

LATIN AMERICAN REGION

ENVIRONMENTAL QUARTERLY



FIRST QUARTER, 2012

NOTES FROM THE LATIN AMERICAN PRACTICE GROUP

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

ARGENTINA HIGHLIGHTS

BILL TO CONTROL ELECTROMAGNETIC RADIATION INTRODUCED IN ARGENTINE CHAMBER OF DEPUTIES

On March 5, 2012, a bill was introduced in the Argentine Chamber of Deputies that would aim to prevent and control “electromagnetic pollution” (*contaminación electromagnética*). The bill (*Proyecto de Ley 0213-D-2012*; the “Bill”) would apply to a wide variety of “radio-electric infrastructure” that is capable of generating non-ionizing radiation at frequencies of 100 kHz to 300GHz, such as antennas or infrastructure for mobile phones, radio, television, and wireless data networks. (Bill, Art. 2.)

Among other things, the Bill would set maximum radiation-emissions levels (Art. 7), require an environmental impact assessment and public hearing prior to installation of new radiation-emitting infrastructure (Arts. 9-11), and require that existing infrastructure use the “best available technology” to minimize radiation emissions and protect public health and the environment (Art. 6). The Bill also contains product-labeling requirements (with a particular emphasis on the purported risks of mobile-phone use) (Arts. 14-15), an insurance requirement for covered persons (Art. 14), and penalty provisions (Art. 22).

The Bill has been referred to several Chamber committees, where it remains under consideration.

Reference Sources (in Spanish):

- *Proyecto de Ley 0213-D-2012 (Proyecto de Ley de Presupuestos Mínimos de Prevención y Control de la Contaminación Electromagnética)*, March 5, 2012 (Chamber of Deputies), available at www.bdlaw.com/assets/attachments/Argentina%20-%20Proyecto%20de%20Ley%200213-D-2012.pdf

BUENOS AIRES PROVINCE ENACTS LAW ON IDENTIFICATION OF ENVIRONMENTAL LIABILITIES AND RESTORATION OF CONTAMINATED SITES

On January 23, 2012, a law governing the identification of environmental liabilities and restoration of contaminated sites was published in the Official Bulletin of the Province of Buenos Aires. The law (*Ley 14343*; the “Law”) requires environmental liabilities and



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contaminated sites in the province to be restored by the parties conducting the activity that led to the environmental harm or, if such parties cannot be found, the owners of the harmed property. (Law, Arts. 2, 5.) “Environmental liability” (*pasivo ambiental*) is broadly defined to include virtually any harm to the environment “that constitute[s] a permanent and/or potential risk to the health of the population, the surrounding ecosystem and property, and which has been abandoned by the responsible party.” (Art. 3.)

In the event of “final cessation or transfer of activities,” the owner of a site must file a closing audit with the enforcement authority. (Art. 8.) The party responsible for the activity that led to the harm will not be released from the obligation to restore if the enforcement authority’s evaluation of the audit shows results suggesting “significant harm to the environment.” (Art. 9.) Only an unequivocal finding to the contrary will release the party. (See Art. 10.)

The Law includes a broad obligation to report: any person who becomes aware of the existence of an environmental liability must report such liability to the government enforcement authority. (Art. 7.) It requires responsible parties to take “urgent measures” in the event of impending or actual environmental harms. (Art. 12), and allows the enforcement authority to order preventive closure of contaminated sites in sufficiently “serious” situations (Art. 13). Penalties are prescribed for violations. (Arts. 14-16.)

The Law mandates that parties undertaking environmentally risky activities procure environmental insurance. (Arts. 19-20.) It also creates a Registry of Environmental Liabilities (*Registro de Pasivos Ambientales*) and a Registry of Professionals (*Registro de Profesionales*). (Arts. 21-22.) Finally, in the enactment decree (*Decreto No. 148*), the governor vetoed several provisions of the Law relating to the creation of a Provincial Environmental Fund. (See Arts. 6, 24-25.)

Reference Sources (in Spanish):

- Ley 14343, modified by Decreto No. 148, published in the Official Bulletin of the Province of Buenos Aires on January 23, 2012
 - Original text of Ley 14343 and Decreto No. 148, available at www.bdlaw.com/assets/attachments/Argentina%20-%20Original%20text%20of%20Ley%2014343%20and%20Decreto%20148.pdf
 - Final text of Ley 14343, available at www.bdlaw.com/assets/attachments/Argentina%20-%20Final%20text%20of%20Ley%2014343.pdf

BRAZIL HIGHLIGHTS

NATIONAL DEVELOPMENTS

IBAMA SETS STANDARDS FOR ENVIRONMENTAL EDUCATION PROGRAMS REQUIRED FOR FEDERAL LICENSING

On March 27, 2012, Brazil’s environmental enforcement agency, IBAMA (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*), issued Normative Instruction No. 2 (the “Regulation”), establishing the technical basis for environmental education programs presented as mitigation or compensatory measures to comply with environmental license conditions (*Estabelece as bases técnicas para programas de educação ambiental apresentados como medidas mitigadoras ou compensatórias, em cumprimento às condicionantes das licenças ambientais*). Under the Regulation, environmental education programs will be required to have two principal components: first, a program directed at the population affected by the facility or activity to be licensed; and second, a program for the workers employed in the facility or activity. The Regulation provides an outline of the process by which such programs must be developed, involving local groups in the elaboration of participatory mitigation projects. IBAMA

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will determine on a case-by-case basis what subject matter must be covered in a given case, depending on the nature of the expected environmental impact. The Regulation applies to facilities and activities licensed by IBAMA (i.e., not by state or municipal agencies), which generally refers to projects of regional significance, such as major hydroelectric dams.

