

LATIN AMERICAN REGION

ENVIRONMENTAL QUARTERLY



JULY 2011

NOTES FROM THE LATIN AMERICAN PRACTICE GROUP

Greetings from the Latin American Practice Group! We are pleased to provide our July 2011 Latin American Region Environmental Quarterly, covering highlights from the second quarter (March - June) of the year. Please know that the Quarterly is designed to capture major regulatory developments and emerging regional trends and is not intended to provide comprehensive coverage of all environmental initiatives.

ARGENTINA HIGHLIGHTS

CONGRESS ADOPTS LAW GOVERNING HYDROCARBON EXPLORATION IN ARGENTINE CONTINENTAL SHELF

Argentina has adopted a law establishing requirements for the exploitation and exploration of hydrocarbons in the Argentine Continental Shelf. (*Ley 26.659, Establécense condiciones para la exploración y explotación de hidrocarburos en la Plataforma Continental Argentina* or “Law”). The Law prohibits any hydrocarbon activities on the Argentine Continental Shelf without authorization from competent authorities. (Law, Art. 2) Penalties for noncompliance include suspension of such activities for a period of five to twenty years. (Law, Art. 3) The Energy Secretariat is the authorized enforcement authority. (Law, Art. 6) Implementing regulations are due within sixty days of publication of the Law. (Law, Art. 8)

Reference Sources (in Spanish):

- Law Governing Hydrocarbon Exploration on Argentine Continental Shelf, available at www.bdlaw.com/assets/attachments/argentina%20hydrocarbon%20law.pdf

CLIMATE CHANGE BILL UNDER CONSIDERATION BY ARGENTINE CONGRESS

A bill currently pending in the Argentine Congress would establish strategies for adaptation to global climate change and mitigation of greenhouse gas emissions. (*Proyecto de Ley 1480-D-201, Estrategias e instrumentos para la adaptación al cambio climático global y la mitigación de gases de efecto invernadero* or “Bill”) The Bill calls for the establishment of a Permanent Intergovernmental Commission and a Technical Consulting Committee on Climate Change. (Bill, Arts. 8 and 10). A National Plan for Adaptation to Climate Change would be established to develop methods to evaluate climate change impacts and prepare proposals for adaptation to climate change. (Bill, Arts. 19 and 20) The Argentine environmental secretariat (SAyDS) would provide technical and economic support for implementation of the plan. (Bill, Art. 22)

Reference Sources (in Spanish):

- Climate Change Bill, available at www.bdlaw.com/assets/attachments/Argentina%20climate%20change%20bill.pdf



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
rlamotte@bdlaw.com

Annis K. Maguire
amaguire@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



CONGRESS CONSIDERS BILL TO ESTABLISH MINIMUM STANDARDS FOR PREVENTION AND CONTROL OF ELECTROMAGNETIC CONTAMINATION

The Argentine Congress is considering a bill that would establish minimum standards for prevention and control of electromagnetic contamination. (*Proyecto de Ley 3375-D-2011, Proyecto de Ley de Presupuestos Mínimos de Prevención y Control de la Contaminación Electromagnética* or “Bill”). The objectives of the Bill are protection of public health, prevention and reduction of electromagnetic contamination and promotion of the use of technologies to reduce electromagnetic levels. (Bill, Art. 4) The Bill establishes maximum emitting limits based on urban or rural geographic location that are to be periodically revised based on scientific developments related to potential risks. (Bill, Art. 7) The Bill also calls for creation of a registry of sources of non-ionizing electromagnetic radiation. (Bill, Art. 18)

Reference Sources (in Spanish):

- Bill to Establish Minimum Standards for Prevention and Control of Electromagnetic Contamination, available at www.bdlaw.com/assets/attachments/Argentina%20electromagnetic%20emissions%20bill.pdf

BRAZIL HIGHLIGHTS

NATIONAL DEVELOPMENTS

CONAMA AMENDS WASTEWATER TREATMENT STANDARDS, REQUIRES FACILITIES TO TEST DISCHARGES

On May 13, 2011, Brazil’s National Environmental Council (*Conselho Nacional do Meio Ambiente*; “CONAMA”) issued Resolution No. 430, on the conditions and standards of effluent discharges (*sobre as condições e padrões de lançamento de efluentes*), to address wastewater treatment systems and industrial dischargers. Resolution 430 amends the existing effluent standards of CONAMA Resolution No. 357/2005, which also extends to the classification and ecological management of water bodies.

Resolution 430 establishes standards for the discharge of effluents from “sanitary sewers” (*esgotos sanitários*), which consists of residential, commercial and publicly collected liquid wastes and may include some industrial discharges. (Art. 4(VII)) Wastewater treatment systems that discharge directly into the ocean through submarine pipes are subject to a distinct set of standards. (Art. 22)

For industrial pollution sources, Resolution 430 imposes a new regime of obligatory self-monitoring and testing. (Arts. 24-28) The requirements include collection of samples by trained professionals and testing of samples by laboratories specially accredited by the National Institute of Metrology, Standardization and Industrial Quality (*Instituto Nacional de Metrologia, Normalização e Qualidade Industrial*; “INMETRO”). (Arts. 25-26) The deadline for compliance with any new requirements of Resolution 430 is three years following its date of publication, May 16, 2011.

