LATIN AMERICAN REGION

Environmental Quarterly

Fourth Quarter, 2011

Notes from the Latin American Practice Group

Greetings from the Latin American Practice Group! We are pleased to provide our Latin American Region Environmental Quarterly covering highlights from the fourth quarter (October - December) 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

Argentine Senator Filmus Introduces Packaging Waste Bill

In October 2011, Senator Daniel Filmus—a prominent legislator on environmental matters—introduced a bill that would regulate the management of consumer product packaging and its waste. (*Proyecto de Ley S 2575/11* ("Bill").) The Bill applies the principle of extended producer responsibility (EPR), aiming to hold producers responsible for the management of packaging waste. (Bill, Art. 3.)

The Bill applies only to household packaging waste. Producers of packaged material and packaging would be required to form nationwide associations in order to develop "Comprehensive Packaging Waste Management Systems" for various types of packaging. (Art. 11.) The activities of the associations would be financed by mandatory fees paid by producers. (Art. 14.) Producers that implement "Deposit and Return" systems to facilitate the reuse of packaging can avoid paying the fees. (Art. 18.)

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

Reference Sources (in Spanish):

- *Proyecto de Ley S 2575/11*, October 27, 2011 (Senate), available at www.bdlaw.com/assets/attachments/Argentina%20-%20Proyecto%20de%20Ley%20S%202575-11.pdf

Buenos Aires Province Enacts Law on Management of Waste Electrical and Electronic Equipment

In November 2011, the Legislature of the Province of Buenos Aires passed a law governing the management of Waste Electrical and Electronic Equipment (WEEE) (*Ley 14321* ("Law")). Later that month, the provincial governor issued a decree (*Decreto No. 2300*) promulgating the Law with modifications.

The Law aims "to prevent the generation of WEEE as well as to promote the reuse, recycling, recovery and reduction in environmental impact of WEEE." (Law, Art. 4.) WEEE is defined to include any discarded or disposed of electrical and electronic equipment, including components thereof. (Art. 6(2).) The Law applies to certain categories of WEEE that are produced, marketed, and/or used in the Province of Buenos Aires and which fall within one of the categories set forth

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in Annex I. (Art. 2.) The list of categories is broad, covering everything from large appliances (e.g., refrigerators, washing machines, air conditioners), small appliances (e.g., vacuum cleaners), and telecommunications equipment (e.g., personal computers) to lighting equipment, non-industrial-scale electrical and electronic tools, toys, video games, and more. (Annex I.)

The entities subject to the Law include producers, distributors, and marketers of electric and electronic equipment. (Art. 7.) These entities are required, among other things, to register with the provincial authorities, mark electrical and electronic equipment with a designated symbol, establish systems for collection of WEEE, and provide facilities for disposal of WEEE. (Art. 7.) In addition, producers (or third parties acting on their behalf) are required to establish systems for the recovery of WEEE in accordance with national and/or provincial legislation. (Art. 15.)

The Law contains provisions that encourage producers to design and produce electrical and electronic equipment in a way that facilitates reuse and recycling—for example, eliminating the use of certain hazardous substances such as lead, mercury, and cadmium. (Arts. 8, 9.) Among other provisions, the Law also prohibits the disposal of WEEE as undifferentiated solid waste (Art. 10) and requires treatment of WEEE containing hazardous materials (Art. 13).

Reference Sources (in Spanish):

- *Ley 14321*, passed November 2, 2011 (Senate & Chamber of Deputies); promulgated, with modifications, by Decreto No. 2300, November 22, 2011
  - Original text of *Ley 14321* (along with *Decreto No. 2300*) available at www.bdlaw.com/assets/attachments/Argentina%20-%20Ley%2014321%20with%20Decreto%20No%202300.pdf
  - Final text of *Ley 14321* (as modified by *Decreto No. 2300*), available at www.bdlaw.com/assets/attachments/Argentina%20-%20Final%20text%20of%20Ley%2014321.pdf

Río Negro Province Repeals Ban on Use of Cyanide and Mercury in Metal Ore Mining Operations

In December 2011, the Legislature of the Argentinean province of Río Negro (part of Patagonia) repealed a provincial law banning the use of cyanide and mercury in the extraction, exploitation, and industrialization of metal ores. The law, *Ley No. 4738* ("Law"), repeals Ley No. 3981, which implemented the ban in 2005. (Law, Art. 5.)

