

LATIN AMERICAN REGION

ENVIRONMENTAL QUARTERLY



JANUARY 2011

NOTES FROM THE LATIN AMERICAN PRACTICE GROUP

Greetings from the Latin American Practice Group! We are pleased to provide you our Latin American Region Environmental Quarterly, now in its third year of publication. Regulatory activity in nearly every jurisdiction and across a broad range of environmental media remains dynamic and 2011 can be expected to keep the pace of the past few years.

This installment highlights the following major regional developments:

- **Waste Policy and Management.** *Venezuela* passes a historic national waste management law that calls for progressive new waste management standards and reverse logistics programs for products. *Brazil* keeps the press and moves forward with a regulation implementing its watershed national waste policy. *Chile* vets a draft version of a new national waste management law, expected to be proposed in 2011. *Costa Rica* proposes a hazardous waste regulation to implement its National Solid Waste Law.
- **Water Quality and Quantity.** *Colombia* issues a new water quality regulation and proposes a series of progressive new point source wastewater discharge standards for industrial and domestic sources. *Brazil* authorizes states to monitor use of federal water resources. *Argentina's* glacier protection law is challenged.
- **Climate Change and Air Quality.** *Peru* adopts a national Climate Change Plan and *Brazil* implements its federal climate policy law requiring greenhouse gas reductions. *Brazilian states* continue to press forward with state climate change laws, *Rio Grande do Sul* the most recent among them. *Ecuador* proposes a national strategy for participation in the U.N. REDD+ Program. *Chile* moves forward with air quality laws, adopting two new standards for fine particulate matter and for thermoelectric plants.
- **Sustainability and Energy Efficiency.** The Region has begun to fully embrace sustainability and alternative fuels initiatives. *Argentina* releases a report on the state of the Biodiesel Industry. A *Colombian* bill would create a voluntary corporate social responsibility certification program and *Mexico* proposes a voluntary ecolabeling program. *Uruguay* adopts governmental green procurement rules requiring registration of packaging waste management plans.

Note: Please know that the Quarterly is designed to capture major developments and emerging regional trends and is not intended to not provide comprehensive coverage of all environmental initiatives.

ARGENTINA HIGHLIGHTS

REGULATION FOR INCANDESCENT LIGHT BULB BAN ADOPTED

Argentina has adopted the implementing regulations for its law banning import and sale of incandescent lamps for residential use. (*Ley 26.473* or "Law"). Under the Law, the import and



Practice Group Members

Texas Office

98 San Jacinto Boulevard
Suite 1820
Austin, TX 78701

Madeleine B. Kadas
mkadas@bdlaw.com

Lydia G. Gromatzky
lgromatzky@bdlaw.com

Washington, DC Office

1350 I Street, NW
Suite 700
Washington, DC 20005

Paul E. Hagen
phagen@bdlaw.com

Russell N. Fraker
rfraker@bdlaw.com

K. Russell LaMotte
klamotte@bdlaw.com

California Office

456 Montgomery Street
Suite 1800
San Francisco, CA 94104

Nicholas W. van Aelstyn
nvanaelstyn@bdlaw.com

New York Office

477 Madison Avenue
15th Floor
New York, NY 10022

Daniel M. Krainin
dkrainin@bdlaw.com

In collaboration with
Melissa Owen, ambientelegal
mowen@ambientelegal.com



sale of these lamps would have been prohibited on or after December 31, 2010. (Law, Art. 1) However, under the regulation, manufacturers and distributors will have additional time to clear inventories of existing stock. (*Decreto 2060/2010, Excepción a la prohibición de importar y comercializar lámparas incandescentes dispuest por la Ley No. 26.473* or “Decree”) In particular, lamps made or imported before December 31, 2010 may continue to be sold until May 31, 2011. (Decree, Art. 3) To avoid imposing unwarranted costs on makers of appliances such as refrigerators and microwave ovens that include such bulbs for interior lighting purposes, the Decree also excludes bulbs of either 25 watts or less or 50 volts or less from the scope of the ban. (Decree, Art. 1)

Reference Sources (in Spanish):

- Law 26.473, available at www.bdlaw.com/assets/attachments/Argentina%20-%20Ley%2026-473.pdf
- Decree 2060/2010, available at www.bdlaw.com/assets/attachments/Argentina%20-%20Decreto%202060-2010.pdf

IMPLEMENTATION OF GLACIER PROTECTION LAW CHALLENGED

Implementation of the glacier protection law, (*Ley 26.639, Régimen de Presupuestos Mínimos para la Preservación de los Glaciares y del Ambiente Periglacial* or “Law”), passed by the Argentine Congress in September of last year, was recently blocked by a federal court in San Juan Province. Among other things, the Law bans mining and industrial activities on or around the country’s glaciers, which are declared as “strategic fresh water reserves.” (Law, Arts. 1 and 6) The court’s injunction, requested by various mining associations and unions on grounds that the Law violates the province’s authority with respect to its natural resources, blocks implementation of the law in San Juan Province, the location of major mining ventures. Additional litigation is likely to ensue as Chile endeavors to strike the appropriate balance between protection of its glaciers and mining activities -- the country’s largest industry.