Reference Sources (in Portuguese):

- CONAMA Resolution No. 430 of 2011, available at www.bdlaw.com/assets/attachments/CONAMA%20Resolution%20430%20of%202011.pdf
- CONAMA Resolution No. 357 of 2005, available at www.bdlaw.com/assets/attachments/CONAMA%20Resolution%20357%20of%202005.pdf

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BRAZILIAN HOUSE PASSES BILL TO REPLACE 1965 FOREST CODE, WITH AMNESTY FOR PAST DEFORESTATION

Concluding twelve years of debate, Brazil's Chamber of Deputies has passed Bill No. 1876/1999 (the "Bill") on the protection of native vegetation (*sobre a proteção da vegetação nativa*), which would supersede one of Brazil's oldest environmental laws, the 1965 Forest Code (*Código Florestal*). The vote had been anticipated for several months, but was delayed due to controversy over amnesty provisions that would suspend fines and remove habitat restoration requirements for many landowners who have illegally cleared forest from their properties. On May 24, 2011, a decisive majority of the deputies voted to pass the Bill: 410 to 63.

Through a process known as regularization (*regularização*), the Bill would suspend fines and restoration requirements for unpermitted clearing of properties up to 400 hectares (988 acres) prior to July 22, 2008, when more rigorous habitat protection rules went into effect. (Art. 33) A late amendment to the Bill would extend the amnesty to Permanently Preserved Areas (*Áreas de Preservação Permanente*), such as riparian buffer zones, mangroves and slopes greater than 45 degrees. (Art. 4) The amnesty provisions have been explained as a practical concession to the economic conditions of rural Brazilians, but have also been blamed for a recent increase in deforestation – i.e., in anticipation of the opportunity to “regularize” the cleared land.

If approved by the Senate, the Bill would go to President Dilma Rousseff, who opposes the amnesty provisions. On June 9, 2011, two weeks after the Bill passed the Chamber, President Rousseff issued Decree No. 7497, a six-month extension of the deadline for landowners to register their legal reserves. While temporarily suspending penalties, the extension also adds time for the Senate to debate, and possibly remove, the amnesty provisions before voting on the Bill.

Reference Sources (in Portuguese):

- Chamber of Deputies Bill No. 1876 of 1999 (as passed May 24, 2011), available at www.bdlaw.com/assets/attachments/Chamber%20of%20Deputies%20Bill%201876%20of%201999%20as%20passed%20May%2024%202011.pdf
- Decree No. 7947 of 2011, available at www.bdlaw.com/assets/attachments/Decree%207497%20of%202011.pdf
- Decree No. 6514 of 2008, available at www.bdlaw.com/assets/attachments/Decree%206514%20of%202008.pdf

IBAMA ISSUES ADMINISTRATIVE PROCEDURES FOR RECOVERY OF DEGRADED AREAS

On April 13, 2011, Brazil's federal environmental enforcement agency, IBAMA, issued Normative Instruction No. 4, establishing procedures for the development of Degraded Area Recovery Projects (*estabelecer procedimentos para elaboração de Projeto de Recuperação de Área Degradada*; “PRAD”). Such land restoration projects may be regulated under certain circumstances: for example, when conducted as an alternative to fines imposed for violations of environmental laws, or to attain the minimum “legal reserve” of natural habitat required for rural properties throughout much of Brazil.

The PRAD procedures are linked to the completion of a standard form that requires a technical evaluation of the degraded area, supporting documentation, and a plan for returning the area to a natural condition. (Annex I) The PRAD must be prepared by a trained professional listed in IBAMA's National Technical Registry (*Cadastro Técnico Federal*; “CTF”), and submitted to IBAMA in both hard copy and electronic forms. (Art. 5) The PRAD procedures include a standard timeline of three years for implementation, although this may be extended. (Art. 13) PRAD proponents must submit monitoring reports to IBAMA at least twice annually, and a final report upon completion. (Arts. 14, 17) If the objectives stated in a given PRAD



are not accomplished, the project is deemed incomplete, which initiates a reevaluation process and possible additional actions. (Art. 18) A Simplified PRAD option (*PRAD Simplificada*) is available for small properties and those occupied by rural families. (Art. 1 § 5)

Reference Sources (in Portuguese):

- IBAMA Normative Instruction No. 4 of 2011, available at www.bdlaw.com/assets/attachments/IBAMA%20Normative%20Instruction%204%20of%202011.pdf

BRAZIL RELEASES TEN-YEAR ENERGY EXPANSION PLAN

The Brazilian Ministry of Mines and Energy has published its “Ten-Year Energy Expansion Plan 2020” (*Plano Decenal de Expansão de Energia 2020*; the “Plan”), projecting pronounced increases in energy consumption and generation during the coming decade. Among the Plan’s many projections are a near-doubling of the number of automobiles, from 29 million in 2009 to 56 million in 2020, and a 50% increase in electricity, from 441 to 659 terawatt-hours. To meet the increase in demand, the Plan proposes construction of 30 hydro-electric projects, including 10 Amazonian dams. The Plan forecasts investments of approximately US\$300 billion in exploration and development of deepwater offshore oil fields, and US\$150 billion in expansion of electrical generation.

