LATIN AMERICAN REGION

ENVIRONMENTAL QUARTERLY

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NOTES FROM THE LATIN AMERICAN PRACTICE GROUP

Greetings from the Latin America Region Practice Group!

It has a been a busy spring and early summer throughout the Region. To learn more about key regional events, we hope you can join us for our annual Latin America Region (LAR) Environmental Roundtable on September 2, 2010 in Washington, D.C. The LAR Roundtable is an annual event for clients to hear about key developments and share information and practice tips in an informal setting designed to promote dialogue and learning. The conference is free of charge and by invitation only. 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.

This quarter witnessed the continued press of Regional environmental law and policy developments. Although all environmental media are in play, key developments during this quarter addressed:

- ***Waste Policy***. Perhaps the biggest news of the region is the pending adoption of Brazil's Omnibus Solid Waste Policy Law, scheduled to be signed into law by President Lula on August 2, 2010. Rather than highlight that here, we will provide a separate new analysis after it becomes law next week. In the meantime, **Costa Rica** adopted a National Waste Policy Law creating a new federal waste framework law. **Venezuela** is evaluating a new solid waste bill. **Argentina** has adopted an agreement intended to streamline its national Hazardous Waste Act, which has been plagued by state patchworking under **Argentina's** strong federalist government. **Brazil's** regulatory agency, CONAMA, is reportedly progressing on its work to develop remediation standards. A bill pending in **Mexico's** legislature would deem all electronic wastes as hazardous wastes and could form the basis for revisiting regulation of e-waste in that country.

- ***Product Stewardship and Regulation***. Environmental regulation of products is a growing trend for this Region, which has historically eschewed these issues in favor of strong trade policies. **Argentina** is considering a framework pesticide bill, new green procurement standards, and a new tax on products for attendant environmental services. **Costa Rica** has adopted proposals revising its regulation of hazardous products and new standards for biofuels. **Mexico** has revised its lists of controlled chemicals substances in cosmetics and separately proposed new energy efficiency standards for air conditioners.

- ***Other.*** Other initiatives we highlight include a new Universal Basic Sanitation Law (**Brazil**), consideration of Oil Law reforms (**Ecuador**), new Environmental Audit Regulations (**Mexico**), and the ICJ Opinion on the **Argentina-Uruguay** Pulp Mill Case. Brazilian states of **São Paulo** and **Rio de Janeiro** continue to be trendsetters on progressive climate change commitments.

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ARGENTINA HIGHLIGHTS

Argentina's Senate Considers Framework Pesticide Bill

The Argentine Senate is considering a bill (*Proyecto de Ley Sobre Regimen Federal de Productos Sanitarios*, S-1382/10) that would establish a comprehensive national framework for regulating the production, import, registration, sale, use and final disposition of all "phytosanitary products" in the country. Phytosanitary products, also referenced generally in the bill as pesticides, are defined to include any substance or mixture of substances, natural or synthetic chemicals, designed to prevent, destroy and/or control the negative effects of any organism, including unwanted species of plants or animals in the production, processing, storage and related activities for agricultural products, wood and agro-industrial or recreational areas. It would also include insects and/or other biological organisms used for similar purposes. The law would not extend to fertilizers, which are already regulated. (Art. 3)

Key elements of the bill include:

- National registry of phytosanitary products and norms for its establishment (Art. 6, Annex I);
- Product classification scheme based on analysis of environmental risk (Art. 7);
- Environmental Risk Assessment (ERA) required for any new phytosanitary product (Art. 27);
- Registry for persons responsible for the manufacture, use and application of the substance, as well as for those that do not come in direct contact with the phytosanitary product but only the packaged product (e.g., transporters, storage facilities, importers, commercial sellers) (Art. 19, Annex I);
- Packaging and labeling requirements (Arts. 22-25);
- Specific requirements and prohibitions related to the import, transport, storage, sale, application and use of phytosanitary products (Chapters IV, VII and VIII);
- Criminal and civil penalties (Chapter X); and
- Producer responsibility requirements, including product and packaging take-back and environmentally sound disposal, for manufacturers and importers of phytosanitary products (Art. 32).

The Ministry of Agriculture, Livestock and Fisheries would be the federal authority that oversees implementation of the law, including the development of implementing regulations. (Art. 19) In addition, the law would create an Advisory Board made up of environmental, health, labor, transport and other experts with responsibility for making technical decisions on the registration of pesticides. (Art. 21) If passed, the law would repeal the existing Legal Decree 3.489/58 and Law 17.935. (Art. 45)

Reference Sources (in Spanish):

- Phytosanitary Products Bill (S-1382/10), available at http://www.bdlaw.com/assets/attachments/Argentina%20-%20S-1382-10%20fitosanitario.pdf

Interministerial Commission for Hazardous Waste Ratifies Transport-Environment Agreement

On July 1, 2010, Argentina's *Comisión Interministerial de Residuos Peligrosos* (Interministerial Commission for Hazardous Waste) ratified a formal agreement between the Secretary of the Environment and Sustainable Development and the Secretary of Transport that will streamline the administration of Argentina's complex hazardous waste transport system. The agreement is intended to improve implementation of Argentina's Hazardous Waste Act (Law 24.051) and the

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Transport Act (Law 24.653) by aligning the resources of both the Secretaries of Environment and Transport. Specifically, the Secretary of Environment would gain access to the *Registro Único de Transporte Automotor* ("RUTA") -- the registry of all cargo transport in the country -- for use as a database to track and administer the issuance and renewal of Hazardous Waste Certificates required for hazardous waste haulers. This would avoid administrative delays now common to the system and improve overall effectiveness of the country's regulation of the cross-provincial movement of hazardous waste.

This internal government initiative is illustrative of ongoing efforts to mainstream and streamline environmental management across the national ministries and improve overall efficiencies. It also signals an increased effort to strengthen and improve regulatory enforcement at the national level.