Reference Sources (in Spanish):

- Glacier Protection Law, , available at www.bdlaw.com/assets/attachments/Argentina%20-%20Glacier%20Law%20Suspension.pdf
- Injunction issued by Judge Miguel Angel Gálvez of Federal Court No. 1 in the Province of San Juan, available at www.bdlaw.com/assets/attachments/Argentina%20-%20Injunction%20issued%20by%20Judge%20Miguel%20Angel%20Galvez.pdf

ARGENTINE CHAMBER OF RENEWABLE ENERGY RELEASES REPORT ON STATE OF BIODIESEL INDUSTRY

The Argentine Chamber of Renewable Energy has released a report on the state of the biodiesel industry in the country. (*Cámara Argentina de Energías Renovables, Estado de la Industria Argentina de Biodiesel, Enero 2011* or “Report”) The Report notes the rapid increase in biodiesel capacity in the country tying its success to an abundance of raw materials, efficiencies in production and a favorable regulatory framework. Based on available information, Argentina’s 2010 production is behind only that of Germany, France and Brazil. With the scheduled opening of two new biodiesel plants in Argentina’s Santa Fe province, where 80% of the country’s biodiesel is produced, an additional 24% growth in capacity is anticipated in 2011.

Reference Sources (in Spanish):

- Argentine Chamber of Renewable Energy, Report on State of Argentine Biodiesel Industry (January 2011), Ministry of Environment Press Release (January 18, 2011) available at http://www.argentinarenovables.org/informes_estudios_ensayos.php.



BRAZIL HIGHLIGHTS

NATIONAL DEVELOPMENTS

REGULATION TO NATIONAL SOLID WASTE LAW ISSUED

On December 23, 2010, a week before leaving office, President Luiz Inácio Lula da Silva signed Decree No. 7404 (the “Decree”), the implementing regulation to Brazil’s National Solid Waste Policy Law (“*Política Nacional de Resíduos Sólidos*”; Law No. 12305; the “Law”). The Decree establishes the bodies that will oversee the programs and processes envisioned in the Law. For general oversight of the elaboration of solid waste policy throughout Brazil, the Decree creates the Interministerial Committee of National Solid Waste Policy (*Comitê Interministerial da Política Nacional de Resíduos Sólidos*), composed of representatives of twelve federal agencies. (Arts. 3, 4) To supervise the formation of producer take-back programs, termed “reverse logistics,” whereby manufacturers and importers must manage their end-of-life products, the Decree creates the Orientation Committee for Implementation of Reverse Logistics Systems (*Comitê Orientador para Implantação de Sistemas de Logística Reversa*). (Art. 33)

In the same public event, President Lula also signed Decree No. 7405, instituting the Pro-Catador Program (*Programa Pró-Catador*), which is intended to assist the development of cooperatives of “catadores,” a socially disadvantaged class of Brazilians who traditionally have made a living picking usable or recyclable items from disposal sites. The enfranchisement of the nation’s approximately one million catadores was prominent among Lula’s motivations to act on the issue of solid waste during his presidency, and the Law assigns them a special status in the management and recycling of wastes. The Pro-Catador Program provides a formal mechanism for channeling resources to enable catadores to form organizations and purchase the equipment necessary to operate as industrial recyclers.

Reference Sources (in Portuguese):

- Law No. 12305 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20Law%2012305%20of%202010.pdf
- Decree No. 7404 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%207404%20of%202010.pdf
- Decree No. 7405 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%207405%20of%202010.pdf

BRAZIL IMPLEMENTS FEDERAL CLIMATE POLICY LAW REQUIRING GREENHOUSE GAS REDUCTION TARGETS

On December 9, 2010, President Luiz Inácio Lula da Silva signed Decree No. 7390 (the “Decree”), the implementing regulation of Law No. 12187, the National Climate Change Policy (*Política Nacional sobre Mudança do Clima*; the “Law”). The Decree sets a nationwide target for annual greenhouse gas emissions of 2.1 billion tons of CO₂ equivalents (“CO₂e”) by 2020, as compared to the current 2020 projection of 3.2 billion tons CO₂e, entailing a reduction of 1.1 billion tons CO₂e. (Arts. 5, 6) To reach this goal, the Decree creates a process for developing action plans to reduce the deforestation rates in the Amazon Basin by 80% and in the cerrado, the savanna brushland that covers much of central Brazil, by 40%, and to restore 35 million hectares of degraded land. (Art. 6)

The Decree sets a deadline of December 15, 2011, for each of twelve major greenhouse gas-producing sectors of the Brazilian economy, including power generation, mining, chemical production and consumer goods, to submit action plans for emissions reductions. (Art. 4) The plans must set targets, outline actions to be taken, define indicators, and propose instruments of regulation and incentives to implement the plans. The plans will be developed through public



consultation with affected industries, and the resulting targets may form the basis for emissions credit trading through the Brazilian Emissions Reduction Market (“*Mercado Brasileiro de Redução de Emissões*”) envisioned in the Law.