Reference Sources (in Portuguese):

- Normative Instruction No. 2/2012, available at www.bdlaw.com/assets/attachments/Brazil%20-%20IBAMA%20Normative%20Instruction%20No%202%20of%202012.pdf

ABNT RELEASES DRAFT STANDARDS ON CONTAMINATED SITE ASSESSMENTS

In February and March 2012, the Brazilian Association of Technical Standards (*Associação Brasileira de Normas Técnicas*; “ABNT”) released for public comment drafts of Parts 3 and 4 of its series of standards for environmental assessments of contaminated sites (*Avaliação da Qualidade do Solo e Água*). Parts 1 and 2, issued in 2008 and 2011, respectively, cover the initial stages of preliminary survey and confirmatory investigation of contaminated sites.

Draft Part 3, “Evaluation of environmental liability in soil and groundwater” (*Avaliação de passivo ambiental em solo e água subterrânea*), would establish procedures for mapping and predicting the progress of soil or groundwater contamination, including the identification of exposure pathways. Draft Part 4, “Evaluation of human health risks for purposes of contaminated site management” (*Avaliação de risco a saúde humana, para fins de gerenciamento de áreas contaminadas*), would establish procedures for the collection and laboratory analysis of contaminant samples, and the assessment of possible routes of human exposure and consequent risks.

The release of the drafts initiates a 60-day public comment period, after which ABNT may proceed to issue final versions of the standards.

Reference Sources (in Portuguese):

- ABNT Draft Standard 68:000.03, available at www.bdlaw.com/assets/attachments/ABNT%20Draft%20Standard%2068%20000%2003.pdf
- ABNT Draft Standard 68:000.04, available at www.bdlaw.com/assets/attachments/ABNT%20Draft%20Standard%2068%20000%2004.pdf

NEW BILL WOULD REQUIRE THE USE OF RECYCLED MATERIALS IN APPLIANCES AND ELECTRONICS

Bill No. 3472 (the “Bill”), introduced March 19, 2012 in Brazil’s House of Deputies, would make mandatory the use of recycled materials in appliances and electronic products (*Torna obrigatória a utilização de materiais reciclados em produtos eletroeletrônicos e eletrodomésticos*). The Bill would establish minimum recycled content requirements of: 15% for the first five years post-enactment, 25% for the next five years, and 35% for the five years after that. The Bill would additionally require that covered products bear a label claiming recycled content.

Reference Sources (in Portuguese):

- Brazil House Bill No. 3472 of 2012, available at www.bdlaw.com/assets/attachments/Brazil%20-%20PL_3472_20121.pdf



BRAZILIAN STATE DEVELOPMENTS

SÃO PAULO CONTINUES DEVELOPMENT OF PRODUCER TAKE-BACK PROGRAMS

Following its August 2011 issuance of SMA Resolution No. 38, requiring manufacturers and importers of various consumer products to submit end-of-life product management proposals, São Paulo's Environmental Secretariat (*Secretaria do Meio Ambiente*; "SMA") has further advanced its efforts to require producer take-back in Brazil's largest state economy. On February 10, 2012, SMA issued Resolution No. 11, adding service providers for mobile devices to the list of companies subject to take-back requirements. The two resolutions implement provisions of the State Solid Waste Policy Law (No. 12300/2006, Art. 53; *Política Estadual de Resíduos Sólidos*) and its primary regulation (Decree No. 54645/2009, Art. 19) that generally impose post-consumption responsibility on producers of products that may require special management systems to avoid harms to the environment or public health.

On February 28, 2012, SMA signed binding agreements (*termos de compromisso*) with organizations representing four product sectors, formally approving proposals submitted in response to Resolution 38. The four classes of products subject to the agreements are: lubricating oils, pesticides, personal care products, and batteries. In each case, the proponents of the agreements are trade associations representing a significant number of companies that manufacture or import the covered class of products.

Reference Sources (in Portuguese):

- São Paulo SMA Resolution No. 11/2012, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20SMA%20Resolution%2011%20of%202012.pdf
- São Paulo SMA Resolution No. 38/2011, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20SMA%20Resolution%2038%20of%202011.pdf
- São Paulo Law No. 12300/2006, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20Law%2012300%20of%202006.pdf
- São Paulo Decree No. 54645/2009, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20Decree%2054645%20of%202009.pdf

PARANÁ LEGISLATIVE ASSEMBLY AMENDS 2009 LAW REGARDING DISPOSAL OF MERCURY-CONTAINING PRODUCTS

On January 23, 2012, the state of Paraná's Legislative Assembly approved an amendment (*Lei No. 17073*; the "Amendment") to its law regarding the disposal of batteries, fluorescent light bulbs and other mercury-containing products (*Lei No. 16075/2009*; the "Law"). The Amendment imposes fines on retailers of mercury-containing products that do not make receptacles available in-store for such products' proper disposal. The Amendment also requires manufacturers of such products and their Paraná-based commercial representatives to collect mercury-containing products from retailers. This collection requirement expands on the Law's existing requirement that manufacturers adopt appropriate mechanisms for the recycling or final disposal of mercury-containing products.

Reference Sources (in Portuguese):

- Paraná Law No. 16075/2009, available at <http://www.legislacao.pr.gov.br/legislacao/pesquisarAto?action=exibir&codAto=29116&codTipoAto=&tipoVisualizacao=original>
- Paraná Law No. 17073/2012, available at <http://www.legislacao.pr.gov.br/legislacao/pesquisarAto?action=exibir&codAto=29116&codItemAto=257719#257719>



BAHIA COMPLETES PERIOD OF PUBLIC CONSULTATION ON NEW ENVIRONMENTAL LAW

March 14, 2012 marked the end of the period of public consultation on Bahia's new environmental law (*Lei No. 12.377/2011*, the "Law"), which integrates the state's existing environmental law (*Lei No. 10.431/2006*) and water resources law (*Lei No. 11.612/2009*), and incorporates new provisions aimed at streamlining enforcement of environmental regulations.