Reference Sources (in Spanish):

- Secretary of Environment and Sustainable Development Press Release, available at http://www.bdlaw.com/assets/attachments/Argentina%20Waste%20Transport.pdf

Federal Government Taking Action on Argentine Green Procurement

Green government procurement is gaining traction in Argentina. Several bills have been put forward in the Argentine Chamber of Deputies that would require the federal government to implement green purchasing programs. For example, one bill (*Régimen de Reciclaje de Insumos Informáticos*, PL 2174-D-2010) would require the federal government and all of its entities to give a purchasing preference to recycled computer and photocopier consumables. In addition, the Secretary of Environment recently announced that it is closer to including an environmental component in all government contracts, and it appears that a policy is under development.

Many national governments in Latin America are similarly reviewing and revising their procurement practices to take into account green purchasing. Notably, these green procurement policies can often serve as de facto regulations for products that they cover because the government is often the largest purchaser of goods and can greatly influence the marketplace. In particular, some government procurement policies may require the purchase of products that meet certain voluntary certification standards, effectively turning those standards into mandatory market access requirements.

Reference Sources (in Spanish):

- Recycled Electronics Bill PL 2174-D-2010, available at http://www.bdlaw.com/assets/attachments/Argentina%20PL%202174-D-2010.PDF
- Secretary of Environment and Sustainable Development Press Release, available at http://www.bdlaw.com/assets/attachments/Argentina%20Green%20Procurement.pdf

Argentina's Senate Debates Creation of Compensation Fund for Environmental Services to Be Covered by Tax on Certain Products

The Senate has before it a bill (*Proyecto de Ley Sobre Creación del Fondo Nacional de Compensación por los Servicios Ambientales de las Áreas Protegidas*, S-1791/10) that would establish a federal compensation mechanism for environmental services from provincially-managed protected areas. The fund would be supported by an environmental tax of 1-2.5 % of the sales price of certain goods, including aerosols, plastic bags, batteries and piles, plastic products and tires. The exact amount of the tax would be determined based on the level of contamination associated with the production and consumption of each of the products. The bill would also require manufacturers or importers to obtain an official stamp to be placed on the product that signifies that the tax has been paid. Manufacturers and/or importers could then internalize the costs

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of the stamp in the sales price of the covered products. Products that do not carry the stamp would be viewed as fraudulent, and, unless proven otherwise, result in application of sanctions, including fines and confiscation of the product. (Art. 8)

This bill represents an interesting shift in the overall discussion in the region regarding payment for environmental services by targeting certain products and prescribing a tax on perceived environmental externalities. It is difficult to ascertain if this is the start of a trend for the region. It does reflect, however, the overall attention given in recent years to regulating products and their associated environmental impacts.

Reference Sources (in Spanish):

- Environmental Services Fund Bill (S-1791/10), available at http://www.bdlaw.com/assets/attachments/Argentina%20S-1791-10%20Protected%20Areas.pdf

BRAZIL HIGHLIGHTS

National Developments

Brazil Implements Universal Basic Sanitation Law

According to a new presidential decree, municipalities throughout Brazil will have to submit plans for all basic sanitation services by 2014 or lose their federal funding for these services. Decree No. 7217 (the "Decree"), signed by President Luiz Inácio Lula da Silva on June 21, 2010, implements Law No. 11445, the three-year-old Law Establishing National Guidelines for Basic Sanitation ("*Estabelece Diretrizes Nacionais para Saneamento Básico*"; the "Law"). The Law lists the principles of a Federal Basic Sanitation Policy, including the promotion of social equity and universal access to sanitation services.

The Decree defines the public services that comprise a sanitation system: clean water supply, sanitary sewers, urban solid waste management, and storm water management. (Arts. 4-16) Municipalities are directed to prepare plans for providing all of these services to their populations. (Art. 25) Beginning in 2014, the existence of such a municipal sanitation plan will be a prerequisite for the receipt of any federal funds for sanitation projects.

Reference Sources (in Portuguese):

- Decree No. 7217 of 2010, available at http://www.bdlaw.com/assets/attachments/Brazil%20-%20Decree%20No.%207217%20of%202010.pdf
- Law No. 11445 of 2007, available at http://www.bdlaw.com/assets/attachments/Brazil%20-%20Law%20No.%2011445%20of%202007.pdf

National Water Resources Council Imposes Fees for Water Use and Discharge

In a step toward implementation of a nationwide water conservation policy, the waters of one of Brazil's largest rivers, the Rio São Francisco, are now subject to fees for capture, consumption and discharge. On April 13, 2010, the National Water Resource Council ("*Conselho Nacional de Recursos Hídricos*" or "CNRH") issued Resolution No. 108 approving a proposal by the Rio São Francisco Watershed Committee to charge fees of R$0.01 per cubic meter of water captured, R$0.02 per cubic meter of water consumed (i.e., captured but not returned), and R$0.07 per kilogram of organic matter discharged into the river or its tributaries. The fees are to be collected in a conservation fund that will support water quality projects such as the replanting of vegetative buffer zones. Such fee arrangements are authorized by CNRH Resolution No. 48 of 2005 to advance the policies of the "Brazilian Water Decade" ("*Década Brasileira da*

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Água") announced in an unnumbered presidential decree of March 22, 2005. Resolution No. 48 authorizes the imposition of such fees in all of Brazil's river basins that are managed by watershed committees of the CNRH.

The Rio São Francisco is the longest river wholly within Brazil. Its watershed includes portions of the Federal District and the states of Alagoas, Bahia, Goiás, Minas Gerais, Pernambuco and Sergipe. The fees affect Brazil's third largest city and industrial center, Belo Horizonte, the national capital Brasília, and expansive agricultural zones.