Reference Sources (in Portuguese):

- Law No. 12187 of 2009, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%207405%20of%202010.pdf
- Decree No. 7390 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20Law%2012305%20of%202010.pdf



BRAZIL AUTHORIZES STATES TO MONITOR USE OF FEDERAL WATER RESOURCES

Brazil’s National Water Agency (*Agência Nacional de Águas*; “ANA”) has enlisted state agencies and state police to help enforce its water use regulations. On November 29, 2010, ANA issued Resolution No. 662 (the “Resolution”), establishing enforcement procedures for use of federal water resources (*fiscalização do uso de recursos hídricos em corpos d’água de domínio da União*). In Brazil, the federal government has jurisdiction over rivers and other water bodies that pass through more than one state or between Brazil and a neighboring country, and the states control water bodies that lie exclusively within their boundaries.

The Resolution empowers state authorities to investigate water use and report infractions to ANA (Art. 3), and repeals a 2002 resolution (No. 82) that had required ANA to conduct all such investigations. ANA retains exclusive authority to administer penalties (Art. 4), which increase under the Resolution: from R\$600 to R\$1,000 or R\$3,000 (depending on the hydrographic basin) for first offenses (Art. 25). The principal infractions are use of federal water resources without an ANA license, exceeding the use permitted under an ANA license, and discharging effluents beyond permitted quantities. (Arts. 19-21)

Reference Sources (in Portuguese):

- ANA Resolution No. 662 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20ANA%20Resolution%20662%20of%202010.pdf

U.S. EPA AUTHORIZES BRAZILIAN AGENCY INMETRO TO CERTIFY ENERGY STAR PRODUCTS

Brazil’s National Institute of Metrology, Standardization and Industrial Quality (*Instituto Nacional de Metrologia, Normalização e Qualidade Industrial*; “INMETRO”) announced on December 28, 2010, that it has received recognition from the U.S. Environmental Protection Agency to accredit laboratories and tests of products for qualification under the Energy Star program. The recognition of INMETRO took effect on January 1, 2011, allowing Brazil to certify products in 60 categories as compliant with applicable energy efficiency standards.

Reference Sources (in Portuguese):

- INMETRO Press Release: http://www.inmetro.gov.br/noticias/verNoticia.asp?seq_noticia=3164

BRAZILIAN STATE DEVELOPMENTS

SÃO PAULO REQUIRES LABELING OF PRODUCTS WITH TRANSGENIC CONTENTS

On December 16, 2010, São Paulo enacted Law No. 14274 (the “Law”), on the labeling



of transgenic products (*rotulagem de produtos transgênicos*) intended for human or animal consumption or for use in agriculture. The Law requires that products offered for sale in the state be labeled as “transgenic” if they contain 1% or more transgenic organisms. (Art. 1)

The Law is similar to federal Decree No. 4680/2003 (the “Decree”), but is somewhat broader in scope and imposes additional requirements. Whereas the Decree applies only to food products and animal feed when marketed to consumers, the Law further applies to products used in agriculture and to products when transported within São Paulo. (Art. 3) The Law also adds tracking and record-keeping requirements not present in the Decree; invoices must identify transgenic products, and producers and suppliers must retain invoices of all purchases and sales of transgenic seeds for five years to facilitate enforcement. (Arts. 1, 6)

Reference Sources (in Portuguese):

- São Paulo Law No. 14274 of 2010, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20Law%2014274%20of%202010.pdf
- Decree No. 4680 of 2003, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%204680%20of%202003.pdf

RIO GRANDE DO SUL IMPOSES PRODUCER RESPONSIBILITY FOR E-WASTE

Under State Law No. 13533 (the “Law”), enacted October 28, 2010, Rio Grande do Sul will establish standards and procedures for recycling, management and final destination of technological waste (*normas e procedimentos para a reciclagem, o gerenciamento e a destinação final de lixo tecnológico*). The Law imposes joint responsibility (“*responsabilidade solidária*”) on manufacturers, importers and merchants to maintain collection points and ensure environmentally adequate disposition (*i.e.*, recycling, reuse, or disposal following “neutralization” of hazardous substances) of end-of-life products. Covered products must also be labeled with a warning against disposal with common waste, information on collection points, contact information for the companies responsible for collection, and a notice of the presence of heavy metals or any other hazardous substances.