In addition to repealing the cyanide/mercury ban, the Law creates a Provincial Council for Mining Environmental Assessment (*Consejo Provincial de Evaluación Ambiental Minera*, or "Co.P.E.A.M.") under the jurisdiction of the provincial Undersecretary of Hydrocarbons and Mining and prescribes the composition of the Council. (Arts. 1, 2.) The Law requires the Council to evaluate environmental impact studies regarding the potential local impacts of mining. (Art. 2). It also sets forth the procedure for an environmental impact evaluation, which requires an environmental impact statement, a technical report, a report from the Provincial Council on the Environment, and a public hearing. (Art. 4.)

Reference Sources (in Spanish):

- *Ley No. 4738*, enacted December 30, 2011 (Legislature of the Province of Río Negro), available at www.bdlaw.com/assets/attachments/Argentina%20-%20Ley%20No.%204738.pdf
- *Ley No. 3981* (repealed), enacted August 2, 2005 (Legislature of the Province of Río Negro), available at www.bdlaw.com/assets/attachments/Argentina%20-%20Ley%20No.%203981.pdf

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BRAZIL HIGHLIGHTS

National Developments

CONAMA Issues Air Emission Standards for pre-2007 Stationary Sources

For the first time, existing facilities in numerous industries throughout Brazil must comply with nationwide air emission standards. On December 22, 2011, the National Environmental Council, CONAMA, issued Resolution 436 (the "Resolution"), establishing limits on the emissions of atmospheric pollutants by stationary sources that either were installed or had applied for a license before January 2, 2007 (*limites máximos de emissão de poluentes atmosféricos para fontes fixas instaladas ou com pedido de licença de instalação anteriores a 02 de janeiro de 2007*). Sources installed or with license applications filed after that date are already subject to similar standards under CONAMA Resolution 382/2006.

The Resolution sets emission standards for thirteen categories of stationary sources, including: boilers (segregated by fuel type), electrical turbines, oil refineries, steel mills, aluminum smelters, lead foundries, cement kilns, and fertilizer factories, among others. (*See* Annexes I - XIII) The emission standards differ among the various categories, with emission limits for particulate matter, nitrogen oxides, sulfur oxides, carbon monoxide, lead, fluoride, and ammonia, depending on the nature of the facility. The deadlines for compliance with the new standards range from immediately (e.g., electrical turbines, oil refinery limits for certain pollutants) to fifteen years following publication of the Resolution, with five years being the most common deadline.

The standards are to be enforced by environmental licensing agencies and, like many other CONAMA resolutions, are likely to be imposed through license renewals. These agencies may establish more restrictive limits and, in so doing, may take into account the availability of alternative fuels. (Art. 5) The Resolution also directs these agencies to establish emission limits for sources that are not enumerated in any CONAMA resolution. (Art. 7)

Reference Sources (in Portuguese):

- CONAMA Resolution 436 of 2011, available at www.bdlaw.com/assets/attachments/CONAMA%20Resolution%20436%20of%202011.pdf
- CONAMA Resolution 382 of 2006, available at www.bdlaw.com/assets/attachments/CONAMA%20Resolution%20382%20of%202006.pdf

Brazil Formally Separates Environmental Licensing and Enforcement Authority of Municipalities, States and the Federal Government

On December 8, 2011, President Dilma Rousseff signed Complementary Law No. 140/2011 (the "Law"), allocating the administrative authorities of the federal, state and municipal governments over environmental protection (*fixa normas . . . para a cooperação entre a União, os Estados, o Distrito Federal e os Municípios nas ações administrativas . . . à proteção do meio ambiente*) in Brazil. The Law is intended to implement Article 23 of the Federal Constitution, which establishes shared jurisdiction (*competência comum*) among the three levels of government over environmental issues. Prior to the Law's enactment, the constitutional overlap in jurisdiction has been widely interpreted to allow any environmental agency to enforce any environmental law or regulation in effect within its territorial purview, enabling multiple means of enforcement in a country whose agencies are not uniformly capable.

The Law's provisions are largely dedicated to separating the licensing authority of the three levels of government, which formalizes an existing policy that any given project's scale and the extent

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of its potential environmental impact dictates which agency should administer the license. However, the Law may have additional, broad implications for environmental regulation and enforcement throughout Brazil. In particular, the Law appears to limit the enforcement power over licensed operations to the agency that issued the license (Art. 17), effectively removing authority that the federal environmental enforcement agency, IBAMA, and some state agencies currently exercise to supplement or overrule the actions of lower-level agencies. IBAMA is generally regarded as more independent, rigorous and sophisticated than most other environmental agencies in Brazil, and sometimes intervenes in projects licensed at the state or municipal level.

