotas by the end of 2010. (Art. 4)

Reference Sources (in Portuguese):

- São Paulo Resolution No. SMA-024 of 2010, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Sao%20Paulo%20Resolution%20No.%20SMA-024%20of%202010.pdf>
- São Paulo Decree No. 54645 of 2009, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Sao%20Paulo%20Decree%20No.%2054645%20of%202009.pdf>
- São Paulo Law 12300 of 2006, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Sao%20Paulo%20Law%20No.%2012300%20of%202006.pdf>

RIO DE JANEIRO REQUIRES INSTALLATION OF EFFLUENT MONITORING BOXES

On March 25, 2010, Governor Sérgio Cabral of Rio de Janeiro signed Law No. 5669 (the "Law"; *Sobre a Obrigatoriedade de Empreendimentos Emissores de Poluentes Líquidos Instalarem Caixa de Inspeção*), requiring all facilities that discharge liquid pollutants into receiving water bodies to install inspection boxes at the outflow pipes – or the connection to a public sewer system. The Law requires that at least one box be installed at each facility that discharges water pollutants, and at least one box for each process or type of effluent. Facilities must comply within 90 days of the Law's publication.

Reference Sources (in Portuguese):

- Rio de Janeiro Law No. 5669 of 2010, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Rio%20de%20Janeiro%20Law%20No.%205669%20of%202010.pdf>



MINAS GERAIS PUBLISHES INVENTORY OF CONTAMINATED SITES

During 2009 the environmental enforcement agency of Minas Gerais, FEAM, conducted an extensive survey of contaminated sites throughout the state (*Inventário de Áreas Suspeitas de Contaminação e Contaminadas do Estado de Minas Gerais*), and has published a list of 413 sites, identifying the “responsible party” in each case. Of these sites, 193 are in the metropolitan region of the state capital, Belo Horizonte, and the remainder are spread across the state.

The contaminated site inventory began with Decree No. 44819 in May 2008, which created the Soil Quality Management program (*Gerência de Qualidade dos Solos*, “GESOL”) within FEAM. In December 2008, the state environmental policy-making agency, COPAM, issued Normative Deliberation 116 (*Deliberação Normativa COPAM No. 116*, “DN 116”), requiring remediation of contaminated sites and creating a window for voluntary self-reporting of contaminated properties. The voluntary program was set to last until March 31, 2009, but was extended until July 30, and produced most of the raw data for the current inventory. Additional sites found to be contaminated after the voluntary self-reporting period will be added to the inventory involuntarily, and subjected to classification for mandatory remediation under DN 116.

Reference Sources (in Portuguese):

- Minas Gerais 2009 Inventory of Suspected and Confirmed Contaminated Sites, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Minas%20Gerais%202009%20Inventory%20of%20Suspected%20and%20Confirmed%20Contaminated%20Sites.pdf>
- Minas Gerais COPAM Normative Deliberation No. 116 of 2008, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Minas%20Gerais%20COPAM%20Normative%20Deliberation%20No.%20116%20of%202008.pdf>
- Minas Gerais Decree No. 44819 of 2008, available at <http://www.bdlaw.com/assets/attachments/Brazil%20-%20Minas%20Gerais%20Decree%20No%2044819%20of%202008.pdf>

CHILE HIGHLIGHTS

CONAMA PROPOSES REVISED WASTEWATER DISCHARGE STANDARDS

In March of this year, Chile published two revised wastewater discharge standards for public comment. The proposed rule changes include those related to liquid wastes discharged to underground water sources (*Anteproyecto de la Revisión de la Norma de Emisión de Residuos Líquidos a Aguas Subterráneas*) and liquid wastes discharged to surface and marine waters (*Anteproyecto de la Revisión de la Norma de Emisión Para la Regulación de Contaminantes Asociados a las Descargas de Residuos Líquidos a Aguas Marinas y Continentales Superficiales*). The proposed rule changes related to discharges to underground water sources would provide for a new exemption for re-injection of geothermal fluids, revise various parameters and limits and make modifications to monitoring procedures and test methodologies. The proposed rule changes related to discharges to surface and marine waters include, among others, changes to extend application of the rule to estuaries and modify monitoring frequencies.

These standards, subject to review every five years in accordance with the applicable rule, *Reglamento Para la Dictación de Normas de Calidad Ambiental y De Emisión*, are currently undergoing the public consultation process. Additional information about these rule projects is available at the CONAMA website at <http://www.conama.cl/portal/1301/channel.html>.