The Law enumerates certain types of products as within its scope: computers, televisions, monitors, batteries and magnetized products. However, the Law also expresses its scope in expansive terms, as “appliances and electro-electronic equipment and components,” which implies that future expansion is at least possible. The Law appears to supplement an existing state law (No. 11019/1997) that already requires producer take-back of some technological wastes, including batteries with heavy metals, but which was stalled in the implementation process. In addition, the Law overlaps with Brazil’s National Solid Waste Policy Law (No. 12305), enacted in August 2010, which imposes “reverse logistics” requirements on manufacturers, importers, distributors and merchants of electro-electronic equipment and batteries, among other products. The eventual relationship between the Law and the existing state and federal laws is unclear.

Reference Sources (in Portuguese):

- Rio Grande do Sul Law No. 13533 of 2010, available at www.bdlaw.com/assets/attachments/Rio%20Grande%20do%20Sul%20Law%2013533%20of%202010.pdf
- Rio Grande do Sul Law No. 11019 of 1997, available at www.bdlaw.com/assets/attachments/Rio%20Grande%20do%20Sul%20Law%2011019%20of%201997.pdf
- Law No. 12305 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20Law%2012305%20of%202010.pdf



RIO GRANDE DO SUL ENACTS STATE CLIMATE CHANGE POLICY LAW

On December 31, 2010, Rio Grande do Sul became the sixth Brazilian state with its own climate change policy law, when its outgoing governor Yeda Crusius signed Law No. 13594 (the “Law”), the Gaúcho Policy on Climatic Changes (*Política Gaúcha sobre Mudanças Climáticas*). The five other states with such laws are Amazonas (June 2007), São Paulo (December 2007), Rio de Janeiro (April 2010), Pernambuco (July 2010) and Espírito Santo (September 2010). The federal government enacted a climate change policy law in December 2009. Unlike São Paulo’s climate law, Rio Grande do Sul’s Law does not establish greenhouse gas emissions reduction goals; however, it does create a process for establishing such goals, which are to be based on sectoral emissions inventories and are intended to fulfill Rio Grande do Sul’s share of the national commitment to reduce emissions. (Art. 8) The Law promises the creation of a statewide Public Registry of Emissions (*Registro Público de Emissões*) in which participation will be voluntary, but encouraged through incentives such as certification of compliance and extensions of deadlines for renewing environmental licenses. (Art. 10) The Law also includes provisions for incentives to adopt environmentally sustainable practices, including conservation of energy, water and soil, as well as a state government green procurement policy. (Arts. 13, 14)

Reference Sources (in Portuguese):

- Rio Grande do Sul Law No. 13594 of 2010, available at www.bdlaw.com/assets/attachments/Rio%20Grande%20do%20Sul%20Law%2013594%20of%202010.pdf

CHILE HIGHLIGHTS

NORM ESTABLISHING LIMITS ON FINE PARTICULATE MATTER APPROVED

Chile has approved a norm establishing limits on fine particulate matter, 2.5 microns in diameter or smaller (PM 2.5) (*Acuerdo No. 6, Aprueba Proyecto Definitivo de Norma Primaria de Calidad Ambiental Para Material Particulado Fino Respirable MP 2,5* or “Norm”). The Norm, in development for more than a decade, sets a maximum daily average of 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and a maximum annual average of 20 $\mu\text{g}/\text{m}^3$ for PM 2.5 beginning in 2012. (Norm, Arts. 3 and 14) In addition, twenty-four hour concentration levels for PM 2.5 emergency episodes are defined and provisions for monitoring PM 2.5 level are established. (Norm, Art. 5) The Norm, approved by the Council of Ministers for Sustainability of Chile’s Environment Ministry, was signed by President Sebastián Piñera and Minister of Environment María Ignacia Benítez on January 18, 2011.

Reference Sources (in Spanish):

- PM 2.5 Norm, available at www.bdlaw.com/assets/attachments/Chile%20-%20PM2.5%20NOM.pdf
- Ministry of Environment Press Release (January 18, 2011) available at <http://www.mma.gob.cl/1257/w3-article-49843.html>

THERMOELECTRIC PLANT EMISSIONS LIMITS ADOPTED

In conjunction with its approval of the fine particulate matter norm, Chile has approved a norm establishing limits for thermoelectric plant emissions. (*Acuerdo No. 5, Aprueba Proyecto Definitivo de Norma de Emisión Para Centrales Termoeléctricas* or “Norm”) The objective of the Norm is to control particulate matter, sulfur dioxide, nitrogen oxides and mercury emissions. (Norm, Art. 1). The Norm affects both new and existing thermoelectric plants. However, furnaces and turbines that are part of a cogeneration process are exempt from the Norm. (Norm, Art. 2) Regulated thermoelectric plants are required to install and certify continuous monitoring systems. (Norm, Art. 8) The Superintendency of the Environment is charged with oversight responsibilities for compliance with the Norm. (Norm, Art. 7) The Norm will now



undergo review by the General Comptroller of the Republic. President Sebastián Piñera and Minister of Environment María Ignacia Benítez signed the Norm on January 18, 2011.