Reference Source (In Portuguese):

- Ten-Year Energy Expansion Plan 2020, available at http://www.cogen.com.br/paper/2011/PDE_2020.pdf

BRAZIL JOINS OECD AGREEMENT FOR MUTUAL ACCEPTANCE OF CHEMICAL DATA

On May 9, 2011, the Organization for Economic Cooperation and Development (“OECD”) announced that Brazil had joined the Mutual Acceptance of Data (“MAD”) system for environmental health and safety testing of chemical products. Under the MAD system, data generated in a member country in accordance with OECD Test Guidelines and Good Laboratory Practices must be accepted in all other member countries. The acceptance of data across international boundaries removes potential regulatory barriers to trade, and the OECD estimates that the system saves governments and manufacturers over \$200 million annually in avoided duplication of testing.

The MAD system provides for non-OECD members to join as non-member adherents. Brazil is the fourth country to join in this capacity. To attain non-member adherent status, the country must first pass through a provisional adherent waiting period, during which the OECD evaluates the country’s compliance monitoring program. Expansion to non-member countries provides manufacturers with more options for laboratories to test their products.

Reference Source (In English):

- OECD Press Release, “Brazil: Joins OECD Agreement on Mutual Acceptance of Chemical Safety Data,” May 4, 2011, http://www.oecd.org/document/16/0,3746,en_2649_34381_47768400_1_1_1_1,00.html

BRAZILIAN HOUSE BILL WOULD BAN NON-RECHARGEABLE BATTERIES

A Bill (No. 1400/2011; the “Bill”) introduced in Brazil’s Chamber of Deputies on May 19, 2011, would establish a five-year timetable for replacing non-rechargeable batteries with similar rechargeable products (*Estabelece prazo de cinco anos . . . para a substituição da comercialização e produção de pilhas e baterias não recarregáveis por produtos similares recarregáveis.*). By its terms, the Bill would cover batteries used in “electro-electronic devices” (*aparelhos eletroeletrônicos*) – a



general phrase that potentially encompasses most, if not all, devices that use batteries. The Bill would require reductions in the production and sales of single-use batteries in annual increments of at least 20%, starting upon enactment of the Bill. However, the Bill is brief and would leave most details to be determined through implementing regulations.

Reference Sources (in Portuguese):

- Chamber of Deputies Bill No. 1400 of 2011, available at www.bdlaw.com/assets/attachments/Chamber%20of%20Deputies%20Bill%201400%20of%202011.pdf

IBAMA REQUIRES WASTE REDUCTION PLANS FOR OFFSHORE OIL OPERATIONS

Two offices of IBAMA, the General Coordination of Oil and Gas (*Coordenação Geral de Petróleo e Gás*; “CGPEG”) and Environmental Licensing Directorate (*Diretoria de Licenciamento Ambiental*; “DILIC”) have issued new rules requiring offshore oil operations to submit waste reduction plans as a condition of obtaining or renewing environmental licenses. The rules are in CGPEG/DILIC/IBAMA Technical Note No. 01/11, “Pollution Control Project (“PCP”): Standards for presentation, implementation and reporting, in the processes of environmental licensing of maritime oil and gas exploration and production enterprises” (*Projeto de Controle da Poluição: Diretrizes para apresentação, implementação e para elaboração de relatórios, nos processos de licenciamento ambiental dos empreendimentos marítimos de exploração e produção de petróleo e gás*), which replaces the previous version of the PCP under Technical Note No. 08/08.

The new PCP sets waste management standards for three categories of operations: seismic, drilling, and production. Covered enterprises will have to submit plans that specify waste reduction targets. (§ II.4) Performance reports are due at least annually, or within a certain period after the completion of an operation. (Table 3) Required supporting documentation includes waste manifests, effluent test reports, and photographic evidence of implementation of the plan. (§ V.4) In addition to analysis of goals and reports, the PCP provides for on-site audits by CGPEG. (§ VI)

Reference Sources (in Portuguese):

- CGPEG/DILIC/IBAMA Technical Note No. 1 of 2011, available at www.bdlaw.com/assets/attachments/CGPEG-DILIC-IBAMA%20Technical%20Note%201%20of%202011.pdf

BRAZILIAN STATE DEVELOPMENTS

SÃO PAULO MOVES TO ELIMINATE PLASTIC SHOPPING BAGS

A still-unfolding series of events in São Paulo will restrict the availability of plastic shopping bags, although the full extent of the limitation remains in dispute. On April 20, 2011, under Resolution No. SMA-15/2011, the State Environmental Secretariat (*Secretaria do Meio Ambiente*; “SMA”) formed a working group to study the viability of eliminating plastic bags from supermarkets (*a criação de Grupo de Trabalho no sentido de estudar a viabilidade da extinção do uso de sacolas plásticas em supermercados*). Within three weeks, on May 9, 2011, Governor Geraldo Alckmin signed an agreement with the São Paulo State Supermarket Association (Associação Paulista de Supermercados; “APAS”) setting a goal for APAS members to stop providing petroleum-based plastic bags to customers by the end of 2011. In its press release announcing the agreement, SMA reported that consumers in São Paulo presently use nearly 30 billion plastic bags annually, sending over 100,000 tons of plastic to landfills and expending a significant quantity of water in the production process.