Reference Sources (in Portuguese):

- Complementary Law No. 140 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20Complementary%20Law%20140%20of%202011.pdf
- Brazilian Federal Constitution of 1988, available at www.bdlaw.com/assets/attachments/Brazil%20Constitution%20of%201988.pdf

IBAMA Regulation to Accelerate Federal Licensing Process

Responding to a dramatic increase in the volume of applications for environmental licenses, the Brazilian government has acted to streamline the process with a series of rigid deadlines for action by the federal environmental enforcement agency, IBAMA, and other federal agencies that collaborate with IBAMA. On October 26, 2011, Brazil's Ministry of Environment (*Ministério do Meio Ambiente*), in conjunction with three other ministries, issued Portaria 419/2011 (the "Regulation"), regulating the activities of federal agencies and entities involved in environmental licensing (*regulamenta a atuação dos órgãos e entidades da Administração Pública Federal envolvidos no licenciamento ambiental*).

The Regulation sets forth timelines for the evaluation of applications and impact assessments. For example, once applications have been submitted, collaborating agencies will have 30 days to submit their reviews to IBAMA, or 90 days in the case of environmental impact studies, with extensions of up to 15 days in exceptional cases. (Art. 6) The agencies will have a single opportunity to request additional information from the applicant (Art. 6 § 6), which has raised concerns as to the ability of IBAMA to fulfill its oversight responsibility. The Regulation went into effect on the day it was published, October 28, 2011.

Reference Sources (in Portuguese):

- Interministerial Portaria No. 419 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20Interministerial%20Portaria%20419%20of%202011.pdf

Brazil Issues Offshore Oil Licensing Procedures

In preparation for the anticipated development of Brazil's recently discovered offshore oil deposits, the Ministry of Environment (*Ministério do Meio Ambiente*; "MMA") has issued Portaria 422/2011 (the "Regulation"), on procedures for the federal environmental licensing of activities and enterprises of exploration and production of oil and natural gas in the marine environment and the land-sea transition zone (*sobre procedimentos para o licenciamento ambiental federal de atividades e empreendimentos de exploração e produção de petróleo e gás natural no ambiente marinho e em zona de transição terra-mar*). Development of the massive "pre-salt" reservoirs—so named because they are located under a thick layer of salt that lies far below the deep ocean floor—is expected to begin in 2013. The Regulation establishes steps and timelines for the issuance of licenses for seismic activities, drilling, and production, and allows for multiple projects to be licensed under a single application process, so long as the projects are of a similar nature, in the same region, and scheduled on compatible timelines (Art. 23).

Reference Sources (in Portuguese):

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- MMA Portaria No. 422 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20MMA%20Portaria%20422%20of%2020111.pdf

Ministry of Environment Initiates Producer Take-back Rulemaking on Lubricant Oils in Plastic Containers

Brazil's Ministry of Environment (*Ministério do Meio Ambiente*; "MMA") has issued its first notice (*edital de chamamento*), requesting proposals for producer take-back programs under the 2010 National Solid Waste Policy Law (No. 12305; the "Law") and its implementing regulation, Decree 7404/2010 (the "Regulation"). The Law requires manufacturers, importers, distributors and merchants of various products—pesticides, batteries, tires, lubricating oils, fluorescent lamps, and electronics—to establish "reverse logistics" (*logística reversa*) programs to collect and manage their end-of-life products and/or packaging to an environmentally adequate final destination, prioritizing reuse and recycling, if feasible. The Regulation creates a novel rulemaking process in which the companies responsible for a certain product category are to propose a "sectoral agreement" (*acordo setorial*) under which they will operate a compliant reverse logistics system. Once approved, the sectoral agreements will be published and effectively become regulations applicable to the signatories.

Edital 1/2011 (the "Notice"), issued on December 28, 2011, covers lubricating oils sold in plastic containers, and is principally aimed at the used packaging, but also covers any product remnants. Additional sectoral agreements will cover lubricating oils sold in metal containers and oil filters. The Notice elaborates the minimum requirements that each proposal must contain, including operational details, geographical coverage, collection quotas, identification of hazardous wastes, responsibilities of the various parties involved, and penalties for non-compliance. The deadline for proposals is 45 days following the publication of the Notice.