Reference Sources (in Spanish):

- Thermolectric Plant Emission Norm, available at www.bdlaw.com/assets/attachments/Chile%20-%20Thermolectric%20NOM.pdf
- Ministry of Environment Press Release (January 18, 2011), available at <http://www.mma.gob.cl/1257/w3-article-49843.html>

DRAFT NATIONAL WASTE LAW UNDERWAY

Chile's Ministry of Environment has been committed to the development of a national waste law incorporating extended producer responsibility principles for some time. Recently, a draft national waste law (*Borrador Anteproyecto de Ley General de Residuos* or "Draft Law") was released for public review and comment. The Draft Law, in addition to including provisions relating to classification and management issues, focuses significant attention to extended producer responsibilities for "priority products" to be defined by subsequent decree. (Draft Law, Art. 31) The Draft Law further provides for implementing regulations to define waste minimization valorization and management measures for "priority products." Nevertheless, the Draft Law does set forth various elements relating to the responsibilities of suppliers of "priority products," such as registration, product take-back and reporting requirements. As it is still in the early stages of development, the likelihood of passage of this measure cannot be predicted but it is evident that the government remains committed to incorporating product stewardship into its national policies.

Reference Sources (in Spanish)

- Draft National Waste Law, available at www.bdlaw.com/assets/attachments/Chile_Draft_Waste_Bill.pdf

COLOMBIA HIGHLIGHTS

WATER REGULATION ADOPTED AND NEW WASTEWATER DISCHARGE STANDARDS PROPOSED

Colombia's Ministry of the Environment has issued a new Decree regulating national water resources and quality. *See* Decree 3930 (October 25, 2010). Many of the provisions address water resource planning and prioritization and impose a requirement for scientific modeling on water quality as part of water resource development. (Arts 4-8.) The new Decree establishes rankings for water uses, establishing as the first three priorities: human and domestic consumption, preservation of flora and fauna, and agricultural uses. Industrial use ranks sixth of the nine factors. (Art. 9). Among other features, the Decree establishes basic program foundations for wastewater discharge standards, a permitting and compliance plan regime, clean technologies and a permit registry.

The Ministry also proposed new wastewater discharge monitoring parameters and limits for a variety of industrial and domestic point sources. *See* Draft Wastewater Resolution (October 2010). Among other key standards, the decree would impose maximum discharge limits for existing and new industrial point sources discharging into public sewer systems (including several general parameters, hydrocarbons, nutrients, ions, metals and metaloids, among others). *Id.* New surface waste standards are also established for domestic and industrial wastewater point sources for both new and existing sources. Art. 10. These new standards will likely be made final in 2011.



Reference Sources (in Spanish):

- *Decreto No. 3930, por el cual se reglamenta parcialmente el Título I de la Ley 9 de 1979, así como el Capítulo del Título VI -- Parte III -- Libro II del Decreto-Ley 2811 de 1974 en cuanto a usos del agua y residuos líquidos y se dictan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Dec3930.pdf
- *Proyecto Resolución No. _____, por la cual se establecen las normas y los valores límite máximos permisibles de parámetros en vertimientos puntuales a sistemas de alcantarillado público y a cuerpos de aguas continentales superficiales de generadores que desarrollen actividades industriales, comerciales o de servicio y se dictan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20proy%20resvertimientos.pdf

MINAMBIENTE PUBLISHES RESOLUTION DETAILING CALCULATION OF PENALTIES

Taking its new progressive penalty policies one step further, Colombia’s Ministry of the Environment has published a Resolution for calculating fines for environmental laws. Resolution 2086 of 2010, which implements Law 1333 of 2009 and Decree 3678 of 2010, provides a mathematical formula for calculating penalties based on several criteria (illicit benefit, degree of environmental harm, evaluation of the risk, aggravating circumstances, and socioeconomic status of the violator, and associated costs). The Resolution details how each of these factors should be calculated and provides specific numeric ranges to be assigned. The Decree also directs MinAmbiente to develop a manual for calculating environmental penalties. The new penalty policy is likely one of the most progressive yet transparent in Latin America.