Among its new provisions, the Law provides for the development of the state's Environmental Information System (*Sistema Estadual de Informações Ambientais*), which is intended to serve as an integrated database containing all the state's environmental monitoring data. The Law also creates two new environmental licenses: the Environmental Adhesion and Commitment License (*Licença Ambiental por Adesão e Compromisso*, the "LAC") and the Regularization License (*Licença de Regularização*, the "LR"). The LAC will be granted for activities of limited environmental impact for which either (a) the extent of environmental impact is already known by the licensing authority, or (b) the licensing authority need not conduct environmental impact studies because the characteristics of the region in which the activities will take place are sufficiently well known, or (c) the activities have been defined by a resolution of the State Environmental Council (*Conselho Estadual do Meio Ambiente*). To obtain a LAC, the license seeker must electronically agree to adhere to development and operational limitations established by the licensing authority. The LR will serve merely to validate activities in existence prior to the implementation of the Law.

The Law was developed by Bahia's Secretary of the Environment (*Secretaria Estadual do Meio Ambiente*) and approved by the state's Legislative Assembly on December 20, 2011.

Reference Sources (in Portuguese):

- Bahia Law No 10431/2006, available at www.bdlaw.com/assets/attachments/Bahia%20Law%20No%2010431%20of%202006.pdf
- Bahia Law No 11612/2009, available at www.bdlaw.com/assets/attachments/Bahia%20Law%20No%2011612%20of%202009.pdf
- Bahia Law No. 12377/2011, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Bahia%20-%20LEI%20N%2012%20377.pdf

RIO DE JANEIRO TAKES STEPS TOWARD GREENHOUSE GAS EMISSION REDUCTION TARGETS

On February 7, 2012, at the 8th Meeting of the Rio Forum on Global Climate Change (*8ª Reunião do Fórum Rio de Mudanças Climáticas Global*), Rio de Janeiro's Secretary of the Environment Carlos Minc, introduced a greenhouse gas abatement cost study that will be used in determining greenhouse gas emission reduction target levels (*metas de redução das emissões*; "Emissions Reduction Targets") for Rio de Janeiro's private industrial sector. At this same meeting, Rio de Janeiro's environmental agency, the State Environmental Institute (*Instituto Estadual do Ambiente*; "INEA") unveiled a form on which companies that emit greenhouse gases (e.g., petrochemical companies, cement companies, steel mills, and other companies that use fossil fuels) are to declare their greenhouse gas emission levels.

Both the study and the declaration form contribute to the development of the carbon credit market on Rio de Janeiro's Green Exchange (*Bolsa Verde*; "Green Exchange"). The Green Exchange was launched in December 2011 as a platform for the trading of environmental assets, including carbon credits. At the meeting, Mr. Minc spoke of the "rules" of the carbon credit market, explaining that companies that outperform their Emissions Reduction Targets will be granted credits which they will be able to sell on the Green Exchange to companies that fall short of their Emissions Reduction Targets. Emissions Reduction Targets for individual



companies have not yet been determined, as companies have been given until April 30, 2012 to file their declaration forms and until June 2012 to submit an inventory of their emissions to INEA.

Reference Sources (in Portuguese):

- INEA Press Releases (Feb. 6, 2012), available at www.bdlaw.com/assets/attachments/INEA%20Press%20Release%20Feb.%206%202012.pdf
- INEA Press Releases (Feb. 8 2012), available at www.bdlaw.com/assets/attachments/INEA%20Press%20Release%20Feb%208%202012.pdf
- Bolsa Verde's website can be found at <http://www.bvrrio.org/>

CHILE HIGHLIGHTS

ENVIRONMENTAL COURT SYSTEM APPROVED

With a unanimous vote on January 19, 2012 Congress sent Bill No. 6747 (*el Proyecto de Ley que crea el Tribunal Ambiental*; the “Bill”) to President Sebastian Piñera, proposing to create an environmental court system in Chile. If signed by the President, the Bill would create three new tribunals, one located in the northern region (Antofagasta), one in the central region (Santiago), and the third in the southern region (Valdivia). As proposed, the environmental courts would have jurisdiction over the following matters:

- Challenges to supreme decrees that establish the primary and secondary rules concerning environmental quality and emissions;
- Reparation claims for environmental damages;
- Complaints against the Superintendency of the Environment;
- Complaints filed against decisions of the Committee of Ministers or the Executive Director;
- Claims filed by natural or legal persons challenging rulings by the Committee of Ministers or the Executive Director, if their observations were not considered in an environmental impact assessment;
- Complaints challenging administrative acts of the Ministers or public services for the execution or implementation of emissions and/or quality standards; and
- Complaints challenging administrative ruling that invalidate an environmental rule or regulation.

Reference Sources (In Spanish):

- Message 595-358, available at www.bdlaw.com/assets/attachments/Chile%20-%20Message%20595-358.pdf

SUPERINTENDENCY OF THE ENVIRONMENT ISSUES EXTENDED PERIOD FOR PARTICIPATION IN VOLUNTARY REPORTING PROGRAM

Responding to public demand, Chile's Superintendency of the Environment opened a second period during which businesses can continue to opt into the voluntary online registration for tracking environmental commitments (*Sistema de Carga Distribuida de Compromisos Ambientales*). The program, initiated in the fall of 2011, has digitized more than 11,000 environmental assessment decisions in Chile, and provided companies with the opportunity to upload their commitments into an online database. Participation in the program allows companies to monitor their own compliance with environmental regulations.