Reference Sources (in Portuguese):

- CNRH Resolution No. 108 of 2010, available at http://www.bdlaw.com/assets/attachments/Brazil%20-%20CNRH%20Resolution%20No.%20108%20of%202010.pdf
- Rio São Francisco Watershed Committee Deliberation No. 40 of 2008, available at http://www.bdlaw.com/assets/attachments/Brazil%20-%20Rio%20Sao%20Francisco%20Watershed%20Committee%20Deliberation%20No.%2040%20of%202008.pdf
- CNRH Resolution No. 48 of 2005, available at http://www.bdlaw.com/assets/attachments/Brazil%20-%20CNRH%20Resolution%20No.%2048%20of%202005.pdf
- Brazilian Water Decade Decree of March 22, 2005, available at http://www.bdlaw.com/assets/attachments/Brazilian%20Water%20Decade%20Decree%2003-22-2005.pdf

Brazilian State Developments

São Paulo Begins Implementation of State Climate Change Policy

The state of São Paulo has announced bold plans to alter its environmental profile, with the potential to transform the regulatory and business climate of South America's largest industrial center. On June 24, 2010, Governor Alberto Goldman issued Decree No. 55947 (the "Decree"), the implementing regulation for the state's ambitious Climate Change Policy Law (No. 13798 of 2009; "*Política Estadual de Mudanças Climáticas*"; the "Law"). As projected in the Law, the Decree creates a new "consultative" body, the State Climate Change Council ("*Conselho Estadual de Mudanças Climáticas*"), which will be comprised of representatives of the state ministries, the municipalities, industry and civil society organizations. The role of the Council is to propose the details of rules, standards and programs to fulfill the objectives of the Law.

The Decree empowers several other bodies to perform key functions under the Law, including a Climate Change Policy Management Committee to provide oversight of major decisions, and a Climate Change Program ("ProClima") within the state environmental agency, CETESB. ProClima is immediately tasked with coordinating the preparation of action plans for five sectors: energy, manufacturing and construction, transportation, agriculture, and waste. (Art. 16) The development of the sectoral action plans will commence with a public comment period of at least 30 days.

The Decree requires consideration of climate change impacts in the environmental licensing process for large or energy-intensive facilities, although it does not precisely define either the nature of the review or the facilities to which it will apply. (Art. 32) Instead, this provision authorizes CETESB to reformulate its licensing procedures, and to establish limits on greenhouse gas ("GHG") emissions, after the completion of the sectoral action plans. CETESB is further authorized to define criteria for compensatory offsets of GHG emissions, to be integrated into the licensing process.

The Decree also directs CETESB to develop standards of environmental performance for products sold in São Paulo, starting with, but not limited to, heating, cooling, lighting, and automobiles. The Decree requires manufacturers and importers to publish information on their

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products' environmental performance, in accordance with the standards. The performance standards will be integrated into the state's procurement rules, and can thereby be expected to affect the marketability of the covered products.

Reference Sources (in Portuguese):

- São Paulo Law No. 13798 of 2009, available at http://www.bdlaw.com/assets/attachments/Sao%20Paulo%20Law%20No%2013798%20of%202009.pdf
- São Paulo Decree No. 55947 of 2010, available at http://www.bdlaw.com/assets/attachments/Sao%20Paulo%20Decree%20No.%2055947%20of%202010.pdf

São Paulo Moves Toward Trading of Air Emission Credits

A new partnership in the state of São Paulo is exploring the feasibility of trading pollution credits. On April 29, 2010, the state environmental agency CETESB signed an agreement with the BOVESPA stock exchange company, the São Paulo Industrial Federation ("FIESP") and the state investment agency Investe São Paulo. The legal basis for the proposed emissions exchange has existed since December 2007, in the form of Decree No. 52469 (the "Decree"), an amendment to São Paulo's 1976 Pollution Control Regulation ("*Sobre Controle de Poluição do Meio Ambiente*").

The Decree creates a system for dividing the state into Air Quality Control Regions and Sub-Regions, the latter to be defined as the area within 30 kilometers of a particular monitoring station. (Art. 1) For each of seven pollutants (ozone, inhalable particles, total suspended particles, smoke, CO, NO2 and SO2), a sub-region will be classifiable as either: (1) saturated, (2) near-saturated, or (3) not saturated. For sub-regions that are saturated or near-saturated, the Decree requires CETESB to establish an Air Emissions Reduction Program ("*Programa de Redução de Emissões Atmosféricas*"), which may include the use of tradable emissions reduction credits. These credits would be issued in the amount of any demonstrated reductions of emissions of the pollutants that saturate the sub-region in which a facility is located. Some quantity of credits may be required for the renewal of existing environmental licenses and the licensing of new facilities.

Reference Sources (in Portuguese):

- São Paulo Decree 52469 of 2007, available at http://www.bdlaw.com/assets/attachments/Sao%20Paulo%20Decree%20No%2052469%20of%202007.pdf

São Paulo Simplifies Environmental Licensing for Low-Impact and Preferred Projects

In its ongoing reform of environmental licensing procedures, the state of São Paulo has instituted a streamlined process for certain projects that are either considered to have insignificant environmental impacts or favored for other reasons. Environmental Ministry Resolution No. SMA-056 (the "Resolution") provides for a pro forma Enterprise Characterization ("*Memorial de Caracterização do Empreendimento*") or the presentation of a simplified environmental study for the following project categories, among others:

- "Class A" solid waste landfills
- Storage of fuels and chemical products within licensed facilities
- Energy co-generation stations
- Biofuel production plants (excluding ethanol)
- Pesticide packaging collection centers
- Water treatment facilities serving populations of <150,000
- Thermo-electric plants of capacity <10 megawatts or within licensed facilities

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Although the Resolution frames its decision in terms of low impact, most of the listed project categories are also notable for the policy priorities that they serve. The Resolution also exempts altogether from environmental licensing most earth-moving operations for building construction.

Reference Sources (in Portuguese):

- São Paulo Resolution No. SMA-056 of 2010, available at http://www.bdlaw.com/assets/attachments/Sao%20Paulo%20Resolution%20No.%20SMA-056%20of%202010.pdf

Rio de Janeiro Enacts Climate Change Policy

The state of Rio de Janeiro joins its neighbor São Paulo as aspiring leaders in the climate change arena. On April 14, 2010, Governor Sérgio Cabral of signed Law No. 5690, the State Policy on Global Climate Change and Sustainable Development (the "Law"; "*Política Estadual Sobre Mudança Global do Clima e Desenvolvimento Sustentável*"). The Law references a forthcoming State Climate Change Plan (Art. 7), and lists seven sectors of activity that all public and private climate change plans should address: energy, transportation, waste, buildings, industry, agriculture and forest preservation (Art. 6).