On May 18, 2011, the Municipality of São Paulo enacted Law No. 15374 (the “Law”), on the prohibition of the free distribution or sale of plastic bags to consumers in all commercial



establishments (*sobre a proibição da distribuição gratuita ou venda de sacolas plásticas a consumidores em todos os estabelecimentos comerciais do Município de São Paulo*). The Law prohibits all plastic bags except those used for unpackaged food and the manufacturer's original packaging. (Arts. 1, 4) The Law further prohibits the use of eco-labels such as "biodegradable," which implies that the Law is intended to forbid even the "bio-plastics" widely favored as an alternative to traditional petroleum-based plastic bags. (Art. 5) The Law also requires all commercial establishments to post a sign encouraging consumers to use only reusable bags. (Art. 2) On June 29, 2011, however, a state judge ruled on a petition by the Brazilian Plastic Industry Association (*Associação Brasileira da Indústria do Plástico*; "ABIPLAST"), enjoining enforcement of the Law. Review of this decision by a panel of judges is anticipated.

Reference Sources (in Portuguese):

- São Paulo SMA Resolution No. 15 of 2011, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20SMA%20Resolution%2015%20of%202011.pdf
- São Paulo State Government Press Release, "Alckmin Assina Acordo com Supermercados para Extinção das Sacolas Plásticas," May 9, 2011, <http://www.saopaulo.sp.gov.br/spnoticias/lenoticia.php?id=214682>
- São Paulo Municipal Law No. 15374 of 2011, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20Municipal%20Law%2015374%20of%202011.pdf

CETESB PUBLISHES ENVIRONMENTAL LICENSING GUIDELINES FOR THE SÃO PAULO METROPOLITAN REGION

São Paulo's environmental enforcement agency, the Environmental Sanitation Technology Company (*Companhia de Tecnologia de Saneamento Ambiental*; "CETESB"), in conjunction with two major trade associations, has published a guide to "Environmental Licensing in the São Paulo Metropolitan Region" (*Licenciamento Ambiental da Atividade Industrial na Região Metropolitana de São Paulo*; the "Guide"). The Metropolitan Region consists of the Municipality of São Paulo and 38 surrounding municipalities, an area with a combined population of over 19 million and approximately 40,000 industrial facilities. Due to the intensity of population and industry, many environmental regulations are more restrictive in the Metropolitan Region than elsewhere in the state.

The Guide discusses seven sources of restrictions that may preclude permitting of a given type of facility at a particular site: (1) municipal legislation; (2) the state-administered industrial zoning regulation for the Metropolitan Region (*Zoneamento Industrial da Região Metropolitana de São Paulo*); (3) protection of the two major reservoirs in the Metropolitan Region; (4) proximity to protected spaces; (5) air pollution controls; (6) the history of occupancy at the site; and (7) areas that are potentially critical for groundwater. The Guide also provides a classification of environmental licenses and guidelines for the licensing process, with listings of environmental laws and agencies.

Reference Sources (in Portuguese):

- Environmental Licensing in the São Paulo Metropolitan Region (2011), available at www.bdlaw.com/assets/attachments/Environmental%20Licensing%20Sao%20Paulo%202011.pdf

CHILE HIGHLIGHTS

FIRST WEEE-ROHS TAKE BACK BILL SUBMITTED TO CONGRESS

On April 21, 2011, Bill No. 7609-12, "Establishing regulations for managing Waste Electrical and Electronic Equipment ("WEEE")" ("WEEE Bill") (*Establece normas para la gestión de*



residuos de aparatos eléctricos y electrónicos) was introduced before the Chilean Chamber of Deputies. The WEEE Bill is modeled after the European Union's WEEE Directive, adopting the list of covered product categories from Annex IA and also adding to that batteries and piles (Art. 3(k)). The WEEE Bill also incorporates provisions from the Restriction of Hazardous Substances ("RoHS") (Art. 5(a)), laying the foundation for a Chilean RoHS System. The Bill sets forth: producer responsibilities in Article 5 (equipment design, creation of a WEEE take-back system, product labeling, and transparency); distributor responsibilities under Article 6 (acceptance of WEEE, distributor role in setting up collection and storage sites); and, generator responsibilities under Articles 7-8 (return and/or disposal of WEEE). The WEEE Bill is still under review by the Environmental Committee, as of the date of this publication.

Reference Source (in Spanish):

- Regulations for managing Waste Electrical and Electronic Equipment, available at www.bdlaw.com/assets/attachments/Chile%20WEEE%20RoHS%20Bill.pdf

ENERGY EFFICIENCY PRODUCT LABELING REQUIREMENTS

Beginning October 3, 2011, manufacturers, importers and distributors of TVs and set-top boxes must comply with rules requiring certification and labeling of energy use. (SEC Resolution 2684/2010, Art. 3). The certification process tests TVs and set-top boxes for their energy consumption while in standby mode, and requires labeling provisions. (Res. 2684/2010). The testing protocols are set out in PE 8/02/1 (TVs) and PE 8/02/2 (set-top boxes) and contain the labeling requirements. Those protocols were passed pursuant to the Chilean Norm ("NCh") No. 3107 of 2008, which sets forth the requirements for energy efficiency labeling for set-top boxes and TV broadcasting receivers.

On April 28, 2011, the regulatory agency in Chile responsible for the TV and set-top box certification and labeling requirement program, the Supervising Authority for Electronics and Fuels (*Superintendencia de Electricidad y Combustibles*), proposed similar rules for DVD, Blu Ray, and minicomponents. The draft testing protocol PE 8/03/2 ("Draft PE") was also created pursuant to NCh No.3107, and would similarly require product labeling. The comment period for the Draft PE closed on June 5, 2011.