The second period opened on March 5 and will continue through August 3, 2012. During this time, businesses may continue to upload their environmental commitments into the online database.



Reference Sources (in Spanish):

- Chile SMA initiates new compliance period, available at www.bdlaw.com/assets/attachments/Chile%20SMA%20initiates%20new%20compliance%20period.pdf

GOVERNMENT ISSUES NATIONAL ENERGY PLAN FOR 2012 TO 2030

Reaffirming his administration's commitment to developing a sustainable economy while protecting public health and the environment, President Sebastian Piñera released Chile's National Energy Plan for 2012-2030 (*Estrategia Nacional de Energía 2012-2030*) ("the Plan"). The primary focus of the Plan is the development of clean, renewable energy, based on Chile's abundant natural resources, with a particular emphasis on hydropower. Another primary component of the Plan is the continued development of new sources of nonconventional renewable energy (*las energías renovables no convencionales*) ("NCRE").

On the demand side, the Plan sets forth a target of reducing energy consumption in 2020 by 12% of the amount currently projected for that year. To achieve this reduction, the Plan describes a new initiative, "Energy Efficiency Action Plan 2012-2020," with guidelines for energy reduction in the construction, industry, mining, and transportation sectors. The Plan also proposes the following:

- Establishing minimum energy performance standards (MEPS) for products, devices, equipment, and materials that use electricity and will be sold in Chile;
- Energy-efficient residential lighting programs;
- Creating an Interministerial Commission for the development of environmentally efficient policies;
- Financial incentives to encourage the development of NCRE, especially geothermal energy, including subsidies and incentives for pilot programs that advance technology needed for NCRE; and
- A new public institution, the Center for Renewable Energy, which would provide guidance and assistance in developing policies concerning NCRE.

In addition to promoting new technologies, resources, and increased use of existing NCRE, the Plan also outlines strategies for developing a more competitive energy market.

Reference Sources (in Spanish):

- Chile National Energy Plan 2012-2030, available at www.bdlaw.com/assets/attachments/Chile%20National%20Energy%20Plan%202012-2030.pdf

PROPOSAL TO IMPLEMENT CHILE POLLUTANT RELEASE & TRANSFER REGISTRY

With the January 13 conclusion of a 20-day public comment period and subsequent workshops open to the public, the Ministry of Environment issued the final draft of a regulation ("Draft Regulation") to implement the Pollutant Release & Transfer Registry (*el Registro de Emisiones y Transferencias de Contaminantes*; "RETC") Act. The RETC Act was first introduced into Chilean law under Article 70 of Law No. 20,417/2010, which created the Superintendency of the Environment. The RETC is intended to be a publicly accessible database with information on chemicals and pollutants generated by both industrial and nonindustrial sources, released into the environment or transferred for disposal or recycling. Under the Draft Regulation, information on emissions, waste, and/or transfers for disposal or recycling would be reported to the Ministry of Environment, the agency in charge of the RETC.

Notably, the Draft Regulation would require manufacturers and importers to report the quantities of reportable substances transferred from their products through end-of-life disposal. The list of reportable substances would be established by a subsequent rule.



Reference Sources (In Spanish):

- Chile Regulation promulgating Registry, available at www.bdlaw.com/assets/attachments/Chile%20Regulation%20promulgating%20Registry.pdf
- *Obligaciones del Reglamento del Registro de Emisiones y Transferencias de Contaminantes respecto a los RESIDUOS*, available at www.bdlaw.com/assets/attachments/Chile%20PPT%20Registry%202.pdf

COLOMBIA HIGHLIGHTS

CONGRESS PROPOSES NEW ENVIRONMENTAL TAXES AMONG CHANGES TO GENERAL ENVIRONMENTAL LAW

The Colombian Congress has approved changes to its General Environmental Law (No. 99/1993) in a bill (the “Bill”) that would create several new advisory bodies to the Ministry of the Environment and impose new taxes for use of natural resources. Among the new taxes would be a 1% surcharge on water use and 6% of gross sales from for hydroelectric energy. The environmental advisors would include: the Interinstitutional Environmental Council (*Consejo Interinstitucional Ambiental*), the Assembly of Mayors (*Asamblea de los Alcaldes*) and the Counsel of Autonomous Regional Corporations (*Corporaciones Autónomas Regionales*; “CARs”). The Bill outlines specific authorities and jurisdiction of the CARs and their Directors, clarifying jurisdiction over marine environments (for coastal CARs). The Bill also includes new measures to protect indigenous and ethnic communities to ensure their participation in environmental issues.

Reference Sources (In Spanish):

- *Proyecto Ley ___Por Medio de la Cual se Modifican Parcialmente los Títulos II, VI, VIII, IX y XVI de la Ley 99 de 1993 y Se Dictan Otras Disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Proyecto%20de%20ley%20Feb%202012.pdf

COLOMBIA FINALIZES RULES ON PCB-CONTAMINATED EQUIPMENT

Implementing commitments under the Stockholm Convention, the Ministry of the Environment has published its final resolution on PCB-containing equipment, *Resolución No. 0222* (the “Resolution”), *por la cual se establecen requisitos para la gestión ambiental integral de equipos y desechos que consisten, contienen o están contaminados con Bifenilos Policlorados (PCB)*. The Resolution requires “possessors” of PCB-containing or contaminated equipment to test, label and inventory such items. The Resolution also provides guidance on sampling, testing, storage, handling, transport, recovery and disposal of PCBs and PCB-containing equipment. Finally, it sets out staggered deadlines calling for elimination of PCB-contaminants by 2028 and a ban on use of PCB-containing equipment or materials by 2025 (among other bans).