The Law does not specify emission reduction targets or deadlines, but promises that future regulation will define measurable, verifiable steps to reduce greenhouse gas ("GHG") emissions, including targets for each of the seven sectors. (Art. 14) Future environmental licensing of facilities in Rio de Janeiro will be linked to two requirements: a facility-wide GHG emissions inventory, and a mitigation plan that complies with the state's sectoral targets. (Art. 7) The Law provides that the state may make licenses conditional on a facility's assumption of the obligation to "neutralize" its GHG emissions. In support of this requirement, the Law authorizes the development of a carbon market, which would facilitate the trading of credits to be obtained by either funding or performing projects that reduce GHG emissions. (Art. 8)

Reference Sources (in Portuguese):

- Rio de Janeiro Law No. 5690 of 2010, available at http://www.bdlaw.com/assets/attachments/Rio%20de%20Janeiro%20Law%205690%20of%202010.pdf

CHILE HIGHLIGHTS

Debate Over Controversial Hydroelectric Dam Project in Patagonia Continues

The HidroAysén project to build five hydroelectric dams on the Baker and Pascua rivers in the Aysén region of Chilean Patagonia continues to face stiff opposition. The approval of the project, which would have a capacity of 2,750 megawatts but would also require the construction of a 1500-mile long transmission line, is pending submittal of a supplementary environmental impact document to the regional environmental authority (COREMA) in October of this year.

HidroAysén first submitted an environmental impact assessment in 2008. In response to the project, a number of non-governmental organizations, including the Council for the Defense of Patagonia, which includes a coalition of both international and Chilean organizations, have staged protests, initiated lawsuits and filed a complaint with the Canada-Chile Commission for Environmental Cooperation (CEC). The complaint, which has been accepted by the CEC, charges that Chile is failing to effectively enforce its environmental laws and has violated a bi-national treaty with Argentina on shared water resources.

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Reference Sources (in English and Spanish):

- Submissions Registry at Environment Canada website (*See* Submission No. SEM-08-01), available at http://www.bdlaw.com/assets/attachments/Chile%20-%20Submissions%20Registry%20SEM-08-01.pdf
- CONAMA Notice of Citizen Participation in Aysén Hydroelectric Project Environmental Impact Study, available at http://www.bdlaw.com/assets/attachments/Chile%20-%20Aysen%20Hydroelectric%20Project%20-%20EIA%20Participation.pdf
- Council for the Defense of Patagonia Press Release, available at http://www.bdlaw.com/assets/attachments/Chile%20-%20HydroAysen%20press%20Release%20on%20Defense%20for%20Patagonia%20website.pdf

CONAMA Developing Remediation Standards

Having now developed a National Policy on Contaminated Sites, CONAMA is reportedly working on a proposal to establish reference standards for cleanup of hydrocarbon contamination and will follow with a proposal to address heavy metals. However, before adopting any heavy metal norms, CONAMA plans to complete studies that will take into account the presence of naturally-occurring heavy metals in Chile, a country that is endowed with rich mineral resources. Currently, CONAMA is continuing to evaluate conditions at contaminated sites to determine required remediation actions.

Reference Sources (in Spanish):

- Fundación Terram, "*Cuánto metal resiste Chile,*" available at http://www.bdlaw.com/assets/attachments/Chile%20-%20Cuanto%20Metal%20Resiste%20Chile.pdf
- CONAMA Contaminated Sites Management, available at http://www.bdlaw.com/assets/attachments/Chile%20-%20CONAMA%20Contaminated%20Sites%20Management.pdf

COLOMBIA HIGHLIGHTS

Environmental Enforcement Criteria Proposed

Colombia's environment ministry, the *Ministerio de Ambiente, Vivienda y Desarrollo Territorial* ("MinAmbiente"), has moved quickly to implement new provisions of its progressive new environmental enforcement law, Ley 1333, which among other things, includes a novel presumption of guilt in environmental criminal matters. In a recent proposed Resolution, MinAmbiente has now proposed draft enforcement criteria to be used during the assessment of enforcement penalties. *See Resolución No. ____ Por el cual se establecen los criterios para la imposición de las sanciones consagradas en el artículo 40 de la Ley 1333 del 21 de julio de 2009 y se toman otras determinaciones*. These criteria were first outlined in a power point presentation provided by the Ministry this spring.

As drafted, the new enforcement criteria include: benefit from the violation, length of time, significance of the environmental impact and or risk of environmental impact, aggravating or attenuating circumstances, costs, socioeconomic status of the violator. (Art 11). The Resolution goes on to require the Ministry to develop formula that will weight these factors for the purposes of assessing the range of penalties proposed under the Resolution, from daily fines of 5000 times the monthly minimum salary, partial and temporary shut-downs, permanent decommissioning and species restitution, and community service. (Arts. 2, 13) The propose penalty policy, which appears designed to promote transparency and consistency in the application of penalties, may be the first of its kind in the Region.

Reference Sources (in Spanish):

- Ley 1333, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Ley%201333.pdf

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- Draft Resolution, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Draft%20Resolution.pdf

Colombian Ministry Adopts Standards for Air Quality Monitoring

MinAmbiente adopted a series of air quality monitoring protocols this spring. First, the Agency adopted two technical protocols for monitoring air quality itself, namely the Manual for the Design of Monitoring Systems for Air Quality and the Manual for the Operation of Monitoring Systems for Air Quality. *See Resolución No. 650 por la cual se adopta el Protocol para el Monitoreo y Seguimiento de la Calidad del Aire*. Within a month, the Agency also adopted a similar Protocol for monitoring emissions from stationary sources. *See Resolución No. 760 por la cual se adopta el Protocol para el Control y Vigilancia de la Contaminación Atmosférica Generada por Fuentes Fija*.

Lastly, the MinAbmiente has adopted implementing regulations for an air quality data collection system, the *Subsistema de Información sobre Calidad del Aire (SISAIRE)*, intended to be a national data base that will serve as the principal source of information for the design, evaluation, and modification of national and regional air contamination prevention and control strategies. *See Resolución No 651, por la cual se crea el Subsistema de Información sobre Calidad de Aire -- SISAIRE*. The SISAIRE will house data from reports from private and government entities required to submit information on emissions and air quality. (Art. 2).