Reference Sources (in Spanish):

- *Anteproyecto de la Revisión de la Norma de Emisión de Residuos Líquidos a Aguas Subterráneas*, available at <http://www.bdlaw.com/assets/attachments/Chile%20-%20Anteproyecto%20de%20la%20Revisión%20de%20la%20Norma%20de%20Emisión%20de%20Residuos%20Líquidos%20a%20Aguas%20Subterráneas.PDF>



- *Anteproyecto de la Revisión de la Norma de Emisión Para la Regulación de Contaminantes Asociados a las Descargas de Residuos Líquidos a Aguas Marinas y Continentales Superficiales*, available at <http://www.bdlaw.com/assets/attachments/Chile%20-%20Anteproyecto%20de%20la%20Revisión%20de%20la%20Norma%20de%20Emisión%20Para%20la%20Regulación%20de%20Contaminantes%20a%20Agu.PDF>

RULEMAKING PROCESS TO REVISE AIR QUALITY NORMS UNDERWAY

Chile has initiated rulemaking to revise certain air quality norms in accordance with its five-year rule review schedule. Specifically, in January of this year, Chile's environmental agency (CONAMA) published notices that it would begin rule development on the revision to primary norms for air quality for sulfur dioxide, carbon monoxide, ozone and nitrogen dioxide as well as its primary norm for particulate matter (PM 10). (See *Resolución Exenta No. 35 and Resolución Exenta No. 21*)

Chile has well-developed procedures for development of environmental quality norms. Rulemaking procedures include development of scientific studies, technical and economic analysis, consultation with other public and private entities and analysis of public commentary. Among other things, revisions to environmental quality norms must consider changes to environmental conditions and results of scientific investigations providing new information related to adverse effects. (See *Reglamento Para la Dictación de Normas de Calidad Ambiental y de Emisión, Arts. 5 and 37*)

Reference Sources (in Spanish):

- *Resolución Exenta No. 35*, available at <http://www.bdlaw.com/assets/attachments/Chile%20-%20Resolucion%20Exenta%20No.%2035.PDF>
- *Resolución Exenta No. 2*, available at <http://www.bdlaw.com/assets/attachments/Chile%20-%20Resolucion%20Exenta%20No.%2021.PDF>
- *Reglamento Para la Dictación de Normas de Calidad Ambiental y de Emisión*, available at <http://www.bdlaw.com/assets/attachments/Chile%20-%20Reglamento%20Para%20la%20Dictacion%20de%20Normas%20de%20Calidad%20Ambiental%20y%20de%20Emision.PDF>

NEW CHILEAN LAW PROMOTES CLEAN PRODUCTION AGREEMENTS

A new Chilean law promulgated in January of this year is intended to facilitate the use of clean production agreements by small businesses. Chile has long promoted the use of clean production agreements, which are voluntary pacts entered into by industry to go beyond legally required standards generally in the environmental context. And for some time, Chile has adopted Policies for Clean Production. (See e.g., Decree No. 156 approving an updated Policy for Clean Production covering the years 2006-2010). With the adoption of Law 20.416 setting special norms for small businesses (*Ley No. 20.416, Fija Normas Especiales Para las Empresas de Menor Tamaño, Artículo Décimo, Ley de Acuerdos Producción Limpia*), Chile has now adopted a Law of Clean Production Agreements. (See Law 20.416, Tenth Article)

The Law of Clean Production Agreements encourages small businesses to enter into clean production agreements through various incentives. For example, small businesses that have entered into these agreements may, under certain circumstances, have more time to comply with new and existing environmental standards thereby avoiding penalties. (Law 20.416, Tenth Article, Arts. 5 and 8) Implementing regulations are required to be adopted within six months. (Law 20.416, Tenth Article, Art. 4 and Transitory Articles, Fourth Article).



Reference Sources (in Spanish):

- Decree No. 156, available at <http://www.bdlaw.com/assets/attachments/Chile%20-%20Decree%20No.%20156.PDF>
- Law of Clean Production Agreements, *Ley No. 20.416, Fija Normas Especiales Para las Empresas de Menor Tamaño, Artículo Décimo, Ley de Acuerdos Producción Limpia*, available at <http://www.bdlaw.com/assets/attachments/Chile%20-%20Law%20of%20Clean%20Production%20Agreements%20-%20Ley%2020.416.PDF>

COLOMBIA HIGHLIGHTS

LEGISLATURE AMENDS MINING CODE TO EXPAND ENVIRONMENTAL PROTECTIONS

Colombia's legislature has amended its Mining Code, Ley 685 de 2001. While most of the amendments, set forth under Ley No 1382 de 2010 (*por el cual se modifica la ley 685 de 2001 Código de Minas*) are directed toward an apparent expansion of concessions rights, in particular those of "great importance" to the country, the amendments also make some important clarifications to environmental protections tied to mining concessions.

Two in particular are worth noting. First, the law expands the provisions relating to areas from which mining is banned. Although exceptions to forest preservation areas were allowed by administrative act under former provisions, the Law now requires that exceptions be supported by studies that demonstrate that mining activities can "adequately coexist" with forestry preservation. Art. 34 (as amended).

Second, in a separate provision, the amendments appear to expand the mining activities that must be evaluated in an environmental impact statement, necessary to support an environmental license. Ley 685, Art. 205 (as amended). Activities that must be evaluated by an environmental impact statement now include road construction in addition to mining exploration activities, among others. *Id.* Both provisions were urged by Colombia's Environmental Minister earlier in the year.