Reference Sources (in Spanish):

- *Resolución No. 2086 (25 de octubre de 2010), por el cual se adopta la metodología para la tasación de multas consagradas en el numeral primero del artículo 40 de la Ley 1333 del 21 de julio de 2009 y se toman otras determinaciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Diario%20Oficial%20Nov%201%202010.pdf

SENATE BILL WOULD ESTABLISH A VOLUNTARY CORPORATE SOCIAL RESPONSIBILITY CERTIFICATION PROGRAM

A novel bill was proposed in the Colombian Senate that would establish a voluntary corporate social responsibility certification program for companies doing business in Colombia. The draft bill, *Proyecto de Ley No 070/2010*, would establish a public and private member Corporate Social Responsibility Counsel, charged with developing standards for sector-based social responsibility and regulations for determining compliance. (Art. 7). The bill appears to have child welfare as one of its central goals. (Art. 9). Although the bill, if passed, would only impose a voluntary program, such a program could have the potential to become standard industry practice.

Reference Sources (in Spanish):

- *Proyecto de Ley No. 070 de 2010, por la cual se definen normas sobre la responsabilidad social empresarial, la protección infantil y se dictan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Proyecto%20ley%20070%20de%202010.pdf

COSTA RICA HIGHLIGHTS

MINISTRY OF HEALTH PROPOSES HAZARDOUS WASTE REGULATION

Costa Rica’s Ministry of Health has initiated the rulemaking process for a hazardous waste regulation to implement the National Solid Waste Law (*Ley Para La Gestión Integral de Residuos, Ley 8839/2010* or “Law”) enacted last year. A proposed regulation (“Proposal”)



has been published on the Ministry of Health website for public comment. The Proposal addresses classification and management of hazardous wastes including a detailed classification framework that is based in part on the Basel Convention annexes on waste classification. However, the scope of the Proposal also extends to special management wastes defined as “those that by composition, transport needs, storage conditions, forms of use or recovery value or a combination of these imply a specific risk to health and degrade ecosystem quality, requiring them to be separated from the ordinary waste stream. (Proposal, Art. 3(26)). Notably, the Proposal also includes mandatory producer take-back provisions for hazardous end-of-life products and packaging and provides for the Ministry of Health to define the special management wastes that will be subject to take-back programs. (Proposal, Arts. 9.6 and 17(e))

Reference Sources (in Spanish):

- National Solid Waste Law, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Waste%20Law.pdf
- Proposed Regulation, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Proposed_hazd_waste_reg.pdf

NATIONAL ASSEMBLY APPROVES BILL TO PROHIBIT OPEN-PIT MINING

Costa Rica’s National Assembly has approved, by unanimous vote, a law to prohibit open-pit mining of heavy metals in the country (*Proyecto de Ley para declarar a Costa Rica país libre de minería de metales pesados a cielo abierto, Expediente N.º 15.948* or “Bill”). In support of the Bill, its sponsor, Deputy Gerardo Vargas Leiva, highlights concerns regarding the short- and mid-term negative effects of these mining activities on other activities that are of major economic impact in Costa Rica such as agriculture and tourism. The Bill does not affect any concessions previously granted but prevents their renewal. Any pending applications for concessions and permits would be archived. (Bill, Transitory Provisions I-III). The Bill requires Presidential signature and publication before it takes effect.

Reference Sources (in Spanish):

- Bill to Prohibit Open-Pit Mining, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20Proyecto-159481.pdf

ECUADOR HIGHLIGHTS

NATIONAL STRATEGY FOR PARTICIPATION IN U.N. REDD+ PROGRAM PROPOSED

On December 7, 2010, Ecuador’s Ministry of the Environment released for public comment a set of draft revisions to its national proposal for participation in the U.N. Program on Reducing Emissions from Deforestation and Forest Degradation (“REDD+”). The REDD+ Program is envisioned as a mechanism for enabling developed countries to invest in greenhouse gas emissions reductions, encourage conservation of forest biodiversity, and provide financial assistance to developing countries. The first step for developing countries such as Ecuador to participate is to prepare a national strategy for conservation, including national dialogue, institutional strengthening and demonstration projects.

Ecuador’s draft strategy sets forth interpretations of the eight REDD+ standards: land rights, equitable benefits, standard of living improvement, contribution to sustainable development, biodiversity and ecosystem services, full participation, access to information, and compliance with domestic and international laws. Under President Rafael Correa, Ecuador has adopted policies favoring conservation of forests and biodiversity over development of some natural resources, and has sought support from the U.N. and other international sources to compensate



the nation and local populations for implementing conservation policies.