Taken together, these initiatives reflect the Colombian governments attention to air pollution issues and a sophisticated and technical platform for obtaining baseline data for monitoring and enforcement purposes. The next steps -- which could follow quickly in light of Colombia's progressive environmental agenda -- could entail emissions standards and stepped-up enforcement of existing standards.

Reference Sources (In Spanish):

- Resolution No. 650, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Resolution%20No.%20650.pdf
- Resolution No. 651, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Resolution%20No.%20651.pdf
- Resolution No. 760, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Resolution%20No.%20760.pdf

MinAmbiente Adopts Process for Authorizing GMO Activities for Environmental Purposes

Minambiente has issued a Resolution that will govern the procedure for any transboundary movement, transit, manipulation or utilization of genetically modified organisms for purposes that are exclusively environmental. *See Resolución No. 957 (Por la cual se establece el procedimiento para la autorización de actividades con Ogranismos Vivos Modificados -- OVM-- con fines exclusivamente ambientales y se adoptan otras determinaciones* (May 19, 2010). (Art. 1). The term defines GMO with exclusively environmental purposes as those GMO's that can be used for bioremediation and other ends that are exclusively environmental in nature. (Art. 2). The Resolution appoints a National Technical Committee to evaluate and issue licenses, which will be granted largely on the basis of the merits of the risk study (Art. 6).

The Resolution was issued in conjunction with a separate Resolution governing the activities of the National Technical Committee. *See Resolución No. 958 (Por la cual se regula el funcionamiento del Comité Techico Nacional de Bioseguridad para Organismos Vivos Modificados (OVM) con fines exclusivamente ambientales que puedan tener efectos sobre el medio ambiente y la biodiversidad.*). Both Resolutions are intended implement, in relevant part, Colombian

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legislation that ratified the Cartagena Protocol. *See Ley 740 de 2002*.

Reference Sources (In Spanish):

- Law 740, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Ley%20740.pdf
- Resolution No. 957, available at http://www.bdlaw.com/assets/attachments/Colombia%20-%20Resolution%20No.%20957.pdf
- Resolution No. 958, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Resolution%20No.%20958.pdf

COSTA RICA HIGHLIGHTS

New National Waste Law Enters into Force

On July 13, 2010, Costa Rica's *Ley para la Gestión Integral de Residuos* (Law for the Integrated Management of Wastes) was published in the Gazette, marking its entry-into-force. The long-awaited Law establishes a broad legal framework for waste management and contaminated site remediation in the country. The Law will be administered largely by the Ministry of Health, with support in certain areas from the Ministry of Environment, Energy and Telecommunications. Both Ministries will have responsibility to develop implementing regulations within six months of the Law's entry-into-force. The Law is self-executing, however, so the lack of regulation would not impede its application by the executive branch. (Transitional Provisions)

Key elements of the Law include:

- A new waste classification regime that divides wastes into hazardous, special management and ordinary categories (Art. 6);
- Specific generator responsibilities for waste management that vary depending on the waste classification (Art. 38);
- Producer responsibility provisions that would require producers and importers to take responsibility for the collection and management of end-of-life products classified as special management wastes (Art. 42);
- The promotion by the Ministries of Health and Environment of the import and sale of products that facilitate the integrated management of wastes, and a prohibition on those materials or products where the country has limited capacity to manage them at end-of-life (Art. 22);
- A registration, licensing and permitting scheme for waste management (Arts. 31 and 32);
- The applicable requirements for export and import of hazardous wastes, including a prohibition on the import of hazardous wastes (Arts. 33-37);
- A framework, to be implemented by the Ministry of Health, for identifying contaminated sites and requiring remediation (Arts. 45-46); and
- A three-tiered system of possible violations, from minor infractions to very serious offenses (Arts. 48-50).

Costa Rica now joins Mexico, Colombia (and possibly soon Brazil and Ecuador) as countries in the region that have developed next generation national framework waste laws. There are some shared concepts emerging through these laws, such as a three-tiered waste classification system and extended producer responsibility for certain waste streams. This suggests that the approach taken by Costa Rica and these other countries is likely to be replicated in other jurisdictions in the region.

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Reference Sources (in Spanish):

- Law for the Integrated Management of Wastes, available at http://www.bdlaw.com/assets/attachments/Costa%20Rica%20Law%20of%20Solid%20Wastes.pdf

Costa Rica Considering Revision of Regulation on Hazardous Products

Costa Rica's Ministry of Health has posted a draft revision of a 1999 Regulation for the Registration, Import, Labeling, and Control of Hazardous Products (Reglamento para el Registro, Importación, Etiquetado y Control de Productos Peligrosos) (the "Draft"). The Draft seeks to streamline the registration process. (Art. 1) It retains, however, the main elements of a system in which a "hazardous product" (a) must be registered with the Ministry of Health, (b) the proponent must have sanitary permits from the agency for its operations in-country, (c) supply product information on an MSDS, and (d) include a label as to the product's hazards.

The Draft would cover all products classified as hazardous, including raw materials without specific regulation that fit one of nine hazardous characteristics:

Class 1 Explosives
Class 2 Gases
Class 3 Flammable liquids
Class 4 Flammable solids
Class 5 Oxidants or combustibles and organic peroxides
Class 6.1 Toxic substances
Class 7 Radioactive substances
Class 8 Corrosives
Class 9 Miscellaneous (Art. 2)

A "hazardous product" is described as any product, substance or object that is toxic, flammable, combustible, radioactive, infectious, irritant, or corrosive according to criteria in Annex I or declared hazardous by the Ministry of Health or includes one or more substances classified as carcinogenic, mutagenic, or teratogenic by a laundry list of U.S. and international organizations (including EPA, TSCA, WHO, ASTDR, OSHA, etc.) if present in concentrations greater than or equal to 0.1%. (Art. 4.28) The Draft also sets out a series of exemptions for certain products. (Art. 2, Annex II)

The Ministry of Health is not required to post this Draft for public comment. Interested parties may, however, submit comments for consideration. There is no deadline for the agency to finalize and publish the revision.