Reference Sources (In Spanish):

- Ley No 1382 de 2010 (Amendments to the Mining Law), available at <http://www.bdlaw.com/assets/attachments/Colombia%20-%20Ley%20No.%201382%20de%202010%20Amendments%20to%20the%20Mining%20Law.PDF>
- Ley 685 de 2001 (Mining Law), available at <http://www.bdlaw.com/assets/attachments/Colombia%20-%20Ley%20685%20de%202001%20Mining%20Law.PDF>

MINAMBIENTE ISSUES RESOLUTION ESTABLISHING REGISTRY OF ENVIRONMENTAL VIOLATORS

MinAmbiente has implemented one of the more novel provisions of its environmental sanctions law, Ley 1333 de 2009, that establishes a public registry of environmental violators. See Resolución No. 415 de 2010 (*Por la cual se reglamenta el Registro Único de Infractores Ambientales -- RUIA- y se toman otras determinaciones*).

Listing in the Registry is required when MinAmbiente has undertaken enforcement under Ley 1333 and imposed fines, temporary or permanently shut down a facility, revoked an environmental license or authorization, among other sanctions. Res, Art. 3. Listing is maintained for lengths of time that vary according to the type of environmental violation, ranging from six months to two years. *Id.* Art 9. The Resolution allows for companies listed in the Registry to solicit corrections or updating of the Report. *Id.* Art. 7. An initial registry, or



RUIA by its Spanish acronym, is now available on-line at

Reference Sources (In Spanish):

- Resolution No. 415, available at <http://www.bdlaw.com/assets/attachments/Colombia%20-%20Resolution%20No.%20415.PDF>
- RUIA (Registry), available at <http://www.bdlaw.com/assets/attachments/Colombia%20-%20RUIA%20Registry.PDF>

MINISTRY OF MINES AND ENERGY ADOPTS RADIOACTIVE WASTE REGULATIONS

The Colombian Ministry of Mines and Energy has adopted new regulations to govern management of radioactive wastes. See *Resolución Número 18 00005 de 2010 (Por la cual se adopta el Reglamento para la gestión de los desechos radioactivos en Colombia)*. The regulation classifies radioactive wastes into six categories (from exempt to high-level) and sets forth framework standards for management and disposal of such wastes.

Although the Regulation establishes some core technical standards, additional technical standards will likely be forthcoming to fully implement the new regulations. It is also possible that additional regulations will be issued, in particular, those governing NORM wastes, for which the Ministry specifically identifies the need for future regulation. See *Policy for the Management of Radioactive Wastes in Colombia (Política para la gestión de los desechos radiactivos en Colombia)*.

Reference Sources (In Spanish):

- Resolution No. 18 0005 2010, available at <http://www.bdlaw.com/assets/attachments/Colombia%20-%20Resolution%20No.%2018%200005%202010.PDF>
- Radioactive Waste Policy, ,available at <http://www.bdlaw.com/assets/attachments/Colombia%20-%20Radioactive%20Waste%20Policy.PDF>

COSTA RICA HIGHLIGHTS

MANDATORY PRODUCT STEWARDSHIP GAINING MOMENTUM

Costa Rica is in the process of developing a number of legislative and regulatory reforms that would put in place a framework for product stewardship for a number of products, including most notably electronics and pharmaceuticals. At the top of the list is the long-awaited national solid waste bill (Bill 15.897), which was recently reinstated on the legislative agenda. (As we noted in our last newsletter, Bill 15.897 expired in December 2009 after some debate in the legislature on whether to keep the bill alive for another four-year period.) The Bill, known as the *Ley para la Gestión Integral de Residuos* (Law for the Integrated Management of Wastes), includes provisions for extended producer responsibility, waste generator responsibilities, identification of certain special management wastes and import and export controls. If passed, the bill would require significant implementing regulations, but it would set in place a framework for comprehensive product take-back in Costa Rica.

Simultaneously, Costa Rica’s Ministry of Health and Ministry of Environment, Energy and Telecommunications are nearing completion of a comprehensive producer responsibility regulation for electronic products. The *Reglamento para la Gestión Integral de Residuos Electrónicos* (Regulation for the Integrated Management of Electronic Wastes) is reportedly very close to enactment, awaiting only final approval from the executive branch. If enacted later this year, manufacturers, importers and merchants of listed electronic equipment would be responsible for collecting and managing their end-of-life products, either individually or



collectively through registered “Compliance Entities.” (Arts. 8-9) Individual or collective Compliance Entities would be required to present compliance plans, meet benchmarking targets, and undertake certain reporting and public awareness activities. (Art. 9)

The Ministry of Health has also published on its Web page a draft regulation for the final disposition of pharmaceuticals that covers both production and product wastes. The *Reglamento para la Disposición Final de Medicamentos, Materias Primas y Sus Residuos* (Regulation for the Final Disposition of Medicines, Raw Materials and Their Wastes) would cover all medicines or primary materials that are no longer usable, damaged, adulterated, or are seized, as well as wastes from manufacturing processes. (Art. 2) The following would be considered “pharmaceutical establishments” that would be subject to the draft Regulation’s requirements:

- Pharmacies that fill prescriptions;
- Importers and distributors of pharmaceuticals;
- Pharmaceutical laboratories or manufacturing facilities; and
- Smaller, Ministry-authorized establishments that administer medicines. (Art. 4)

Every pharmaceutical establishment would be required to develop and operate a Ministry-approved plan for the management of covered wastes. (Art. 8) The Regulation would also prohibit the disposition of pharmaceuticals or raw materials used to make pharmaceuticals in the municipal sanitary system, except for high volume solutions that contain substances that are “innocuous” to the environment and that can be eliminated through the normal sanitary system. (Art. 11) Annexes to the Regulation provide greater detail on approved disposal procedures, as well as classification categories for covered pharmaceuticals and primary materials.

Producer responsibility has become an attractive tool for environmental regulators to place the burden on manufacturers, importers and distributors for handling certain product waste streams. It is likely that, as the above-discussed waste law and product take-back regulations take hold, additional products will be targeted for take-back measures in the country. It is also worth noting that Costa Rica is often viewed as a bellwether for other Central American countries, and as such, the proposed national solid waste law and electronics and pharmaceuticals producer responsibility regulations emerging in Costa Rica could become the models for other jurisdictions.

Reference Sources (in Spanish):

- Bill 15.897, available at http://www.bdlaw.com/assets/attachments/Costa_Rica_-_Bill_15.897.pdf
- Draft Regulation for the Integrated Management of Electronic Wastes, available at <http://www.bdlaw.com/assets/attachments/Costa%20Rica%20E-Waste%20Regulation.pdf>
- Draft Regulation for the Final Disposition of Medicines, Primary Materials and Their Wastes, available at <http://www.bdlaw.com/assets/attachments/Costa%20Rica%20draft%20Pharma%20Take-Back%20Regulation.pdf>

MINISTRY OF ENVIRONMENT PUBLISHES NATIONAL ENVIRONMENT PROGRAM FOR 2010-2015

Costa Rica’s Ministry of Environment recently issued its national program for the environment through 2015, which is intended to raise the profile of environmental issues and coordinate actions among all of Costa Rica’s governmental agencies. The program, known as the *Programa Nacional de Calidad Ambiental* (2010-2015) (National Program for Environmental Quality (2010-2015)), includes a comprehensive Action Plan for the following seven thematic areas: (i) water; (ii) soil; (iii) air; (iv) solid waste; (v) chemical substances; (vi) biodiversity; and (vii) impacts on the countryside. Each thematic area includes a number of specific actions to be taken in the following areas: (i) public policies; (ii) legal and normative aspects; (iii) monitoring;



(iv) surveillance; (v) control; and (vi) regulation and access to information. The program also identifies a number of cross-cutting areas for future work, including environmental education, vulnerability and risk, climate change, competitiveness and citizen participation. (pg. 5)

The Program also sets forth an Interinstitutional System for Environmental Protection (“ISEP”) that would establish a new administrative framework for implementation of the Action Plan. The primary function of the ISEP would be to improve coordination and implementation of environmental measures among the 13 public institutions that have responsibility for the management of some natural resource. (pg. 8) The ISEP would have the following organizational structure:

- Coordinating counsel for policy direction and coordination, made up of the Ministry of Environment, Energy and Telecommunications, Ministry of Health, Ministry of Agriculture and Livestock, Ministry of Public Works and Transport and the Ministry of Planning.
- Executive Secretary, located in the Department for Management of Environmental Quality (known as “Digeca”) within the Ministry of Environment, that would be responsible for taking the broad policy guidance and implementing the specific programs. (pg. 13)

In addition, there would be seven permanent Working Roundtables made up of public, social and private actors to undertake work on each of the thematic areas. (pgs. 14-15)

The Program is further informed by a number of published companion documents, including, among others:

- A comprehensive environmental quality diagnostic that provides detailed analysis of each of the seven thematic areas;
- A short background paper on clean production; and
- A short pamphlet on integrated management of wastes.

It remains to be seen how this ambitious work program will operate in practice in the next five years. At a basic level, it represents a clear political commitment to fully integrating environmental concerns into the other government agencies in a way that is perhaps without precedent in Latin America. This could particularly impact a number of industries that may be predominantly regulated by sectoral government agencies that may now give greater attention to environmental issues under this new framework.