Reference Sources (In Spanish):

- *Por la cual se establecen requisitos para la gestión ambiental integral de equipos de desechos que consiste, contienen or están contaminados con Bifenilos Policlorados (PCB)*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Resolucion%200222%20PCBs.pdf

MINISTRIES OF COMMERCE AND ENVIRONMENT PUBLISH TECHNICAL STANDARDS FOR CERTAIN BATTERIES

New standards regulating batteries are now in place in Colombia, under Resolución No. 172 (the “Resolution”), *por la cual se expide el reglamento técnico aplicable a pilas de zinc-carbón y alcalinas que se importen o fabriquen para su comercialización en Colombia*. The Resolution establishes labeling requirements as well as maximum content limits for mercury, cadmium and



lead in zinc-carbon and alkaline batteries, with the exception of rechargeable and button cells. (Art. 2, 4.) The Resolution does not apply to battery-containing products. (Art. 4.)

To sell covered batteries in Colombia, manufacturers and importers must enroll in the national registry of manufacturers and importers subject to technical standards and must certify that their batteries in Colombia, are below the applicable thresholds in accordance with Colombian sampling and testing methods. (Arts 8, 21.) The Resolution anticipates acceptance of tests conducted by foreign laboratories, to be validated by a Colombian-accredited certification body. (Art 9(b).) The Resolution goes into effect six months after its publication date, January 26, 2012.

Reference Sources (In Spanish):

- *Resolución No. 172, Por la cual se expide el reglamento técnico aplicable a Pilas de Zinc-Carbón y Alcalinas que se importen o fabriquen para su comercialización en Colombia*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Resolucion%2001722012RTPilas.pdf

BOGOTÁ STANDARDS STATIONARY SOURCE AIR EMISSIONS STANDARDS NOW FINAL

As reported in the most recent edition of the Latin American Region Environmental Quarterly, the City of Bogotá proposed new stationary source air emission standards for facilities located within city boundaries. See <http://www.bdlaw.com/news-1050.html>. That proposal is now final.

Reference Sources (In Spanish):

- *Resolución 6982 de Diciembre de 2011 d la SDA sobre prevención y control de contaminación atmosférica por Fuentes fijas y protección de la calidad del aire en el distrito capital*, available at www.bdlaw.com/assets/attachments/Colombia%20-%206982%20aire%20bogota.pdf

COSTA RICA HIGHLIGHTS

COSTA RICA PUBLISHES PROPOSED INTEGRATED WASTE MANAGEMENT REGULATIONS

In January 2012, Costa Rica's Ministry of Health published a draft executive decree ("Draft Decree") proposing regulations to implement the Integrated Waste Management Law (*Ley para la Gestión Integral de Residuos*, No. 8839, June 24, 2010, or "Law"). The Draft Decree includes guidelines for a national waste policy and waste management plans at the national, municipal, generator, and sectoral levels. (Draft Decree, Ch. IV, Secs. I-IV.) Sectoral plans would be designed for particular economic sectors and would be voluntary. (Art. 2.) The Draft Decree also details how the Integrated Waste Management Fund (*Fondo para la Gestión Integral de Residuos*) established by the Law would be managed and distribute its resources. (Ch. VIII). Other proposed provisions would address government procurement (Ch. IX), registration of waste managers (Ch. X), and transboundary movement of wastes (Ch. XI), prescribing procedures for the export of hazardous waste (Arts. 54-58) and the export and import of "recoverable" waste ("*residuos valorizables*") (Arts. 59-60).

Reference Sources (in Spanish):

- *Decreto Ejecutivo No. __ (Reglamento General a la Ley para la Gestión Integral de Residuos)*, made available for public comment by Ministry of Health in January 2012, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Integrated%20Waste%20Management.pdf
- *Ley para la Gestión Integral de Residuos*, No. 8839, June 24, 2010 (published July 13, 2010),

available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Integrated%20Waste%20Management%20Law.pdf

COSTA RICA PUBLISHES DRAFT OF PROPOSED REFORMS TO E-WASTE REGULATIONS

On February 22, 2012, Costa Rica's Ministry of Health ("Ministry") published a draft executive decree ("Draft Decree") proposing reforms to the 2010 electronic waste regulation (*see Reglamento para la Gestión Integral de los Residuos Electrónicos*, No. 35933 S, Feb. 12, 2010 ("E Waste Regulation")) and inviting public comments within 10 days. The Draft Decree would authorize the Ministry to expand the list of equipment covered by the E Waste Regulation (Revised Art. 10, *see* E Waste Regulation, Annex I) and would revise key definitions, expanding "marketer" (*comercializador*) to include virtually any party that places covered equipment on the market (Revised Art. 3(c)) and narrowing "producer" (*productor*) to exclude persons who bring electronic equipment into the country for their personal, non-commercial use (Revised Art. 3(n)). Finally, the Draft Decree would require the Ministry to monitor and control the export of e waste. (New Art. 20.)

Reference Sources (in Spanish):

- *Decreto Ejecutivo No. __ (Reforma al Reglamento para la Gestión Integral de los Residuos Electrónicos)*, made available for public comment by Ministry of Health on February 22, 2012, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Proposed%20EWaste%20Regs.pdf
- *Reglamento para la Gestión Integral de los Residuos Electrónicos*, No. 35933-S, February 12, 2010 (published May 5, 2010), available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Decree%2035933%20S.pdf

MEXICO HIGHLIGHTS

MEXICO RATCHETS UP ENVIRONMENTAL PROTECTIONS FOR MINING STANDARDS

In two recently issued Official Mexican Standards (*Normas Oficiales Mexicanas*; "NOMs"), SEMARNAT, Mexico's national environmental agency, has set new rules for protecting the environment during mining activities.