Reference Sources (in Spanish):

- Draft Revised Regulation for the Registration, Import, Labeling, and Control of Hazardous Products, available at http://www.bdlaw.com/assets/attachments/Costa%20Rica%20Hazardous%20Products.PDF

Quality Standards for Costa Rican Biofuels Adopted

Costa Rica's Ministry of Environment, Energy and Telecommunications recently published in the Official Gazette new ethanol, anhydrous ethanol, and denatured anhydrous ethanol fuel standards for motor vehicles (*Reglamento Técnico de Especificaciones de Calidad de Etanol Carburante Anhidro y Etanol Carburante Anhidro Desnaturalizado y sus Mezclas con Gasolina*). The standards apply to these substances in pure form, and also to mixtures with gasoline. The standards include specific quality criteria and acceptable test methodologies to ensure the ethanol-based fuels meet the requirements.

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The manufacture and use of biofuels is a significant political, economic and social issue for many countries in Latin America. Recently, representatives from Latin American governments met in Sao Paulo, Brazil, under the Global Sustainable Bioenergy Project to discuss bioenergy production and use in the region. At the heart of the issue is the balance between in-country sustainability and land use versus economic opportunity and energy security. While a significant amount of legislation has already been issued regarding environmentally sound agro-ecological zoning in relation to biofuel production, attention is now also being paid to regulating the quality and use of biofuels, as seen in this example from Costa Rica.

Reference Sources (in Spanish):

- Decree 35915-MINAET, available at http://www.bdlaw.com/assets/attachments/Costa%20Rica%20Biofuels%20Standards.pdf

ECUADOR HIGHLIGHTS

Ecuador Establishes State Oil Companies and Considers Bills to Reform Its Oil Law

On April 6, 2010, President Rafael Correa Delgado issued two unnumbered decrees creating two new state oil companies, *La Empresa Pública de Hidrocarburos del Ecuador* (to be known as "PetroEcuador EP"), and PetroAmazonas EP. The mission of PetroEcuador will be to manage the development of petroleum resources throughout the country, and PetroAmazonas will take over operations of certain Amazonian oil fields. Each of these new entities replaces an existing state-owned oil company already known by similar names, so the significance of the new entities may be largely symbolic, accompanying the transformation of the former oil and mining ministry to the new Ministry of Non-Renewable Resources, which Ecuador established in late 2009.

On June 25, 2010, President Correa introduced a bill to reform Ecuador's oil law ("*Ley Reformatoria a la Ley de Hidrocarburos y a la Ley de Régimen Tributario Interno*"), which would expand the national government's authority over the country's oil reserves and increase its share of the resulting revenue. The bill would create the Agency of Hydrocarbon Regulation and Control ("*Agencia de Regulación y Control Hidrocarburífero*") to supervise petroleum production and enforce regulations (Art. 5), and the Hydrocarbon Secretariat ("*Secretaría de Hidrocarburos*") to perform several administrative functions. The most prominent of these functions would be the execution of contracts with companies involved in the exploration, extraction, refining and transport of petroleum (Art. 6). All contracts for oil production would be required to provide for 25% of gross revenue to be paid directly to the national government. (Art. 7) The Correa Administration placed its bill on a fast track to passage, invoking a constitutional authority for matters of economic urgency. (Const., Art. 140)

Within days of the Correa bill, legislators from other parties introduced oil law reform bills with near-identical titles, each of which would address environmental concerns in addition to asserting greater national control over Ecuador's oil industry. The "*Ley Reformatoria de la Ley de Hidrocarburos*," submitted by Magali Orellana of the Movimiento Unidad Plurinacional Pachakutik Nuevo party, would require companies to pay an environmental bond in the amount of 30% of the value of the commercially exploitable proven reserves under their control. (Art. 1) The money thus deposited would serve as a guarantee that the companies would clean up any environmental contamination resulting from their operations. The Orellana bill would also reclaim certain fields from private concessions, to be returned to the control of PetroEcuador (Transitory Provisions I - VII), and would reorganize the institutional structure of the national oil subagency. The "*Ley Reformatoria a la Ley de Hidrocarburos*," submitted by Galo Vaca of the Alianza Juntos por Napa party, would require oil companies that operate in Ecuador to pay

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local communities $100 per hectare annually to be dedicated to funding local environmental and sanitation projects. The Vaca bill, which does not appear to conflict fundamentally with either of the other bills, would also require that certain percentages of petroleum workers in all operations be Ecuadorian citizens.

Reference Sources (in Spanish):

- Decree Creating PetroEcuador EP, available at http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Decree%20Creating%20PetroEcuador%20EP.pdf
- Decree Creating PetroAmazonas EP, available at http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Decree%20Creating%20PetroAmazonas%20EP.pdf
- Correa Oil Law Reform Bill of 2010, available at http://www.bdlaw.com/assets/attachments/Ecuador%20Correa%20Oil%20Law%20Reform%20Bill%20of%202010.pdf
- Orellana Oil Law Reform Bill of 2010, available at http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Orellana%20Oil%20Law%20Reform%20Bill%20of%202010.pdf
- Vaca Oil Law Reform Bill of 2010, available at http://www.bdlaw.com/assets/attachments/Ecuador%20-%20Vaca%20Oil%20Law%20Reform%20Bill%20of%202010.pdf

MEXICO HIGHLIGHTS

Mexican Environmental Agency Adopts New Environmental Audit Regulations

In efforts to strengthen its environmental audit program, originally adopted in 2000, Mexico's environmental agency, SEMARNAT, has adopted new implementing regulations that substantially revise the existing program. The *Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Autorregulación y Auditorías Ambientales* repeals and replaces the existing regulations in their entirety.

The new regulations create a revised application process for obtaining an audit "Certificate" issued by the Mexican environmental enforcement entity, the *Procuraduría Federal de Protección al Ambiente*, on the basis of a comprehensive environmental audit program. (Art. 28). Certificates can be awarded in three categories: Clean Industry, Environmental Turist Quality; and Environmental Quality. Entities that receive the certificate may advertise that fact through use of a specially awarded "seal" (Art. 29) and are eligible to receive recognition for Environmental Excellence. (Art. 31).