Reference Sources (in Spanish):

- National Program of Environmental Quality (2010-2015), available at <http://www.bdlaw.com/assets/attachments/Costa%20Rica%20Environmental%20Strategy.pdf>
- Environmental Quality Diagnostic, available at <http://www.bdlaw.com/assets/attachments/Costa%20Rica%20Environmental%20Diagnostic.pdf>
- Clean Production Background Paper, available at <http://www.bdlaw.com/assets/attachments/Costa%20Rica%20Clean%20Production.pdf>
- Integrated Management of Wastes Pamphlet, available at <http://www.bdlaw.com/assets/attachments/Costa%20Rica%20Integrated%20Management%20of%20Wastes.pdf>

COSTA RICA ADOPTS REGULATION ON OZONE DEPLETING SUBSTANCES

Costa Rica’s Ministry of Environment, Energy and Telecommunications issued late last month a special regulation (Decree 3567-S-H-MAG-MINAET) setting out interagency responsibilities for controlling imports and exports of covered ozone depleting substances. The regulation, which went into effect March 5, 2010, does not create any new substance restrictions, but it does clarify the rules that apply to different categories of covered materials. All importers,



exporters and re-exporters of ODSs or equipment or technology containing them, either as distributors or manufacturers, must register in a new Registry created within the Ministry. (Art. 13) The Regulation also sets out the restrictions and prohibitions on specific ODSs, including CFCs, many of which had been banned under Costa Rica's existing implementing legislation for the Montreal Protocol (Law 7.223). (Chapter III) The regulation also addresses import licenses and quotas. (Chapter II)

While these restrictions on ODSs are not new to Costa Rica, the regulation does signal the country's continued effort to manage potentially hazardous chemicals.

Reference Sources (in Spanish):

- Decree 3567-S-H-MAG-MINAET, available at <http://www.bdlaw.com/assets/attachments/Costa%20Rica%20Decree%203567.pdf>

ECUADOR HIGHLIGHTS

TERMS OF REFERENCE FOR ENVIRONMENTAL IMPACT STUDIES FOR MINING OPERATIONS ISSUED

On February 1, 2010, Environment Minister Marcela Aguinaga Vallejo signed Ministerial Accord No. 11, issuing terms of reference for environmental impact studies required for eight categories of mining projects. The Accord fulfills a requirement of Ecuador's Environmental Regulation for Mining Activities (*Reglamento Ambiental para Actividades Mineras en la Republica del Ecuador*), under the new mining law. The law and regulation were enacted in January and November 2009, respectively. Article 10 of the Regulation directs the Ministry to publish technical norms for all mining activities and phases.

The terms of reference are detailed documents that list the contents required for an environmental impact study to comply with the Regulation. The documents provide both the format for the study report and an interpretive guide to the technical requirements. The Ministry has released terms of reference for environmental audits of all mining projects and for the following project categories:

- initial exploration of metallic and non-metallic minerals
- advanced exploration of metallic and non-metallic minerals
- mineral refining plants
- subsurface exploitation of metallic mineral deposits
- exploitation of construction materials from rock formations
- exploitation and processing of non-metallic mineral deposits
- open air exploitation of metallic minerals in alluvial and colluvial deposits

Reference Sources (in Spanish):

- Ecuador 2009 Mining Law, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%202009%20Mining%20Law.pdf>
- Environmental Regulation for Mining Activities in Ecuador, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Environmental%20Regulation%20for%20Mining%20Activities.pdf>
- Ministerial Accord No. 11 of 2010, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Ministerial%20Accord%20No.%2011%20of%202010.pdf>
- Terms of Reference for the Completion of Environmental Audits of Mining Projects, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Terms%20of%20Reference%20-%20Completion%20of%20Environmental%20Audits%20of%20Mining%20Projects.pdf>



- Terms of Reference for the Completion of Environmental Impact Studies for Advanced Exploration of Metallic and Non-Metallic Minerals, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Terms%20of%20Reference%20-%20Advanced%20Exploration%20Metallic%20and%20Non%20Metallic%20Minerals.pdf>
- Terms of Reference for the Completion of Environmental Impact Studies for Mineral Refining Plants, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Terms%20of%20Reference%20-%20Mineral%20Refining%20Plants.pdf>
- Terms of Reference for the Completion of Environmental Impact Studies for Initial Exploration of Metallic and Non-Metallic Minerals, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Terms%20of%20Reference%20-%20Initial%20Exploration%20-%20Metallic%20Non-Metallic%20Minerals.pdf>
- Terms of Reference for the Completion of Environmental Impact Studies for Subsurface Exploitation of Metallic Mineral Deposits, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Terms%20of%20Reference%20-%20Subsurface%20Exploitation%20of%20Metallic%20Mineral%20Deposits.pdf>
- Terms of Reference for the Completion of Environmental Impact Studies for Exploitation of Construction Materials from Rock Formations, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Terms%20of%20Reference%20-%20Exploitation%20of%20Construction%20Materials.pdf>
- Terms of Reference for the Completion of Environmental Impact Studies for Exploitation and Processing of Non-Metallic Mineral Deposits, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Terms%20of%20Reference%20-%20Exploitation%20Processing%20of%20Non-Metallic%20Mineral%20Deposits.pdf>
- Terms of Reference for the Completion of Environmental Impact Studies for Open Air Exploitation of Metallic Minerals in Alluvial and Colluvial Deposits, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Terms%20of%20Reference%20-%20Open%20Air%20Exploitation%20Metallic%20Minerals%20-%20Alluvial%20Colluvial%20Deposits.pdf>