Reference Sources (in Portuguese):

- MMA Edital No. 1 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20MMA%20Edital%201%20of%202011.pdf
- Law No. 12305 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Law%20No%2012305%20of%202010.pdf
- Decree No. 7404 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%207404%20of%202010.pdf

Brazilian Senate Amends House Bill to Replace 1965 Forest Code, with Amnesty for Past Deforestation

Brazil's Senate has approved, with amendments, the Chamber of Deputies Bill No. 1876/1999 (the "Bill"; reintroduced as Chamber of Deputies Bill No. 30/2011) on the protection of native vegetation (*sobre a proteção da vegetação nativa*), to revise the 1965 Forest Code (*Código Florestal*), in a vote on December 6, 2011. The Chamber of Deputies had approved the Bill on May 24, 2011, arousing controversy over its provisions for amnesty for some past deforestation. The Bill passed both houses by large margins, although the Senate version differs in certain respects from the Chamber's.

Both versions of the Bill would retain the existing Forest Code obligation for landowners to maintain native habitat on a certain portion of their properties, an area known as the "legal reserve" (*reserva legal*). Under existing law, properties that lack sufficient native vegetation to comprise the legal reserve are subject to fines and mandatory replanting. In Amazonia the legal reserve is 80%; in the central Brazilian Cerrado it is 35%; elsewhere it is 20%. (Art. 13) The Senate version would reduce the legal reserve to 50% in any Amazonian state that has committed at least 65% of its territory to public preserves.

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The Bill would enhance enforcement of the legal reserve by establishing the "Rural Environmental Registry" (*Cadastro Ambiental Rural*), in which landowners would register their properties, specifying the areas of legal reserve and extent of remaining native vegetation. (Art. 30) Through a process known as regularization (*regularização*), the Bill would suspend fines and restoration requirements for unpermitted clearing of properties of up to 400 hectares (988 acres) prior to July 22, 2008, when more rigorous habitat protection rules went into effect. (Art. 33) The Bill would extend the amnesty to lands designated as "Permanently Preserved Areas" (*Áreas de Preservação Permanente*), which include riparian buffer zones, mangroves and slopes greater than 45 degrees. (Art. 4)

The Senate vote returns the Bill to the House for further action. If passed, the Bill would go to President Dilma Rousseff, who has twice extended the deadline under existing law for landowners to register their legal reserves, effectively granting the legislature a grace period in which to finalize the Bill. The Bill would further extend this deadline by one year following enactment.

Reference Sources (in Portuguese):

- Chamber of Deputies Bill No. 1876 of 1999 (as passed May 24, 2011), available at
- Senate Report on Vote to Approve and Amend Chamber of Deputies Bill No. 1876 of 1999, available at www.bdlaw.com/assets/attachments/Brazil%20Senate%20Report%20on%20Vote%20to%20Approve%20New%20Forest%20Code%20Chamber%20Bill%201876%20of%201999.pdf
- Decree No. 7640 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%207640%20of%202011.pdf
- Decree No. 7497 of 2011, available at www.bdlaw.com
- Decree No. 6514 of 2008, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%206514%20of%202008.pdf

Brazilian State Developments

São Paulo Creates State Environmental Registry, Claims Portion of Federal Environmental Fees

Starting in 2012, companies that operate in a wide array of industries in the state of São Paulo must register with the State Environmental Secretariat (*Secretaria do Meio Ambiente*; "SMA"), report annually on their activities, and pay an annual fee—the São Paulo State Environmental Control and Enforcement Fee (*Taxa de Controle e Ficalização Ambiental do Estado de São Paulo*)—to SMA. On November 29, 2011, São Paulo Governor Geraldo Alckmin enacted Law No. 14626/2011 (the "Law"), establishing the State Technical Registry of Potentially Polluting Activities or Users of Environmental Resources (*Institui o Cadastro Técnico Estadual de Atitivadades Potencialmente Poluidoras ou Utilizadoras de Recursos Ambientais*) and its accompanying obligations. Annex I of the Law lists the covered industries, including mining, forestry, various manufacturing sectors, utilities, transportation, and commerce in certain classes of products.

The Law's requirements are derived from, and essentially identical to, those already in effect under the Federal Technical Registry of Potentially Polluting or Resource Consuming Activities (*Cadastro Técnico Federal de Atividades Potencialmente Poluidoras ou Utilizadoras de Recursos Ambientais*; "CTF"). The CTF was established under Brazil's framework environmental law (No. 6.938/1981) and is administered by the federal environmental enforcement agency, IBAMA.