The new regulations set forth guidelines for conducting an environmental audit, which must be conducted only by accredited environmental auditors. (Art. 33). The new Regulation includes expanded enforcement options and penalties for environmental auditors who falsify environmental audits and for companies who falsify information to obtain their certificates or misuse the seal. (Arts. 42-45). The new provisions generally seem intended to ensure that participation in the environmental audit and award of a certificate and seal provide meaningful distinctions for consumers and the public.

Reference Sources (In Spanish):

- Environmental Audit Regulation, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Environmental%20Audit%20Regulation.pdf

Secretary of Health Revises Lists of Banned and Controlled Chemical Substances in Cosmetics

The Mexican Secretariat of Health has again revised its list setting forth the banned and

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restricted standards in the elaboration of beauty products and perfumes, *Acuerdo por el que se determine las sustancias prohibidas y restringidas en la elaboración de productos de perfumería y belleza* (Agreement determining banned and restricted substances in the elaboration of beauty and perfume products). The new list abrogates the existing list, published in 2007. The list is updated and amended periodically. The list itself has few substantive requirements; rather it is a list intended to implement provisions of the Mexican health laws governing cosmetics.

Reference Sources (In Spanish):

- Agreement of Listed Banned and Restricted Substances, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Agreement%20of%20Listed%20Banned%20and%20Restricted%20Substances.pdf

Congressional Bill Would Deem All E-Wastes Hazardous Wastes

A new bill in the Mexican Chamber of Deputies would classify all "technological wastes" as hazardous wastes, changing their status from so-called "special management waste" to hazardous wastes. *See* Bill *Que Reforma Diversas Disposiciones de la Ley General para la Prevención y Gestión Integral de Residuos, Suscrita por Las Diputados Rodrigo Pérez-Alonso González y Agustiín Torres Ibarrola* (Bill, Background Section, p. 2) To make that change, two key revisions to the existing General Waste Law (*Ley General para la Prevención y Gestión Integral de los Residuos*) are proposed.

Under the proposal, "technological waste" would be defined as materials from electronic equipment as well as from the IT and electronics industries that present any of the following characteristics: corrosivity, reactivity, explosivity, toxicity, or flammability or which could harm human health or the environment. (Bill, Proposed Art. 5 XXXIII Bis for the General Waste Law) The hazardous characteristics are taken from Mexico's existing criteria for defining hazardous waste, but the addition of the broad language (i.e., "anything that could harm health or the environment") creates an additional set of criteria. Second, technological wastes would be removed from the category of special management wastes and added to the list of hazardous wastes and hazardous EOL products subject to Management Plans. (See Bill, Revising Arts. 19 & 31 of the General Waste Law).

Importantly, by changing the classification for tech wastes to hazardous wastes, they would be subject to the exclusive jurisdiction of the federal government instead of the individual states. While the latter change could lead to some jurisdictional streamling, it would add considerable costs to the management of such end-of-life products. The bill has been met with some criticism by industry, local sources report.

Reference Sources (In Spanish):

- Bill Classifying Technological Wastes as Hazardous, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Bill%20Classifying%20Technological%20Wastes%20as%20Hazardous.pdf

Secretary of Energy Proposes Energy Efficiency Standards for Air Conditioners Proposed

In what will likely be a wave of forthcoming energy efficiency standards for a broad range of domestic goods, the Mexican Secretariat of Energy (SENER) has proposed energy efficiency standards for air conditioners, *Proyecto de Norma Oficial Mexicana PROY-NOM-023-ENER-2008, Eficiencia energética en acondicionadores de aire tipo dividido, descarga libre y sin conductos de aire*).

The NOM, once adopted, would apply to split system (minisplit and multisplit) and ductless air

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conditioners, including one cycle and reverse cycle condensor-based units. Art. 1. The proposed NOM includes test methods for compliance as well as labeling standards for advising the public regarding the efficiency standards. Several standards are set forth based on the cooling capacity of the air condition units. The proposed NOM cites as one of its core references, ISO 5151 Non-ducted Air Conditions and Heat Pumps -- Testing and Rating for Performance, but notes that it is not in accordance with any international standards.

Reference Sources:

- Draft PROY-NOM-023-ENER-2008, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Draft%20PROY-NOM-023-ENER-2008.pdf

PERU HIGHLIGHTS

Peru Considering New Forestry and Wildlife Law

In June of this year, the President of Peru, Alan García Perez, submitted a bill for consideration by Congress that would create a new Forestry and Wildlife Law (*Proyecto de Ley Forestal y De Fauna Silvestre, No. 04141/2009-PE* or "Bill"). A prior forestry law was indefinitely suspended last year by Congress due to protests by indigenous groups who opposed the law on the grounds that it would weaken their land rights. The Bill, 126 pages long, is comprehensive in scope and includes various provisions intended to address concerns raised by indigenous groups.

The Bill's objective is to "promote the conservation, protection, increase and sustainable use of the patrimony of forestry and wildlife." (Art. 2) A national institutional framework for management of forestry and wildlife issues would also be created. (Arts. 19, 20 and 21) The Bill expressly recognizes the rights of indigenous groups to prior informed consultation on matters that affect them (Art. 1, Section IV) and rural and native communities to participate in government decisions related to forestry and wildlife (Art. 1, Section III). The Bill would also prohibit a change in use of lands classified as having capacity for major forestry use. (Art. 46)

Reference Sources (in Spanish):

- *Proyecto de Ley Forestal y De Fauna Silvestre, No. 04141/2009-PE*, available at http://www.bdlaw.com/assets/attachments/Peru%20-%20Forestry%20and%20Wildlife%20Bill.pdf

MINAM Declares Environmental Emergency After Collapse of Mine Tailings Dam

Peru's Ministry of Environment (MINAM) has declared an environmental emergency in response to the partial collapse of a dam that resulted in the spill of about 21,000 cubic meters of mine tailings into the Escalera and Opamayo rivers. *See Resolución Ministerial No. 117-2010-MINAM*. The declaration of environmental emergency, issued on July 5, 2010, is effective for ninety days and requires an immediate and short-term plan of action to be implemented by the responsible mining company to remediate the affected area. (Arts. 1 and 2) Peru's governmental mining and energy authority, OSINERGMIN, is charged with supervising the remediation. (Art. 4)

By subsequent Ministerial Resolution (*Resolución Ministerial No. 122-2010-MINAM*), MINAM approved the immediate and short-term plan of action. In addition to remediation of the rivers and affected soils, the action plan requires the mining company to provide clean sources of water for livestock and replenishment of aquatic species affected by the spill. Peru's National Water Authority has reportedly assessed a fine of almost $13 million against the company.