Reference Sources (in Spanish):

- Chile - SEC Resolution 2684/2010, available at www.bdlaw.com/assets/attachments/Chile%20-%20SEC%20Resolution%202684-2010.pdf
- Chile PE No. 8/02/1, available at www.bdlaw.com/assets/attachments/Chile%20PE%20No.%208-02-1.pdf
- Chile PE No. 8/02/2, available at www.bdlaw.com/assets/attachments/Chile%20PE%20No.%208-02-2.pdf
- Chile PE No. 8/03/2, available at www.bdlaw.com/assets/attachments/Chile%20PE%20No.%208-03-2.pdf

UPDATE: STANDARDS FOR PM 2.5 AND THERMOELECTRIC PLANT EMISSIONS PUBLISHED IN CHILE'S OFFICIAL GAZETTE

On May 9, 2011, Chile's Official Gazette (*Diario Oficial*) published Decree No. 12, Establishing limits on fine particulate matter, 2.5 microns in diameter or smaller (PM 2.5) (*Aprueba Proyecto Definitivo de Norma Primaria de Calidad Ambiental Para Material Particulado Fino Respirable MP 2,5*), setting maximum daily limits for emissions of PM 2.5. Then on June 23, 2011, Decree No. 13, Establishing limits for thermoelectric plant emissions (*Aprueba Proyecto Definitivo de Norma de Emisión Para Centrales Termoeléctricas*), was published. Decree No. 13 sets forth requirements for thermoelectric plants in order to limit emissions of PM, sulfur



dioxide, nitrogen oxides and mercury.

Decreets No. 12 and 13 were originally signed by President Sebastián Piñera and Minister of Environment María Ignacia Benítez on January 18, 2011. Both of the newly published standards were discussed in more detail in the January 2011 Edition of the Latin American Region Environmental Quarterly Newsletter (“Norm Establishing Limits on Fine Particulate Matter Approved” and “Thermoelectric Plant Emissions Limits Adopted”).

Reference Source (in English):

- Latin American Region Environmental Quarterly Newsletter (January 2011), available at www.bdlaw.com/assets/attachments/January%202011%20LAR%20Environmental%20Quarterly.pdf
- PM 2.5 Norm, available at www.bdlaw.com/assets/attachments/Chile%20-%20PM2.5%20NOM.pdf
- Thermoelectric Plant Emission Norm, available at www.bdlaw.com/assets/attachments/Chile%20-%20Thermoelectric%20NOM.pdf

COLOMBIA HIGHLIGHTS

NEW CABINET-LEVEL MINISTRY OF THE ENVIRONMENT CREATED

Prompted in part by the recently-negotiated free trade agreement with the U.S., Colombia has established a new Ministry of Environment and Sustainable Development (*Ministerio de Ambiente, Vivienda y Desarrollo Sostenible*), separating out the environmental functions previously housed in one agency, the Ministry of Environment, Housing and Territorial Development (now the Ministry of Housing, Cities and Territories (*Ministerio de Vivienda Ciudad y Territorio*)). The change comes together with a series of other agency restructurings in Colombia, including the creation of a new Ministry of Justice and Rights and a Ministry of Health. Establishment of a cabinet-level ministry devoted to environmental policy may well increase the profile and importance of environmental issues in a country already known for its commitment and progressive approach to environmental policy.

Reference Source (In Spanish):

- *Ley No. 1444* (May 4, 2011) (*Por medio de la cual se secinden unos ministerios, se otorgan precisas facultades extradordinarias al preesidente de la república para modifica la estructura de la administración puública y la planta de personal de la fiscalía general de la nación y se dictan otras dispociones.*) available at www.bdlaw.com/assets/attachments/Colombia%20-%20Ley%201444.pdf

COLOMBIA TAKES ACTION TO PROTECT INTERNATIONAL FORESTS

Over the summer, Colombia moved to approve and implement two international conventions designed to promote sustainable forestry: (1) the 2006 International Tropical Timber Agreement, the primary objective of which is to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and to promote the sustainable management of tropical timber producing forests; and (2) the 1997 Agreement on the Establishment of the International Network for Bamboo and Rattan, the objective of which is to improve the well-being of producers and users of bamboo and rattan within the context of a sustainable bamboo and rattan resource base.

Reference Sources (In Spanish):

- *Ley No. 1458 de 2011*, (*Por medio de la cual se aprueba el convenio internacional de maderas tropicales 2006, hecho en ginebra el 27 de enero de 2006*, available at www.bdlaw.com/assets/attachments/Columbia%20-%20Ley%20No.%201458.pdf.



- *Ley 1461 de 2011, Por medio de la cual se aprueba el acuerdo sobre el establecimiento de la red internacional del bambú y el ratán, dado en Beijing, República Popular China, el 6 de noviembre de 1997*, available at www.bdlaw.com/assets/attachments/Ley%20No.%201461%20-%20China.pdf

SENATE APPROVES COMPREHENSIVE WEEE - ROHS BILL

Colombia's Senate has passed a bill that would institute a comprehensive waste electric and electronics equipment (WEEE) take-back bill and impose restrictions on hazardous substances in such equipment. See *PL 17/2010 Por la cual se establecen los lineamientos para la adopción de una política pública de gestión integral de residuos eléctricos y electrónicos (RAEE) y se dictan otras disposiciones*. The bill would require that manufactures, importers and distributors of covered products take-back covered goods at their end-of-life. (Art. 6). Importantly, the bill sets forth an operating presumption that covered waste products are not hazardous, a presumption that could be critical to facilitating front-end logistics associated with take-back of certain electronics goods. (Art. 1). The bill also bans landfill disposal of regulated end-of-life products and requires labeling advising of the ban on products.