The first standard, NOM-120-SEMARNAT-2011, imposes restrictions on direct mining activities and applies to mining conducted in the following zones: agriculture, livestock and uncultivated zones, dry and temperate zones of xerophytic bush vegetation (*matorral xerófilo*), tropical and deciduous forests, and coniferous and evergreen forest. Radioactive mining and mining in protected natural areas are excluded from the scope. (Art 1.) The NOM is structured to include general and specific measures, although it is largely oriented to establishing best practices for mine construction activities (boring, access roads, encampments, wells, mine entrance, and ditches). Among the more notable prescriptions, post-development revegetation must be completed with measures to guarantee a 95% survival rate. (Art. 4.1.19.) The NOM will take effect 60 days after its publication in the *Diario Oficial*, March 13, 2012.

During the same timeframe, Mexico has also finalized rules for copper mineral leaching through NOM-159-SEMARNAT-2011. The NOM applies to copper leaching activities conducted on slabs and on the ground, but not *in situ* mining. New standards are provided for classification and management of hazardous waste, and acid drainage (waste sampling protocols are provided in extensive annexes). (Art. 5.2.) Other standards outline requirements for mining site characterizations and environmental impacts to forests, soils and aquifers (Arts. 5.3, 5.4, 5.5.);



site construction (5.6), control (5.7), and closure (5.8), including monitoring and post-closure monitoring. The NOM will take effect 60 days after its publication in the *Diario Oficial*, March 2, 2012.

Reference Sources (In Spanish):

- *NOM-120-SEMARNAT-2011, Que establece las especificaciones de protección ambiental par alas actividades de exploración minera directa, en zonas agrícolas, ganaderas or eriales y en zonas con climas secos y templados en donde se desarrolle vegetación de matorral zerófilo, bosque tropical caducifolio, bosques de coníferas o encinos*, available at www.bdlaw.com/assets/attachments/NOM-120-SEMARNAT-2011.pdf
- *NOM-159-SEMARNAT-2011, Que establece los requisitos de protección ambiental de los sistemas de lixiviación de cobre*, available at www.bdlaw.com/assets/attachments/NOM-159-SEMARNAT-2011.pdf

MEXICO MOVES FORWARD WITH NEW ENERGY EFFICIENCY STANDARDS

Mexico’s National Rulemaking Committee for the Preservation and Responsible Use of Energy Resources (*Comité Consultivo Nacional de Normalización para la Preservación y Uso Racional de los Recursos Energéticos*; the “Committee”) has issued an energy efficiency standard for domestic refrigerators (*NOM-015-ENER-2012*, the “Refrigerator Standard”) and proposed new technical and energy efficiency standards for light emitting diode (“LED”) lamps (*PROY-NOM-030-ENER-2011*, the “Proposed LED Standard”).

The new standards establish performance, testing and labeling specifications for refrigerators and LED lamps produced or marketed in Mexico. The Refrigerator Standard replaces an existing standard issued in 2003 (*NOM-015-ENER-2002*) and sets forth specifications for maximum allowable energy consumption by refrigerator type. The Proposed LED Standard sets forth specifications for, among other things, minimum luminous efficiency, the correlation of luminous efficiency and color temperature, resistance to thermal shock, tolerance of surge voltage, and allowable degradation of technical performance over the lifespan of LED lamps. Both standards provide prescriptions for product testing, maximum thresholds for performance deviations, and labeling specifications.

The Refrigerator Standard was published in the *Diario Oficial* on February 1, 2012 and will take effect 90 days after its publication. The Proposed LED Standard was published in the *Diario Oficial* on January 20, 2012, remained open for public comment until March 20, 2012 and will take effect within 60 days of being published in final form.

Reference Sources (In Spanish):

- Proposed LED Standard, *PROY-NOM-030-ENER-2011*, available at www.bdlaw.com/assets/attachments/PROY-NOM-030-ENER-2011.pdf
- Refrigerator Standard, *NOM-015-ENER-2012*, available at www.bdlaw.com/assets/attachments/NOM-015-ENER-2012.pdf

NEW REVISIONS TO HAZARDOUS MATERIALS TRANSPORTATION STANDARDS ADOPTED

Mexico continues its work to update its national hazardous materials transportation standards, which generally follow those of the UN. Two new standards have been updated:

- *NOM-029-SCT2/2011*, adopts UN standards applicable to Intermediate Bulk Containers (“IBCs”). These requirements specify construction and reconstruction of IBCs destined for transport of hazardous substances, materials, and wastes, providing characteristics for classification and designation codes, as well as specifications for construction, testing, certification, marking, and certain usage standards.

- *NOM-002-SCT/2011*, List of Most Commonly Transported Hazardous Materials and Substances (*NOM-002-SCT/2011*). The NOM provides for identification and classification for the most commonly transported hazardous materials and wastes, including limited quantity exemptions, and instructions on packaging and containers.

Both standards went into effect 60 days after their publication and are now in force.