HAZARDOUS SUBSTANCE AND WASTE PROPOSALS UNDERWAY

The Administration of President Rafael Correa Delgado has proposed new regulations to prevent and control pollution from hazardous chemical substances and hazardous and special wastes (*Proyecto Reglamento para la Prevención y Control de la Contaminación por Sustancias Químicas Peligrosas, Desechos Peligrosos y Especiales*, the “Proposal”). Both hazardous chemical substances and hazardous wastes are defined by lists published under existing Ecuadorian law. Special wastes, however, would be a new category of non-hazardous wastes defined as those that “by their nature, can impact the environment or health, due to their volume of generation and/or difficulty of degradation, and for which systems of recovery, reuse and/or recycling must be implemented.” (Art. 155)

The Proposal would create a system of integrated management of hazardous and special wastes, with criteria for generation, storage, collection, transport, treatment and final disposal. Manufacturers and importers would bear responsibility for the management of both hazardous and special wastes. (Arts. 188-195) The Proposal also assigns responsibility to manufacturers and importers for the management of hazardous chemical substances, although for these substances the proposal lacks detail. The Correa Administration has a record of success in passing its legislative initiatives, indicating that the Proposal merits the attention of companies that would be affected by it.

Reference Sources (in Spanish):

- Proposed Regulation for the Prevention and Control of Pollution by Hazardous Chemical



Substances, and Hazardous and Special Wastes, available at <http://www.bdlaw.com/assets/attachments/Ecuador%20Proposed%20Regulation%20-%20Prevention%20Control%20of%20Pollution%20by%20Hazardous%20Chemical%20Substances%20Special%20Wastes.pdf>

MEXICO HIGHLIGHTS

SEMARNAT PUBLISHES MANAGEMENT STANDARDS FOR GOLD AND SILVER MINING ACTIVITIES

Mexico has made final NOM-155-SEMARNAT-2007 (*Que establece los requisitos de protección ambiental para los sistemas de lixiviación de minerales de oro y plata*), a rule intended to implement environmental standards for mining called for in the 2003 General Waste Law (*Ley General para la Prevención y Gestión Integral de los Residuos*). The rule was originally proposed in 2007 and subject to public comment at that time under Mexico's rulemaking procedures.

The new rule sets forth a comprehensive set of criteria for management of barren mineral solutions (mineral leachate or spent minerals) (*mineral lixiviado o gastado*), defined as wastes from a mineral treated under a leachate process, including a toxicity elimination phase. (Art. 4.9) The rule creates procedures for testing the hazardousness of these materials as well as general standards for both siting collection systems (based on climatic, geotechnical, seismic, hydrological, and forestry considerations) as well as the construction, operation and monitoring of such systems. Although the standard references numerous international standards (including a number from the U.S. Environmental Protection Agency), it is a unique standard that should be evaluated closely.

This standard reflects continued attention by Mexico to environmental issues associated with mining, following a recent standard outlining management plan requirements for mining wastes.

Reference Sources (In Spanish):

- NOM-155-SEMARNAT-2007 (*Que establece los requisitos de protección ambiental para los sistemas de lixiviación de minerales de oro y plata*), available at <http://www.bdlaw.com/assets/attachments/Mexico%20-%20NOM-155-SEMARNAT-2007.PDF>

ENERGY SECRETARIAT ADOPTS FUEL LIST FOR DETERMINING “HIGH USERS” OF ENERGY UNDER ENERGY EFFICIENCY LAW

Keeping the press of its pace in implementing a national energy efficiency program, Mexico's Energy Secretariat has adopted a list of fuels and their caloric equivalency for the purposes of determining applicability of the reporting requirements under the Energy Efficiency Law. The list, entitled the List of Fuels That Must Be Considered for Identifying High Energy Consumers, as well as Factors for Determining Equivalencies in Petroleum Barrel Equivalents (*Lista de combustibles que se considerarán para identificar a los usuarios con un patron de alto consumo, asi como sus factores para determinar las equivalencias en terminos de barriles equivalentes de petroleo*), was required as part of the 2008 Law for Sustainable Development of Energy (*Ley para el Aprovechamiento Sustentable de la Energía*) which charged the National Commission for the Efficient Use of Energy (CONUEE) with implementing a National Subsystem for the Development of Energy to ensure its availability and use.

As reported in the October 2009 Latin American Environmental Quarterly (<http://www.bdlaw.com/assets/attachments/October%202009%20LAR%20Environmental%20Quarterly.pdf>), the Law and its implementing regulation require “high” users of energy to provide annual reports of their energy consumption. A “high” user is defined as an entity that consumes more than



6- gigawatt-hours of electricity in the prior year, whose annual fuel consumption exceeds 9000 barrels of petroleum crude equivalent (excluding transportation fuels) or that has a fleet of more than 100 cargo or passenger vehicles. This List is intended to provide guidance to users and energy providers for determining what fuels must be accounted for, what their caloric value is, and their petroleum barrel equivalent.