Reference Sources:

- UN REDD+ Opportunities Assessment (English), available at www.bdlaw.com/assets/attachments/UN%20REDD%20Options%20Assessment%20Report.pdf
- Ecuador Draft REDD+ Strategy (Spanish), available at www.bdlaw.com/assets/attachments/Ecuador%20December%202010%20Revision%20to%20REDD%20National%20Strategy.pdf



MEXICO HIGHLIGHTS

SENATE PASSES HISTORIC CLASS ACTION LAW

Only months after the Mexican Constitution was amended to allow for class actions last year, the Mexican Senate has passed a bill that would amend the Federal Code of Civil Procedure, Federal Civil Code, and other statutes to allow for collective actions (*acciones colectivas*). The House is expected to adopt companion legislation during the 2011-2012 timeframe. The bill sets forth the requirements for forming a class, opt-in and opt-out mechanisms, procedural rules for bringing a collective action, and the scope of a judicial decision regarding resolution of a class action law suit. Until now, class actions have been prohibited as a matter of constitutional law. Combined with low damages awards, lengthy times for judicial resolution, and issues relating to judicial corruption, plaintiff's litigation in Mexico has been historically low. New demands for judicial transparency coupled with rights to class actions could well begin a seachange in Mexican civil jurisprudence and the redress of environmental harms.

Reference Sources (In Spanish):

- Class Action Bill (*Iniciativa con proyecto de decreto por el que se reforman y adicionan diversos artículos del código federal de procedimientos civiles, código civil federal, ley federal de competencia económica, ley federal de protección al consumidor, ley orgánica del poder judicial de la federación, ley general del equilibrio ecológico y la protección al ambiente; y la ley de protección y defensa al usuario de servicios financieros*), available at www.bdlaw.com/assets/attachments/Mexico%20-%20Class%20Actions%20Bill.pdf

MEXICAN ENVIRONMENTAL AUTHORITY PROPOSES REGULATION FOR HIGH RISK ACTIVITIES

SEMARNAT, Mexico's environmental authority, has posted a draft regulation implementing provisions of Mexico's environmental framework law, the *Ley General del Equilibrio Ecológico y la Protección al Ambiente* (LGEEPA) related to high risk activities. Until now, there has been no separate regulation of high risk activities, although some interagency agreements and lists of activities have been developed in an ad hoc basis. The proposed regulation would establish types of specifically listed high risk activities (for example gas and petroleum extraction and petroleum refining) and those that are high risk activities when a certain threshold quantity of chemicals is managed on-site. (Art. 6). Threshold quantities would be established by a separate implementing standard (*i.e.*, Mexican Official Norm). (Art. 7) Those engaged in high risk activities would be required to develop detailed risk studies and accident prevention programs, elements of which are outlined in the Regulation. (Art. 11 - 23).

Reference Sources (In Spanish):

- *Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Actividades Altamente Riesgosas*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Draft%20Reglamento%20de%20law%20LGEEPA.pdf



ENVIRONMENTAL SECRETARY PROPOSES NATIONAL INTERSECRETARIAL CHEMICALS COMMITTEE

Citing to its obligations under a range of international chemicals treaties, Mexico's Environmental Secretary, Juan Rafael Elivra Quesada, has proposed creation of an intersecretarial technical consulting body to SEMARNAT regarding chemicals. Although the interagency body would not have any regulatory powers, it would act to develop technical and policy recommendations regarding the production, generation, transport, storage, use, management, treatment and final disposal of chemicals subject to international treaties. The committee, as proposed, would include representatives from virtually every executive level secretariat. Although the functions of the committee appear limited, its proposal may signal renewed efforts on the part of SEMARNAT to address chemicals issues comprehensively and which to date, have been regulated in a somewhat piecemeal fashion across numerous agencies.

Reference Sources (in Spanish):

- Draft Agreement, (*Acuerdo por el que se crea el comité consultivo nacional para la gestión integral de sustancias químicas, compuestos orgánicos persistentes y residuos peligrosos sujetos a convenios internacionales en materia ambiental*), available at www.bdlaw.com/assets/attachments/Mexico%20-%20Draft%20Committee%20on%20Haz%20Substances.pdf

SENATE BILL PROPOSES VOLUNTARY ECO LABEL

Citing similar programs from across the globe, a Mexican Senator has presented a bill to amend the LGEEPA to provide for a voluntary ecolabeling program. The label would be available for products that could demonstrate low environmental impacts in key areas, including energy efficiency. (Bill, Proposed Art. 38Bis 3, LGEEPA). New provisions would be added to the Consumer Protection Law to provide claims for false labeling. The bill reflects a regional trend towards ecolabeling and energy efficiency programs driven by grid capacity limitations and implementation of voluntary and self-imposed climate change commitments. Such types of standards may well become industry standards and competitive markers, and in some cases, mandatory programs for market access.