Reference Sources (In Spanish):

- *NOM-02-SCT2-2011*, *Listado de las sustancias y materiales peligrosos más usualmente transportados*, available at www.bdlaw.com/assets/attachments/NOM-002-SCT-2011.pdf
- *NOM-029-SCT2/2011*, *Especificaciones para la construcción y reconstrucción de Recipientes Intermedios para Graneles (RG), destinados al transporte de sustancias, amterials y residuos peligrosos*, available at www.bdlaw.com/assets/attachments/NOM-029-SCT2-2011.pdf

PERU HIGHLIGHTS

PERU INTENSIFIES EFFORTS TO COMBAT ILLEGAL MINING

During the first few months of 2012, the Peruvian Government passed a series of decrees to combat illegal mining in the Madre de Dios region, and to establish a legal framework under which current practices can be formalized. Supreme Decree No. 006-2012-EM, “Approving methods to formalize mining activities in areas covered by Decree No. 1100, Annex 1” (*Aprueban medidas complementarias para la formalización de la actividad minera en las zonas comprendidas en el anexo 1 del Decreto Legislativo N° 1100*) provides the foundation for regulations that focus on transforming illegal mining practices into regulated, legal activities. Decree No. 1100 (*Interdicción de la Minería Ilegal en Todo*) establishes methods for combatting illegal mining practices. Decree No. 1101 (*Medidas para el Fortalecimiento de la Fiscalización Ambiental*) increases government authority to counter illegal mining operations. Decree No. 1102 (*Incorporación al Código Penal Delitos de Minería Ilegal*) criminalizes illegal mining, and focuses in particular on activities of organized crime organizations and government officials who facilitate illegal mining.

The final regulation in the series, Decree No. 1103 (*Medidas de Control y Fiscalización en la Distribución, Transporte y Comercialización de Insumos Químicos*), establishes measures for controlling and supervising the distribution, transportation, and marketing of chemicals used in illegal mining. The initial focus is on regulating mercury, potassium cyanide, sodium cyanide, and hydrocarbons, but Decree No. 1103 provides the Ministry of Energy and Mines with the authority to add to this list. Peru’s custom’s agency (*Superintendencia Nacional de Aduanas y de Administración Tributaria*; “SUNAT”) was named as the lead agency in charge of controlling and taxing the import, shipment, sale, and export of chemicals regulated by Decree No. 1103.

In addition to the domestic initiatives, in late March, Peru signed a multilateral declaration with Ministers from Bolivia, Brazil, Colombia, Ecuador, Guyana, Surinam, and Venezuela, affirming their commitment to work together to eradicate illegal mining.

Reference Sources (in Spanish):

- Supreme Decree No. 006-2012-EM, available at www.bdlaw.com/assets/attachments/Peru%20-%20Supreme%20Decree%20006-2012.pdf
- Decree No. 1100, available at www.bdlaw.com/assets/attachments/Peru%20-%20Decree%201100.pdf
- Decree No. 1101, available at www.bdlaw.com/assets/attachments/Peru%20-%20Decree%201101.pdf
- Decree No. 1102, available at www.bdlaw.com/assets/attachments/Peru%20-%20Decree%201102.pdf





- Decree No. 1103, available at www.bdlaw.com/assets/attachments/Peru%20-%20Decree%201103.pdf
- Press Release: Countries Unite to Combat Mining, available at www.bdlaw.com/assets/attachments/Peru%20-%20Countries%20unite%20to%20combat%20illegal%20mining.pdf

MINISTRY OF THE ENVIRONMENT ACCEPTS PUBLIC COMMENTS ON FACEBOOK

Embracing social media, the Ministry of Environment is experimenting with the acceptance of rule-making comments through Facebook. In addition to the traditional method of submitting comments, for a 48-hour period, March 28-30, 2012, the public was able to go to the Ministry's Facebook page and comment on proposed Law No. 29811 (*Ley de Moratoria de Transgénicos*), the 10-year moratorium on Living Modified Organisms and Genetically Modified Organisms. The traditional comment period closed on April 7, 2012.

Reference Sources (in Spanish):

- Peru Public Comments via Facebook, available at www.bdlaw.com/assets/attachments/Peru%20-%20Public%20Comments%20via%20Facebook.pdf

PUERTO RICO HIGHLIGHTS

PUERTO RICO ADOPTS LAW AUTHORIZING ENERGY-SAVING GOVERNMENT CONTRACTS

On January 17, 2012, Puerto Rico enacted a law (*Ley 19 2012* or “Act”) allowing the government to enter into specialized contracts designed to promote energy efficiency and the use of renewable energy while reducing the commonwealth's dependence on and the environmental impacts of oil used for power generation. The law, entitled the Energy Savings Performance Contracts Act (*Ley de Contratos de Rendimiento Energético*), allows government entities to enter into contracts with “Qualified Energy Savings Companies” that are authorized by the Energy Affairs Administration (*Administración de Asuntos Energéticos*) as having specialized knowledge in energy conservation, energy efficiency, renewable energy, and water conservation and use. (Secs. 1.4(12), 2.3.) Through these contracts, known as “energy savings performance contracts,” the companies help the government implement energy-efficiency measures and the government benefits from the resulting cost savings. (Act, Sec. 1.4(5).)

Before entering into a contract, the company must conduct an energy audit of the government unit and provide estimated savings projections. (Sec. 2.6.) Once the contract is in place, the company must provide quarterly reports to the government on the savings achieved from the efficiency measures implemented. (Sec. 2.11.) Among other things, the Act also contains provisions on financing, payment schedules, and permissible length of the term of the contract (15 years maximum). (Secs. 2.12-14.)