Although the bill is plainly inspired by EU WEEE and ROHS Directives, in contrast to similar e-waste proposals in the Region the bill is not a verbatim leveraging of the EU initiatives. Rather, the bill envisions a framework that would be further implemented through the work of a public-industry member National Committee on Waste Electric and Electronic Equipment. Such an approach would likely result in a uniquely Colombian approach to WEEE regulation. (Art.11). The Bill is now before the Chamber of Deputies for consideration.

Reference Source (In Spanish):

- Electronics Disposal Decree, available at www.bdlaw.com/assets/attachments/Electronics%20Disposal%20Decree%20-%20Colombia.pdf

CITY OF BOGOTÁ REQUIRES REDUCTIONS IN PLASTIC BAGS

Stopping short of an outright ban on plastic bags, the City of Bogotá recently adopted a resolution requiring reduction of plastic bags by City commercial centers. See *Resolución 829 2011 (Por la cual se establece el programa de racionalización, reutilización y reciclaje de bolsas en el Distrito Capital)*. The Resolution adopts a three-phased approach that would require supermarkets to reduce "one-use" plastic bags from 30-40%, phased in over the next 3-5 years, depending upon the type of store. (Art. 5) Supermarkets must present plastic bag "rationalization" programs to the public, although those plans do not appear to require agency approval. Art 6. A phased-in 20% reduction of one-use plastic bags for all commercial centers is required within six years. (*Id.*). Plastic bag producers are required to label bags regarding bag reuse and must begin to provide multiple-use bags within a year. (Art 6).

The City has been focused on waste reduction programs this year. In March, the City proposed two producer take-back requirements for electronics equipment (see *Latin American Region Environmental Quarterly*, Beveridge & Diamond, P.C., January 2011, available at <http://www.bdlaw.com/assets/attachments/April%202011%20LAR%20Environmental%20Quarterly.pdf>). More recently, a City-wide management plan was adopted that addresses hazardous waste. See *Resolución 1754 de 2011*. Among other objectives, the Plan establishes an overarching goal a 40% reduction of hazardous waste generation as well as increased capacity and compliance for managing hazardous wastes, suggesting that additional regulation by the Capital City is forthcoming. (Art. 4).

Reference Source (in Spanish):

- *Resolución 829 de 2011 (Por la cual se establece el programa de racionalización, reutilización*



y reciclaje de bolsas en el Distrito Capital), available at www.bdlaw.com/assets/attachments/Colombia%20-%20resolucion_0829_Bolsas.pdf

- *Resolución 1754 de 2011 (Por la cual se adopta la plan para la gestión integral de residuos peligrosos para el distrito capital)* available at www.bdlaw.com/assets/attachments/Resolution%201754%20-%20Columbia.pdf

COSTA RICA HIGHLIGHTS

NATIONAL WASTE MANAGEMENT POLICY ADOPTED

Costa Rica has adopted a comprehensive National Waste Management Policy (*Política Nacional Para la Gestión Integral de Residuos 2010-2021* or “Policy.” The Policy highlights the importance of shared responsibility stating that the “integral management of wastes is a social co-responsibility and requires joint, coordinated and differentiated participation by all producers, importers, distributors, consumers and waste handlers, in both the private and public sectors.” (Policy, Chapter 3) The implementation strategy for the Policy includes, among other things, updating and apply the normative framework for solid wastes, creating educational programs on waste management, developing strategies that allow funding of waste management programs and improving intergovernmental coordination. (Policy, Implementation Strategies).

Reference Sources (in Spanish):

- National Waste Management Policy, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20National%20Waste%20Plan.pdf

COSTA RICA CONTINUES TO IMPLEMENT E-WASTE REGULATION

Costa Rica continues to implement its landmark e-waste product take-back regulation adopted last year. (*Decreto No. 35933-S, Reglamento para la Gestión Integral de los Residuos Electrónicos* or “Decree”). Under the Decree, an executive committee comprised of representatives from government, universities, NGOs, an industry association and a telecommunications authority (CEGIRE, by its Spanish acronym) is charged with oversight and implementation authority. (Decree, Arts.4-5) CEGIRE is reportedly working on an internal regulation as well as technical guides that would be used by the recycling sector. Recently, working groups formed by CEGIRE have developed a draft registration form to be used by industry collectives referred to as Compliance Units. Among other things, the draft registration form would require identification of the companies involved and types of wastes managed.

Reference Sources (in Spanish):

- E-Waste Regulation, Decreto No. 35933-S, available at www.bdlaw.com/assets/attachments/Costa%20Rica_Revised_Decree_35933_S_2010.pdf
- Draft Registration Form for Compliance Units, available at www.bdlaw.com/assets/attachments/Formulario_Unidades_de_Cumplimiento.pdf

EMISSIONS STANDARDS FOR BOILERS AND INDIRECT TYPE FURNACES PUBLISHED

On April 26, 2011, the Government of Costa Rica signed Executive Decree No. 36551-S-MINAET-MTSS (“Decree No. 36551”), Regulation on the Emission of Atmospheric Pollutants from Boilers and Indirect Type Furnaces (*Reglamento Sobre Emisión de Contaminantes Atmosféricos Provenientes de Calderas y Hornos de Tipo Indirecto*), building on the authority of prior Decrees promulgated to reduce air pollution by limiting industrial and commercial emissions in metropolitan and surrounding areas. The Decree was published in Costa Rica’s Official Gazette, Volume 125 (June 29, 2011), and goes into effect six months after the date of



publication, on December 29, 2011. (Art. 29).