Reference Sources (In Spanish):

- *Iniciativa con proyecto de decreto por el que se adiciona la ley general de equilibrio ecológico y protección al medio ambiente y la ley federal de protección al consumidor*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Ecolabel%20Bill.pdf

PERU HIGHLIGHTS

ENVIRONMENT MINISTRY ADOPTS CLIMATE CHANGE PLAN

Peru's Environment Ministry (MINAM) has adopted an Action Plan for Climate Change Adaptation and Mitigation (*Plan de Acción de Adaptación y Mitigación Frente al Cambio Climático, Resolución Ministerial No. 238-2010-MINAM* or "Plan"). The objectives of the plan include establishment of the national priorities regarding mitigation of climate change, promotion of short- and mid-term climate change response programs underway at the regional and sectoral levels, and proposal of priority programs in terms of prevention of risks and adaptation to climate change impacts. (Plan, Introduction) The Plan is structured according to seven broad categories: (1) quantification of greenhouse gas emissions, (2) contribution to greenhouse gas emission reductions, (3) climate change adaptation, (4) consideration of adaptation and mitigation of climate change in development policies, (5) improvement of monitoring and investigation systems; (6) fostering public awareness regarding climate change and (7) management of investment and funding. (Plan, Introduction) Identified and ranked



under the Plan are 68 projects for which implementation costs are projected to be more than one billion dollars.

Reference Sources (in Spanish):

- Action Plan for Climate Change Adaptation and Mitigation, available at www.bdlaw.com/assets/attachments/Peru%20-%20RM_238-2010-minam1.pdf

ENFORCEMENT REGULATION TO ADDRESS INFRACTIONS IN NATURAL PROTECTED AREAS ADOPTED

By Supreme Decree, Peru's Environment Ministry (MINAM) has adopted a regulation establishing an administrative procedure for the imposition of sanctions for non-compliance with laws governing natural protected areas (*Decreto Supremo No. 019-2010-MINAM que aprueba el Reglamento del Procedimiento Administrativo Sancionador por afectación a las Areas Naturales Protegidas de Administración Nacional* or "Regulation"). The Regulation provides for the classification of infractions as minor, serious or very serious depending on the upon the degree of impact and extent of non-compliance with applicable laws. (Regulation, Art.5) Possible sanctions include fines, temporary or permanent closure of establishments and suspension of permits and licenses. (Regulation, Art.11) The National Service for Natural Protected Areas, SERNANP, is charged with creating a registry accessible to the public that contains information related to each violation. (Regulation, Art. 9)

Reference Sources (in Spanish):

- Regulation Establishing Administrative Procedure, available at www.bdlaw.com/assets/attachments/Peru%20DS_019-2010-minam1.pdf

URUGUAY HIGHLIGHTS

URUGUAY ADOPTS GREEN PROCUREMENT RULE REQUIRING REGISTRATION OF PACKAGING WASTE MANAGEMENT PLANS

Under Decree No. 315/2010 (the "Decree"), companies that wish to sell their products to agencies of Uruguay's government will have to submit management plans that cover their packaging wastes. Uruguay established a registry of packaging waste management plans through a 2007 decree (No. 260). The current Decree requires that providers of goods have their plans approved by the Ministry of Housing, Zoning and Environment (*Ministerio de Vivienda, Ordenamiento Territorial y Medio Ambiente*) and include a reference to their registration in proposals to sell goods to the Uruguayan government.

Reference Sources (in Spanish):

- Decree No. 315 of 2010, available at www.bdlaw.com/assets/attachments/Uruguay%20Decree%20315%20of%202010.pdf
- Decree No. 260 of 2007, available at www.bdlaw.com/assets/attachments/Uruguay%20Decree%20260%20of%202007.pdf

VENEZUELA HIGHLIGHTS

VENEZUELA ENACTS NATIONAL WASTE MANAGEMENT LAW

On December 30, 2010, Venezuela published its Waste Management Law (*Ley de Gestión Integral de la Basura*; the "Law"), which will take effect ninety days after publication. The Law is intended to establish a national regulatory framework to promote the reduction of



waste generation and ensure that waste collection, management and disposal is undertaken in a sanitary and environmentally protective manner. (Art. 1) A National Council for Integral Management of Wastes is created and its functions include approval of the National Plan for Integral Management of Wastes, participation in the development of regulations of waste technical norms, and providing technical support to state and local authorities on waste management issues. (Art. 15) The Law also includes provisions related to generator responsibilities, storage, collection, transport, treatment, import and export as well as final disposition. (Arts. 34-69)

Notably, the Law also includes producer responsibility obligations. Specifically, the Law provides that importers, manufacturers and distributors of products of mass consumption that generate wastes must develop product take-back programs to ensure re-use or effective recycling. (Art. 35) Manufacturers of packaging, particularly for products intended for mass immediate consumption, must ensure that packaging is produced with materials that facilitate its return, re-use, biodegradability and effective recycling. (Art. 38) Implementing regulations for the Law are required to be adopted within the year. (Law, First Transitory Disposition).

Reference Sources (in Spanish):

- Waste Management Law, available at <http://www.bdlaw.com/assets/attachments/Venezuela%20Waste%20Management%20Law.pdf>

Office Locations:

Washington, DC

Maryland

New York

Massachusetts

New Jersey

Texas

California