Reference Sources (in Spanish and English):

- Ley 19-2012 (*Ley de Contratos de Rendimiento Energético*), approved on January 17, 2012
 - Spanish version, available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Energy%20Efficiency%20Law%20Sp.pdf
 - English version, available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Energy%20Efficiency%20Law%20Eng.pdf



U.S. COURT OF APPEALS DISMISSES LAWSUIT BY VIEQUES RESIDENTS ALLEGEDLY INJURED BY POLLUTION FROM NAVY TRAINING EXERCISES

On February 14, 2012, the U.S. Court of Appeals for the First Circuit dismissed tort claims brought by several thousand residents of the Puerto Rican island of Vieques, who alleged that they had been harmed by hazardous and toxic waste emitted by the U.S. Navy during the several decades that it conducted training exercises on the island. The Navy's operations included live-munitions training (including with depleted uranium bullets) and other combat-simulation exercises as well as the incineration and detonation of unused ordnance. Pursuant to the Federal Tort Claims Act ("FTCA"), the 7,125 named plaintiffs asserted various causes of action under Puerto Rico law against the United States. Among the claims was that the government negligently failed to warn the plaintiffs about the pollution. The plaintiffs also claimed that the Navy's actions violated the Clean Water Act ("CWA"), various federal permits, and internal regulations and policies.

The court dismissed the lawsuit for lack of jurisdiction on two principal grounds. As to the CWA-related claims, the court found that "Congress did not intend that the CWA authorize civil tort actions against the federal government for damages." (Opinion at 18.) As to the other claims, the court found that they were barred by the "discretionary function exception" to the FTCA, "which precludes FTCA actions against government conduct which is both within the discretion of the relevant government party and susceptible to policy-related judgments." (*Id.* at 4.) The court held that the Navy's challenged conduct on Vieques constituted an exercise of its discretion, and noted the great deference courts must give to the military in weighing competing interests between "secrecy and safety, national security and public health." (*Id.* at 32, 38.)

The court nevertheless noted the "serious health concerns" raised by the plaintiffs' claims, and took the unusual step of directing the court clerk to send a copy of its opinion to the leadership of the House of Representative and the Senate. (*Id.* at 39.) In addition, Circuit Judge Juan R. Torruella, a Puerto Rican native, wrote a stinging dissent in which he faulted the majority's reasoning and placed it in the context of the "turbulent history" of the U.S. government's relationship with Vieques and a neighboring island, Culebra. (*Id.* at 40.)

Reference Sources (in English):

- *Sánchez v. United States*, No. 10-1648 (1st Cir. Feb. 14, 2012), available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Sanchez%20v%20United%20States.pdf

SUPREME COURT OF PUERTO RICO DENIES STANDING TO PARTIES CHALLENGING APPROVAL OF ENVIRONMENTAL IMPACT STATEMENT FOR GAS PIPELINE PROJECT

On March 21, 2012, the Supreme Court of Puerto Rico (*Tribunal Supremo de Puerto Rico*) denied standing to a number of individuals and community groups challenging the government's approval of an environmental impact statement ("EIS") for a controversial proposed gas pipeline project. The pipeline, known as Vía Verde, would traverse the island from Peñuelas in the south to Arecibo in the north, then extend east to San Juan. The project is subject to an expedited governmental review process (including environmental review) due to a declared state of emergency with respect to Puerto Rico's electricity generation infrastructure, which is highly dependent on imported oil.

The agency proposing the pipeline, the Electric Power Authority (*Autoridad de Energía Eléctrica*) prepared an EIS for the project, which was approved by the Environmental Quality Board (*Junta de Calidad Ambiental*; "JCA"). The citizens and groups challenging the project—which included farmers and other landowners whose property might be affected by the pipeline—sought judicial review of the JCA's decision to approve the EIS. In *Lozada Sánchez v. Autoridad*



de Energía Eléctrica, 2012 T.S.P.R. 50, 184 D.P.R. __ (2012), the Supreme Court held that the challengers lacked standing (*legitimación activa*) to challenge the JCA’s decision because they were not “adversely affected” by the approval of the EIS. The Court reasoned that the challengers did not suffer “actual, concrete, and tangible” injury because the approval of an EIS is merely a “planning tool” that does not constitute approval or disapproval of the project itself. Accordingly, the Court dismissed the citizens’ lawsuit.

Reference Sources (in Spanish):

- *Lozada Sánchez v. Autoridad de Energía Eléctrica*, 2012 T.S.P.R. 50, 184 D.P.R. __ (2012) (Supreme Court of Puerto Rico/Tribunal Supremo de Puerto Rico), available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Lozada%20Sanchez%20v%20AEE.pdf

URUGUAY HIGHLIGHTS

PRESIDENT APPROVES URUGUAYAN SAVINGS AND ENERGY EFFICIENCY TRUST

On March 22, 2012, Uruguayan President, Jose Mujica, issued Decree No 86/012, approving the Uruguayan Savings and Energy Efficiency Trust (*Fideicomiso Uruguayo de Ahorro y Eficiencia Energetica*; the “Trust”). The Trust was initially created on December 29, 2011 by the Ministry of Finance (*Ministerio de Economía y Finanzas*), the Ministry of Industry (*Ministerio de Industria, Energía y Minería*) and the National Development Corporation (*Corporación Nacional para el Desarrollo*; “CND”) with the aims of promoting energy efficiency in Uruguay. The CND will manage the Trust with the objective of, among other things, financing investments in energy efficiency programs, promoting research and development in the renewable energy field, and financing energy efficiency education campaigns. The Trust will be principally funded by utility companies, including the National Administration of Fuel (*Administración Nacional de Combustible, Alcohol y Portland*) and the National Administration of Power Stations and Transmitters (*Administración Nacional de Usinas y Transmisiones Electricas*), each of which will contribute to the Trust approximately 0.13% of their total annual energy revenues.

Reference Sources (in Spanish):

- Uruguay - Decreto Fideicomiso, available at www.bdlaw.com/assets/attachments/Uruguay%20-%20Decreto%20Fideicomiso.pdf

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