Decree No. 36551: provides updated emissions limits for boilers and indirect type furnaces (Arts. 1, 7); creates the Technical Counsel on Emission and Immission Standards (Art. 4); establishes new reporting requirements for oil refineries and fuel producers and distributors (Art. 6); requirements for emission control systems and monitoring (Art. 9); states the obligations of laboratories that conduct sampling and analysis of pollutants (Arts. 10-12); specifies conditions for equipment used to conduct measurements and sampling (Arts. 13-14); establishes requirements for conducting and reviewing operational and laboratory reports, and their effect on the issuance of permits (Arts. 15-24); lays out the role of the State in the reporting and permitting process (Art. 25); and, lists sanctions for failure to comply with the Decree (Arts. 26-27).

Reference Source (in Spanish):

- Executive Decree No. 36551-S-MINAET-MTSS, Regulation on the Emission of Atmospheric Pollutants from Boilers and Indirect Type Furnaces, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20Decree%2036551.pdf

MEXICO HIGHLIGHTS

CONGRESS PASSES HISTORIC BILL TO ALLOW CLASS ACTIONS

Moving forward to implement changes to its Constitution enacted last summer and following unanimous Senate approval of an earlier bill, the Mexican Chamber of Deputies has passed legislation in a 398-4 vote to recognize class actions (*acciones colectivas*) for the first time in Mexico's history. Types of class actions that could be brought specifically include those for environmental harms, pursuant to proposed revisions to the General Law of Ecology Equilibrium and Ecological Protection. The bill has been returned to Senate approval for reconciliation of changes (*fe de erratas*) and will then move forward to the President for approval. If passed, the bill may well represent a sea change in environmental litigation practices in Mexico allowing for class action toxic torts law suits, heretofore unavailable to plaintiffs.

Reference Sources(In Spanish):

- Class Action Bill (*De las Comisiones Unidas de Justicia, y de Economía, con proyecto de decreto que reforma y adiciona los Códigos Federal de Procedimientos Civiles, y Civil Federal, así como las Leyes Federal de Competencia Económica, Federal de Protección al Consumidor, Orgánica del Poder Judicial de la Federación, General del Equilibrio Ecológico y la Protección al Ambiente, y de Protección y Defensa al Usuario de Servicios Financieros*) (April 28, 2011), available at www.bdlaw.com/assets/attachments/United%20Commissions%20for%20Justice%20and%20economy%20draft.pdf

SEMARNAT MOVES FORWARD WITH WASTE CLASSIFICATION AND TAKE-BACK STANDARDS

Nearly a decade after Congressional adoption of the 2003 General Law for the Prevention and Comprehensive Management of Wastes, Mexico's federal environmental agency (SEMARNAT) appears poised to finalize two key Official Mexican Norms (*normas oficiales mexicanas or NOMS*) that will implement key provisions of the omnibus waste management and take-back law. The first of the NOMs would establish requirements and procedures for formulating management plans for hazardous wastes as well as those products that are hazardous wastes at their end of life. The second NOM would identify those products deemed "special management wastes" that would be subject to a management plan; these products include a range of electronics and packaging among others. Both standards have been under development for some time



and subject to input through the Agency's informal negotiated rulemaking procedures. The NOMS have been filed with COFEMER, Mexico's commission on federal standards setting. If approved, they will be published for formal comment in the national official gazette prior to being made final.

Reference Sources (In Spanish):

- *Proyecto de norma oficial mexicana PROY-NOM-XXX-SEMARNAT-2008, que establece los elementos y procedimientos para formular los planes de manejo de residuos peligrosos*, available at www.bdlaw.com/assets/attachments/Draft%20Mexican%20criteria%20for%20classification%20of%20waste.pdf
- *Proyecto de norma oficial mexicana PROY-NOM-XXX-SEMARNAT-2011, que establece los criterios para clasificar a los residuos de manejo especial y determinar cuales están sujetos a plan de manejo; el listado de los mismos, el procedimiento para la inclusión o exclusión a dicho listado; así como, los elementos y procedimientos para la formulación de los planes de manejo*, available at www.bdlaw.com/assets/attachments/Project%20of%20mexican%20law%20for%20Clasification%20of%20special%20handling%20waste.pdf

MEXICO CONTINUES PRESS TO IMPLEMENT SUSTAINABLE ENERGY LAW

Keeping to an unusually aggressive pace of implementation, Mexico's National Commission on Efficient Energy Use (CONUEE) has adopted procedures under the Law of Sustainable Development of Energy (LASE) for submitting energy consumption information for this year only. (Art. 1). Under the LASE and its regulation, large quantity consumers of energy must annually submit information to CONUEE regarding their production, importation, exportation and consumption of energy as well as measures for conserving energy. (LASE Regulation, Art. 18). A large quantity user of energy is defined as an entity that has (1) used, in the past calendar year, electricity in excess of six gigawatt-hours or combustible energy in excess of nine thousand barrels of crude petroleum equivalent; or (2) an operator of a fleet of more than 100 cargo units or passenger transport. (*Id.*, Art. 22). The new procedures are largely designed to address incomplete submissions or failures to submit the required information.