Payment of the fee to SMA will be a new procedure; however, in theory, the total fee obligations of affected companies will not increase because payments to SMA will be deducted from the CTF fee that the same classes of companies already pay. (Decree 57547/2011, Art. 1) São

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Paulo is acting under a provision of Law No. 6.938 that allows states, under agreements with IBAMA, to take a portion of the CTF fee to fund state environmental programs. (Law 6.938/1981, Art. 17-Q) The fees owed to SMA range from R$120 to R$5,400 (approximately U.S. $80 to $3,500), depending the company's size and potential environmental impact, and will be due, along with the annual report, on March 31 of each year. The initial registration deadline is 90 days following publication of the Law.

Reference Sources (in Portuguese):

- São Paulo Law No. 14626 of 2011, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20Law%2014626%20of%202011.pdf
- São Paulo Decree No. 57547 of 2011, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20Decree%2057547%20of%202011.pdf
- Federal Law No. 6.938 of 1981, available at www.bdlaw.com/assets/attachments/Brazil%20Law%206938%20of%201981.pdf

São Paulo Exempts Low-Impact Projects from Environmental Licensing

On December 27, 2011, São Paulo's State Environmental Secretariat (*Secretaria do Meio Ambiente*; "SMA") issued a pair of resolutions exempting certain classes of agricultural and rural infrastructure projects from environmental licensing requirements. SMA Resolution No. 74/2011 on the exemption from environmental licensing of specific activities (*sobre a inexigibilidade de licenciamento ambiental para as atividades que especifica*) exempts some forms of construction, renovation and expansion of rural developments. The related SMA-SAA-SJDC Resolution No. 1/2011, on the environmental licensing of ranching activities in São Paulo State ("sobre o licenciamento ambiental para atividades agropecuárias no Estado de São Paulo"), issued jointly with the secretariats of Agriculture and Supply (*Secretaria de Agricultura e Abastecimento*; "SAA") and Justice and Citizens' Defense (*Secretaria da Justiça e da Defesa da Cidadania*; "SJDC"), exempts certain irrigation projects, plantations and livestock operations. Both resolutions apply only to low-impact projects that do not impinge on protected areas or suppress native vegetation. The resolutions are the most recent installment in a trend toward reducing the scope of environmental licensing both in São Paulo and elsewhere in Brazil.

Reference Sources (in Portuguese):

- São Paulo SMA-SAA-SJDC Resolution No. 1 of 2011, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20SMA-SAA-SJDC%20Resolution%201%20of%202011.pdf
- São Paulo SMA Resolution No. 74 of 2011, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20SMA%20Resolution%2074%20of%202011.pdf

CHILE HIGHLIGHTS

Bill Would Require Certain Businesses to Obtain Environmental Liability Insurance

Companies that produce, store, transport, or reuse toxic or flammable substances would be required to obtain environmental liability insurance in Chile to protect against harm to landfills under a new law. Introduced by Sen. Alejandro Navarro, Bulletin No. 8040-12 would amend Chile's General Environmental Law (No. 19,300) by adding a new provision to Article 8. The proposed amendment would require any person or business involved in activities specified under Law No. 19,300, Article 10 (projects or activities that can cause an environmental impact), to carry liability insurance for environmental damage that can occur during the closure or abandonment of sanitary landfills.

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Reference Sources (In Spanish):

- Bulletin No. 8040-12, "Modifying Law No. 19,300, " available at www.bdlaw.com/assets/attachments/Chile%20-%20Bulletin%20No%208040-12.pdf
- Law No. 19,300, "General Environmental Law," available at www.bdlaw.com/assets/attachments/Chile%20-%20Law%20No%2019300.pdf

Government Solicits Public Comments on Draft Revision of the Standard for Particulate Matter ("PM-10")

Between November 21, 2011, through February 13, 2012, the public can submit comments to the Ministry of the Environment on proposed Resolution No. 1309, "Approving the Draft Revision of the Primary Quality Standard for PM-10" (*Aprueba Anteproyecto de Revision de la Norma de Calidad Primaria para Material Particulado Respirable MP10*). The proposed Resolution would amend existing standards for PM-10 established under Supreme Decree No. 59/98. The Draft Revision proposes a daily concentration limit on PM-10 of 150mg/m3, and would designate levels of environmental concern when those limits are exceeded ("alert" when the 24 hour concentration is between 195-239mg/m3, "pre-emergency" when the concentration is between 240-329 mg/m3, and "emergency" when the concentration is > 330 mg/m3). (Art. 3,5)