The List is one of a series of regulations and policies required by the Law. Mexico also recently published a four-year National Program for Using Sustainable Energy (see January 2010 Latin American Environmental Quarterly, available at <http://www.bdlaw.com/assets/attachments/January%202010%20LAR%20Environmental%20Quarterly.pdf>), is working on a catalogue listing products that must have energy efficiency labels, developed energy efficiency standards for federal buildings, and is reportedly developing NOMs regulating light bulbs. The rapidity with which the Secretariat of Energy has issued these standards is noteworthy -- implementing standards can be years in the making. Together, these standards reflect Mexico's seriousness about developing a meaningful energy efficiency program that may have far-reaching effects over the long time for industrial users and product manufacturers both.

Reference Sources (In Spanish):

- The Fuel List (*Lista de combustibles que se considerarán para identificar a los usuarios con un patron de alto consumo, así como sus factores para determinar las equivalencias en términos de barriles equivalentes de petróleo*), available at <http://www.bdlaw.com/assets/attachments/Mexico%20-%20The%20Fuel%20List%20Lista%20de%20Combustibles.PDF>

TRANSPORTATION SECRETARIAT CONTINUES TO REVISE TRANSPORTATION STANDARDS FOR HAZARDOUS MATERIALS AND WASTE

Mexico continues to revise its hazardous materials and waste transportation standards to harmonize with those of the UN and the U.S. Mexico has proposed and adopted a series of official Mexican standards (referred to as NOMs) that adopt various sections of the UN Recommendations on the Transport of Dangerous Goods. While Mexico has long followed the UN standards, it has been some time since their domestic standards were revised to reflect current UN recommendations. These rules generally apply to shippers, transporters and receivers of covered hazardous goods, materials, and wastes transported by land. The following standards have been adopted:

NOM-009-SCT2/2009 – Specifications and compatibility standards for storage and transport of Class I explosive substances, materials and hazardous wastes (published in the *Diario Oficial* on February 12, 2010)

NOM-032-SCT2/2009 – Specifications and characteristics of design, construction, inspection and testing for portable tanks used in transport of Class 1, 3 and 9 substances, materials and hazardous wastes (published in the *Diario Oficial* on February 16, 2010)

NOM-027-SCT2/2009 – Specifications for packaging, containers, intermediate bulk containers (IBCs), and portable tanks and transport of hazardous materials, substances, and wastes from Division 5.2 organic peroxides (published in the *Diario Oficial* on February 17, 2010)

NOM-002/1-SCT-2009 – List of hazardous substances and materials most often transported; instructions and use of packaging and containers, intermediate bulk containers (IBCs), large packaging and containers, portable tanks, multiple element gas containers, and bulk containers for transport of hazardous materials and wastes (published in the *Diario Oficial* on March 4, 2010)

Reference Sources (in Spanish):

- NOM-009-SCT2/2009, available at <http://www.bdlaw.com/assets/attachments/Mexico%20-%20NOM-009-SCT2-2009.PDF>



- NOM-032-SCT2/2009, available at <http://www.bdlaw.com/assets/attachments/Mexico%20-%20NOM-032-SCT2-2009.PDF>
- NOM-027-SCT2/2009, available at <http://www.bdlaw.com/assets/attachments/Mexico%20-%20NOM-027-SCT2-2009.PDF>
- NOM-002/1-SCT-2009, available at http://www.bdlaw.com/assets/attachments/Mexico%20-%20NOM-002_1-SCT-2009.PDF

PERU HIGHLIGHTS

REGULATIONS TO PERUVIAN WATER LAW IMPLEMENTED

In March of this year, Peru published the implementing regulation to its water law, Law No. 29338 (*Decreto Supremo No. 001-2010-AG, Aprueban Reglamento de la Ley No. 29338, Ley de Recursos Hídricos*) (“Regulation”). The Regulation provides that water use for human consumption is a priority over any other class or type of use. (Art. 55) Further, notwithstanding the importance of mining -- with its attendant need for water supplies -- to Peru’s economy, a list of preferential uses for water resources places mining below other uses (e.g., agriculture and fishing). (Art. 62)

The 287-article Regulation creates Basin Councils for Water Resource Management (“Councils”) with the objective of managing water resources by basin rather than by political jurisdiction. (Art. 24) These Councils, considered entities of the National Water Authority, include both regional and local government representatives. (Art. 28) The Regulation provides for Management Plans for Water Resources in the Basin that are to be developed by the Councils, with regional, local, water user and public participation and approval of the National Water Authority. (Arts. 31 and 32) The Councils are charged with ensuring compliance and fulfillment of the Management Plans. (Art. 31(f))

Reflecting Peru’s continuing focus on management of its water resources, the Regulation also includes provisions for, among other things, water use licenses, classification of water bodies, designation of protected zones and desalination projects. (Arts. 70, 106, 127 and 167)

Reference Sources (in Spanish)

- Law 29338, *Ley de Recursos Hídricos*, available at <http://www.bdlaw.com/assets/attachments/Peru%20-%20Law%2029338%20Water%20Law.PDF>
- Implementing Regulation, *Decreto Supremo No. 001-2010-AG, Aprueban Reglamento de la Ley No. 29338, Ley de Recursos Hídric*, available at <http://www.bdlaw.com/assets/attachments/Peru%20-%20Implementing%20Regulation%20for%20Law%2029338.PDF>