Mexico has received international criticism for its far-reaching and inflexible implementation of the LASE, largely in relation to the energy efficiency labeling requirements that apply to nearly 200 products. Responding to that pressure, on June 15, 2011 Mexico submitted notice to the WTO Committee on Technical Barriers to Trade the catalogue of products required to have labels. Separately, CONUEE has promised issuance of guidance that would streamline applicability of the law in the near future. Labeling requirements are set to go into force on September 11, 2011.

Reference Source (In Spanish)

- Energy Consumption Guidelines (*Lineamientos que deberán observar los usuarios con un patrón de alto consumo de energía (UPAC) para la entrega de información sobre su consumo energético*), available at www.bdlaw.com/assets/attachments/Energy%20Consumption%20Guidelines%20-%20Mexico.pdf

PERU HIGHLIGHTS

PERU ADOPTS TEN-YEAR NATIONAL ENVIRONMENTAL ACTION PLAN

Peru has adopted a National Environmental Action Plan setting forth a ten-year strategy for responding to the country's environmental issues and addressing the management of natural resources. (*Plan Nacional de Acción Ambiental, Peru 2011-2021, Julio 2011* or "Plan") The Plan establishes goals in seven priority areas: (i) water resources; (ii) solid wastes; (iii) air quality;



(iv) the forest sector and climate change; (v) biological diversity; (vi) mining and energy; and (vii) environmental governance. Achieving the objectives of the Plan is defined as a shared responsibility of all levels of government. (Plan, Introduction)

The Plan includes specific actions to be undertaken in each priority area by 2012, 2017 and 2021. It cites deteriorating water quality as one of the most serious environmental issues faced by Peru and sets a goal of achieving treatment of 100 percent of domestic wastewater in urban areas by 2021. (Plan, Section 7.1) For solid waste management, the Plan establishes a 2021 goal of ensuring adequate treatment and disposal of 100 percent of urban solid wastes. (Plan, Section 7.2) The goal for air quality is for the country's thirteen principal cities to implement air quality action plans and meet applicable air quality standards by 2012 and maintain air quality thereafter. (Plan, Section 7.3)

Reference Sources (in Spanish):

- National Environmental Action Plan, available at www.bdlaw.com/assets/attachments/Peru%20National%20Environmental%20Action%20Plan.pdf

CONGRESS APPROVES FORESTRY LEGISLATION

Peru's Congress has approved a bill that would adopt a new Forestry and Wildlife Law (*Proyecto de Ley 4441/2009-PE* or "Bill"). The Bill would create a National Forestry and Wildlife Service (SERFOR) that would be responsible for developing policies and norms and have oversight and enforcement authority regarding forests and wildlife. (Bill, Art. 21). The Bill would also establish four forestry zones including areas that are: (i) designated for permanent production, (ii) classified as requiring protection and ecological conservation; (iii) identified as requiring reforestation; and (iv) in need of a specific strategy due to biophysical, socio-economic, cultural or geopolitical factors. (Bill, Art. 36). Passage of the Bill is a key step in satisfying the country's commitments related to forest sector governance under the U.S.-Peru Trade Promotion Agreement.

Reference Sources (in Spanish):

- Bill to Adopt Forestry and Wildlife Law, available at www.bdlaw.com/assets/attachments/Peru_Forestry_Bill.pdf

BILL WOULD ESTABLISH TEN-YEAR BAN ON IMPORT OF GENETICALLY MODIFIED ORGANISMS

A bill that would establish a ten-year moratorium on import of genetically modified organisms (GMOs) for use in agriculture was recently approved by Peru's Congress. (*Proyecto de Ley que Declara una Moratoria al Ingreso de Organismos Vivos Modificados* or "Bill"). Living modified organisms used in a confined space for research purposes and pharmaceuticals for which there is no transgenic alternative are outside the scope of the Bill. (Bill, Art. 2) The Bill would establish a technical committee comprised of government, private sector, university and biologist representatives to evaluate and prevent risks associated with GMOs and identify ways to improve crop production. If adopted, the Bill would require implementing regulations within sixty days. (Bill, Final Provisions)

Reference Sources (in Spanish):

- Bill to Establish Ten-Year GMO Moratorium, available at www.bdlaw.com/assets/attachments/Peru%20GMO%20Bill.pdf



PUERTO RICO HIGHLIGHTS

U.S. EPA ENFORCES AIR QUALITY STANDARDS FOR LEAD

On June 15, 2011, EPA informed the Government of Puerto Rico that it plans to designate the Arecibo area as failing to meet the national air quality standard for lead of 0.15 micrograms. If so classified, Puerto Rico will have three years from the day the area is designated (final designation expected to be made on October 14, 2011) to develop a clean air plan to improve the air quality in Arecibo and bring the area into attainment with EPA's lead standards. Puerto Rico has until August 15, 2011, to submit comments on the proposed designation. In connection with the proposed nonattainment area designation, EPA also pursued action against a battery recycling facility in the area. EPA has not ruled out the possibility of pursuing further enforcement actions targeting lead emissions if the conditions of a recently negotiated Settlement Agreement with the facility are not satisfied.

Reference Sources (in English):

- EPA Finds Area in Arecibo, Puerto Rico Does Not Meet Stricter Air Standards for Lead (June 15, 2011) www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20EPA%20Article%20-%20Arecibo.pdf

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