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Reference Sources (in Spanish):

- *Resolución Ministerial No. 117-2010-MINAM*, available at http://www.bdlaw.com/assets/attachments/Peru%20-%20Resolution%20No.%20117-2010.pdf
- *Resolución Ministerial No. 122-2010-MINAM*, available at http://www.bdlaw.com/assets/attachments/Peru%20-%20Resolution%20No.%20122-2010.pdf

URUGUAY HIGHLIGHTS

International Court of Justice Issues Opinion on Argentina-Uruguay Pulp Mill Case

On April 20, 2010, the International Court of Justice ("ICJ") issued its final ruling on the four-year dispute between Argentina and Uruguay regarding the construction and operation of a pulp mill on the Uruguay River, a shared watercourse between the two countries. The ICJ determined that Uruguay, by authorizing construction of the mill by Finnish company Oy Metsa-Botnia Ab, had not breached its substantive obligations for the protection of the environment under the Statute of the Uruguay River, an agreement between the two countries regarding use of the River. (Paras. 177, 180, 189 and 265) The ICJ did, however, find that Uruguay had failed to formally consult with Argentina before allowing construction of the mill. (Paras. 111, 122, 131, 149, 157 and 158) This was only a minor procedural infringement, however, and the court therefore held that the lack of consultation did not merit closure of the mill or other action. (Paras. 275-76)

This case, which Argentina filed against Uruguay over four years ago, has been a major political and economic issue for both national governments. For Uruguay, the mill is the most significant foreign investment venture to date for the country. On the other side of the Uruguay River, Argentine protestors, concerned with the potential environmental harm from the mill, have blocked the largest bridge over the river for three years, galvanizing the Argentine populace and national political leadership. It was only on June 19, 2010, well after the ICJ issued its ruling, that the protestors agreed to temporarily lift their blockade of the bridge, and only due to the threat of prosecution by the Argentine president Cristina Fernandez de Kirchner. The tension appears to be decreasing, as president Jose Mujica recently posted a message on his presidential Web page indicating Uruguay's willingness in the future to allow Argentina to monitor emissions and effluent discharges from the plant.

This is a landmark case in the region and globally. First, it raises the ICJ's profile for international environmental disputes, perhaps paving the way for similar transboundary environmental pollution cases in the future. Argentina and Uruguay's apparent willingness to respect the ICJ's decision and move forward peacefully to reconcile their differences over the mill further emphasizes the potential for the ICJ dispute settlement process. The ICJ's final decision also in some way validates the environmental assessment procedures that are required by Equator Banks and international funding organizations, like the Inter-American Development Bank and the World Bank's International Financial Corporation. Such validation can provide some assurances for future foreign investment projects of this scale.

Reference Sources (in Spanish):

- Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay), available at http://www.bdlaw.com/assets/attachments/Arg-Uruguay%20Pulp%20Case%20-%20ICJ%20Decision%20English.pdf

Uruguay Announces Plans to Significantly Expand Protected Areas

Uruguay recently announced that it plans to increase the country's protected areas from 100,000

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hectares to 500,000 hectares in 2014. The plan would be implemented through Uruguay's National System for Protected Areas (*Sistema Nacional de Áreas Protegidas* or "SNAP"), which is managed by the National Environmental Directorate in the Ministry of Housing, Land Use and Environment. In addition to increasing the scale of protected areas, the plan will also strengthen the capacity within SNAP to manage parks and achieve sustainable financing. This proposal signals the importance that the national government is now placing on protecting and preserving the country's biological and ecological diversity, a major shift for a country with a very young protected areas system.

Reference Sources (in Spanish):

- SNAP Fall 2010 Newsletter, available at http://www.bdlaw.com/assets/attachments/Uruguay%20Protected%20Areas%20Plan.pdf

VENEZUELA HIGHLIGHTS

National Assembly Considering Solid Waste Bill

Venezuela's National Assembly is considering a solid waste bill (*Proyecto de Ley para la Gestión del Manejo Integral de Residuos y Desechos Sólidos no Peligrosos*) ("Bill") intended to result in greater cooperation on waste management issues by all levels of government. The Bill would replace its 2004 Solid Waste Law (*Ley Sobre Residuos y Desechos*) in its entirety. Among other things, the Bill would create a National Superintendency for the Integral Management of Solid Wastes ("Superintendency"). The Superintendency would have oversight, policy-making and enforcement functions relating to solid waste management. (Art. 12). The Superintendency would also be charged with developing, together with the National Environmental Authority, a National Plan for the Integral Management of Solid Wastes ("National Plan"). (Art. 13) State and municipal solid waste management plans, which would be required to be developed within six months of publication of the law, would need to be consistent with the National Plan (Art. 26 and First Transitory Disposition).

The Bill also includes provision for product take-back. Importers, manufacturers and distributors of products of mass consumption that generate solid wastes would be required to develop take-back programs, including mechanisms for return, collection, storage and transport, to ensure reuse in the chain of production or effective recycling. Mass consumption would refer to the immediate use in large quantities, either individually or collectively, of products that result in the generation of solid wastes such as packaging, wrapping, recipients and similar products. (Art. 42) High-volume wastes such as construction debris, scrap and tires would be subject to special management requirements. (Art. 91-93). The Bill would also require the phasing out of open-air landfills. (Art. 88)

Reference Sources (in Spanish):

- *Proyecto de Ley para la Gestión del Manejo Integral de Residuos y Desechos Sólidos no Peligroso*, available at www.bdlaw.com/assets/attachments/Venezuela%20-%20Proyecto%20de%20Ley%20para%20la%20Gestion%20del%20Manejo%20Integral.pdf
- *Ley Sobre Residuos y Desechos*, available at www.bdlaw.com/assets/attachments/Venezuela%20-%202004%20Solid%20Waste%20Law.pdf

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