Only approved monitoring devices, such as instruments specified by the US EPA, could be used to measure the amount of PM-10 in the air and that monitoring would need to occur at least once every three days. (Art. 6) Criteria for selecting the location of the monitoring devices include the quantity of the urban population that is exposed in a given zone, the absolute value of concentrations of PM-10, the chemical composition of PM-10 that the population is exposed to (in terms of its toxicity), and the presence of significant industrial developments or other activities that generate emissions in an area. (Art. 7) Finally, anyone responsible for maintaining networks and monitoring stations associated with the revised standard would be required to report the results to the Superintendency of the Environment. (Art. 12)

Reference Sources (In Spanish):

- Resolution No. 1309 (Approving the Draft Revision of the Primary Quality Standard for PM-10), available at www.bdlaw.com/assets/attachments/Chile%20-%20Resolution%20No%201309.pdf
- Supreme Decree No. 59/98 (Establishing Primary Quality Standard for PM-10 and Values that Define Emergencies) (modified through D.S. No. 45 of 2001), available at www.bdlaw.com/assets/attachments/Chile%20-%20Supreme%20Decree%20No%2059_98.pdf

Proposed Changes to Bidding Process for Chilean State Contracts Awarded for the Transfer or Disposal of Toxic Waste

A bill to amend Law No. 19,886 (General Law on Administrative Contracts and Service Provisions) was introduced before the Chamber of Deputies on December 22, 2011. The bill, Bulletin No. 8127-12 "Additional Requirements for Competitive Bidding for the Transfer or Deposit of Toxic Wastes" (*Agrega requisitos a las licitaciones públicas, para el traslado o depósito de residuos tóxicos*), is motivated by concerns that existing environmental protections are insufficient to ensure that businesses that provide high risk waste services are sufficiently qualified to engage in such activities.

To close the perceived loopholes in Law No. 19,886, the new bill would set forth several new requirements that companies must satisfy to be awarded contracts. These include:

- Participate in a public bidding process;
- Submit a "performance bond";

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- Demonstrate prior experience performing similar work, either within Chile or abroad;
- Show that it has discussed the project and any potential risks with the surrounding community; and
- For projects that involve the disposal of toxic waste, that the waste will be disposed of in the same region where materials will be extracted or waste will be treated.

Finally, the bill proposes that when a company merges, changes ownership, or purchases a toxic waste dump, the company must demonstrate that it can meet the same requirements initially required of the company who was awarded the contract.

Reference Sources (In Spanish):

- Bulletin No. 8127-12, "Additional Requirements for Competitive Bidding for the Transfer or Deposit of Toxic Wastes," available at www.bdlaw.com/assets/attachments/Chile%20-%20Bulletin%20No%208127-12.pdf
- Law No. 19,886 (General Law on Administrative Contracts and Service Provisions), available at www.bdlaw.com/assets/attachments/Chile%20-%20Law%20No%2019886.pdf

Amendment to General Environmental Law Would Require Waste Service Providers to Increase Coordination with the Fire Department

On December 21, 2011, Chile's Senate approved a proposed law to amend Article 12 of Chile's General Environmental Law and voted to send it onto the Committee for the Environment and Natural Resources. The proposed amendment, Bulletin No. 8.116-12, would require a regulated entity to inform the local Fire Department of: (1) the type of wastes that will be treated or stored, (2) security measures adopted, and (3) risks to human health.

Reference Source (In Spanish):

- Senate Daily Report, 84th Session held on December 21, 2011, available at www.bdlaw.com/assets/attachments/Chile%20-%20Senate%20Daily%20Report%2021%20Dec%202011.pdf

Proposed Law Would Require Large Mining Companies to Use Desalinated Water, Reduce Use of Surface and Ground Water

A new bill, "Obligating Large Mining Operators to Use Desalinated Water for Production Processes" (*Obliga a grandes explotadores mineros a la desalinización de agua para sus procesos productivos*), would require operators who extract water for mining operations at a rate greater than 200L/second to use desalinated water instead of surface and/or ground water by 2016. (Art. 1) This same requirement would go into effect for mining operators who extract more than 150L/second beginning in 2020. (*Id.*) A subsequent regulation would establish conditions and deadlines for complying with the law, as well as methods for substituting water currently used with desalinated water. (*Id.*) Factors that will be taken into consideration include: (a) the magnitude of the mining operation; (b) the quantity of water extracted; (c) the feasibility of undertaking investments in conjunction with other mining operations; (d) the scarcity of water in the respective basin; (e) the difficulty of the work and investment involved; (f) the future price of the minerals and their derivatives. (*Id.*)

Reference Sources(In Spanish):