PERU ESTABLISHES COMMISSION TO REVIEW MEASURES PROTECTING AMAZON

In response to protests by small-scale miners, Peru has created a commission to evaluate whether any changes are needed to a measure recently adopted to address environmental impacts associated with mining operations in the *Madre de Dios* region of the Amazon. The mining activities in this area that reportedly led to significant deforestation and mercury contamination of rivers led to Peru’s issuance of Urgent Decree 012-2010 (*Decreto de Urgencia*, No. 012-2010) in February of this year. By this Urgent Decree, Peru declared the regulation of mining in the *Madre de Dios* region to be a national priority to protect human health, conservation of the national patrimony and development of sustainable economic activities. (Urgent Decree, Art. 1) The Urgent Decree established no-mining zones, banned the use of dredging equipment in rivers and provided for the restoration of areas that have been damaged by small-scale mining. (Urgent Decree, Art. 2)



However, the implementation of the Urgent Decree, which required full compliance within twelve months of issuance, led to significant protests by miners in the area. Peru has now adopted a Resolution to form a Commission to determine whether any modifications to the Urgent Decree are needed. (*Resolución Ministerial No. 110-2010-PCM*) The Commission includes, among others, representatives from the Ministries of the Environment, Energy and Mines and Agriculture. Notably, the Commission will also include members of two mining unions. (Resolution, Art. 2) The Commission is charged with issuing a final report with its recommendations, due in July of this year. (Resolution, Art. 6)

Reference Sources (in Spanish)

- Urgent Decree 012-2010 (*Decreto de Urgencia*, No. 012-2010), available at <http://www.bdlaw.com/assets/attachments/Peru%20-%20Urgent%20Decree%20012-2010.PDF>
- Resolution, (*Resolución Ministerial No. 110-2010-PCM*), available at <http://www.bdlaw.com/assets/attachments/Peru%20-%20Resolution%20110-2010-PCM.PDF>

URUGUAY HIGHLIGHTS

ENVIRONMENT MINISTRY ISSUES NATIONAL CLIMATE CHANGE PLAN

Uruguay's Ministry of Housing, Land Planning and Environment has developed a comprehensive strategic plan of action for the period of 2010-2015 to respond to the likely impacts of climate change in the country. The *Plan Nacional de Respuesta Al Cambio Climático* ("National Plan for Responding to Climate Change" or the "Plan") includes a number of specific adaptation and mitigation policy measures to be completed in five basic thematic areas:

- Production (e.g., agriculture, forestry, water resources, biodiversity);
- Coasts (e.g., aquatic ecosystems, fisheries, coastal zones, tourism);
- Population Centers (e.g., services, tourism, construction, health);
- Energy (water resources, infrastructure, transport); and
- Information and Monitoring (information systems, vulnerability mapping). (pgs. 62-80)

For example, adaptation measures in the energy sector would include improved planning and maintenance of infrastructure, diversification of the energy grid and promotion of energy efficiency. (pgs. 66-68) Mitigation measures would include efforts to reduce emissions in the agricultural, energy and transport sectors, as well as in the management of wastes. (pgs. 77-79) The Plan also calls for significant efforts to augment the country's ability to access available resources under the Clean Development Mechanism. (pgs. 79-80)

Uruguay's Plan represents a significant commitment to mainstreaming adaptation and mitigation to climate change across all sectors of government. It may result in new policies, administrative practices and regulation designed to implement the broad goals and objectives of the Plan.

Reference Sources (in Spanish):

- National Plan for Responding to Climate Change, available at <http://www.bdlaw.com/assets/attachments/Uruguay%20National%20Plan%20for%20Climate%20Change.pdf>

TECHNICAL STANDARDS FOR ENVIRONMENTAL SAMPLING ISSUED

The Ministry of Housing, Land Planning and Environment recently approved through Resolution 110-010-1 a revised *Manual de Procedimientos Analíticos para Muestras Ambientales* (Manual of Analytical Procedures for Environmental Samples). The Manual, which replaces



a previous 1997 version, provides the test procedures that will be used across the country for analyzing water, soil and air quality, industrial effluents, sediments and solid wastes, among others. The Manual's 72 procedures are divided amongst eight basic parameters (e.g., non-metallic inorganic, metallic, ecotoxicological). The procedures are drawn from American Public Health Association's Standard Methods for Examination of Water and Wastewater, the International Organization for Standardization ("ISO"), the U.S. EPA, and Canada's Ministry of Environment. Uruguay's national network of environmental laboratories, which are under the direction of the National Office of the Environment (*Dirección Nacional de Medio Ambiente* or "Dinama"), will use these procedures for all environmental testing and enforcement, providing a more coordinated and consistent approach to environmental regulation in the country.

Reference Sources (in Spanish):

- Procedures for Testing Environmental Samples: http://www.mvotma.gub.uy/dinama/index.php?option=com_content&view=article&id=795



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