- Bulletin No. 8006-08 (Obligating Large Mining Operators to Use Desalinated Water for Production Processes), available at www.bdlaw.com/assets/attachments/Chile%20-%20Bulletin%20No%208006-08.pdf

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Certification Requirements for Organic Farming Adopted

With the promulgation of Resolution No. 7880 on November 29, "Establishing Minimum Certification Requirements for Organic Agriculture in Accordance with Law No. 20.089 (*Establece Contenidos Mínimos de Certificados para Uso en Agricultura Organica en el Marco de la Ley No. 20.089*), farmers and vendors must now satisfy certification requirements to label goods they grow and sell as "organic" in Chile. To classify produce as organic, anyone involved with the production or processing of organic produce must receive a General Certification from a certified body registered in the Registry of the National System for Organic Certification. (Art. 3) Sellers of organic goods must submit sufficient information to receive a Certificate of Transaction from a similarly recognized body. (*Id.*) Resolution No. 7880 also specifies the minimum information that must be provided by individual farmers, associations of organic farmers, or vendors, before a general certificate or certificate of transaction will be issued. (Arts. 1, 2, & 4)

Reference Sources (In Spanish):

- Resolution No. 7880 (Establishing Minimum Certification Requirements for Organic Agriculture in Accordance with Law No. 20.089), available at www.bdlaw.com/assets/attachments/Chile%20-%20Bulletin%20No%208006-08.pdf
- (Spanish): Law No. 20.089 (Creating a National System for the Certification of Organic Agriculture), available at www.bdlaw.com/assets/attachments/Chile%20-%20Law%20No.%2020.089.PDF

COLOMBIA HIGHLIGHTS

New Senate Bill Would Standardize Green Marketing Claims

A new bill proposed in the Colombian Senate would create a framework for making "green" statements, declarations, claims and announcements related to activities, goods and services. The Bill proposes a broad range of standard definitions for different concepts often made in connection with green marketing claims (e.g., degradable, biodegradable, recycle, reduced use for water, energy or resources, among others). (Art. 1.) The Bill also proposes a series of principles associated with green marketing claims and advertising, including legality, truthfulness, good faith, and objectivity. (Arts. 3-7).

Liability for such statements would correspond to those making the claims, although the bill does not outline penalties associated with violations. (Art. 11). The MinAmbiente would be charged with developing an implementing regulation within six months of publication of the Law (Art. 12); the Superintendent of Industry and Commerce would be charged with actual enforcement. (Art. 14).

Although many countries in Latin America have Consumer Protection Laws that could be used for the enforcement of certain environmental claims, this comprehensive framework may well be the first of its kind in the region, once again underscoring how Colombia continues to stay at the vanguard of progressive environmental law and policy in Latin America.

Reference Sources (in Spanish):

- *Proyecto de Ley _____de 2011 Senado, Ley sobre argumentso ambientales y otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Proyecto%20de%20Ley%20086-11%20Senado%2012-09-11.pdf

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New National Authority on Environmental Licenses Proposes Norm for Calculating Tariffs for Projects Requiring Environmental Permits

Within weeks of its creation, Colombia's new National Authority on Environmental (ANLA) proposed a norm that would govern how fees are established for processing environmental permit, licensing and other authorizations. *See Proyecto Resolución No. ___, por la cual se fijan las tarifas para el cobro de los servicios de evaluación seguimiento de licencias, permisos, autorizaciones y demás instrumentos de control y manejo ambiental y se dictan otras disposiciones*.

The norm identifies two types of services for which fees can be charged -- evaluating services (essentially for issuing new and amended environmental authorizations) and monitoring services (for compliance monitoring of existing environmental authorizations). (Art. 3). Fees would be assessed for expert and consulting fees, agency personnel travel and meal costs, development of analyses and studies, and administrative costs (set as a percentage by the agency). (Art. 6).

The proposed standard includes a series of supporting forms to calculate specific types of fees by sector. The proposal also contemplates that permit applicants and holders will be required to submit information about project investment and operating costs on an annual basis. (Art 1, 2).

Reference Sources (In Spanish):

- *See Proyecto Resolución No. ___, por la cual se fijan las tarifas para el cobro de los servicios de evaluación seguimiento de licencias, permisos, autorizaciones y demás instrumentos de control y manejo ambiental y se dictan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Proyecto%20de%20resolucion%20ANLA%2011-24-2011.pdf

City of Bogotá Proposes Stationary Source Air Emission Standards

Following on its 2011 Ten Year Clean Air Plan (*Plan Decenal de Descontaminación del Aire*), the City of Bogotá has proposed new stationary source standards located within city boundaries. The standard proposes a series of air emissions standards, key among them including:

- First, the proposal would establish phased-in maximum permissible limits for PM, Sulfur Dioxides, and Nitrogen Oxides for new and existing external combustion equipment based on type of combustible (sold, liquid, gas). (Art 4, Art. 7) The proposal would ban use of untreated used oil as a combustion material; used oils may be used as combustibles only when it is treated by a licensed provided. (Arts 5-6).

- Next, new general emission standards for so-called productive processes would be established, although the scope of "productive process" set is establish in a separate standard (Res. 909/2008). Standards would be set for: PM, Sox, NOx, HG, HCl, total hydrocarbons, dioxins and furans, H2SO4, lead, cadmium and copper.

- All commercial and service establishments are required to comply with emission standards set forth in Resolution 909/2008.

The proposal also establishes monitoring protocols and mechanisms for identifying the point of discharge for monitoring emissions. (Art. 14, 17). All commercial and industrial service activities covered by the standard would be required to develop a contingency plan during times of non-compliance. (Art. 20).

Reference Source (In Spanish):

- *Resolución No. ___ de _____. Por la cual se dictan normas sobre prevención en control de la contaminación atmosférica po fuentes fijas y protección de la calidad del aire*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Proyecto%20de%20resolucion%20

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de%20la%20SDA%20-%20contaminacion%20atmosferica%2011-11-11.pdf

MinAmbiente Proposes Major Overhaul of Forest Management Regulations

Colombia's environment ministry has proposed new standards to implement changes to its 1974 Forestry Laws, amended in 2011. The proposed regulation would govern the identification, zoning and sustainable management of forest areas, including their development, generally under the jurisdiction of Colombia's regional entities, the *Corporaciones Autónomas Regionales* (CARs) and large urban centers (*Grandes Centros Urbanos*). (Art. 1)

The regulation would charge governing environmental authorities with developing forest zoning plans (*Planes de Ordenación Forestal*) as well as forest management plans (*Planes de Manejo Forestal*) for their regions. (Chapter 3). The proposed regulation, which groups forests generally into forest areas and protected forest areas, also establishes a system of permits, authorizations and concessions for developing forest reserves. (Chapter V).

Forest development would be authorized pursuant to a comprehensive Development Plan (*Plan de Aprovechamiento*) in accordance with technical guidelines to be established by the MinAmbiente within six months from adoption of the Regulation. Art. 51. The new law would repeal and replace Decree 877/1976 and most of Decree 1791/1996, the current implementing standards for the Law. (Art. 67)

Reference Sources (In Spanish):

- *Por el cual se reglamenta el Decreto Ley 2811 de 1974 en materia de ordenación, manejo y aprovechamiento forestal y se adoptan otras determinaciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Proyecto%20de%20Decreto%20del%20MADS%2010-27-11.pdf

MinAmbiente Proposes Terms of Reference for Developing Wetland Studies for Hydrocarbon Industry

MinAmbiente has proposed a brief Decree that would define reference terms for developing wetland studies for mining, oil and gas exploration, and agriculture. The regulation would also require the Regional Autonomous Corporations (*Corporaciones Autónomas Regionales*) and urban environmental authorities to create wetlands inventories and identify priority jurisdictional wetlands, followed by zoning plans to be used for making permitting decisions. (Art. 4; 6). Notably, the draft standard would prohibit mining, oil and gas exploration, agriculture, and large-scale development in wetlands that have been zoned for preservation or restoration. (Art. 7).

Reference Sources (In Spanish):

- *Decreto No. ____, por el cual se reglamenta parcialmente el inciso primero y el Parágrafo 2 del artículo 202 de la ley 1450 de 2011, sobre la prohibición parcial o total de las actividades mineras, de exploración y explotación de hidrocarburos y agricultura en humedales*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Proyecto%20de%20Decreto%20sobre%20la%20prohibicion%20actividades%20mineras%2011-11-11.pdf (Document with annexes available at www.bdlaw.com/assets/attachments/Colombia%20-%20Proyecto%20de%20Decreto%20sobre%20la%20prohibicion%20actividades%20mineras%20anexos11-11-11.pdf

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COSTA RICA HIGHLIGHTS

Costa Rican Legislature Considering Bill to Allow Import of Special Management Waste

Costa Rica's unicameral legislature, the Legislative Assembly, is considering a bill (P*royecto de Ley, Expediente No. 18074, Reforma del Primer Párrafo del Artículo 35 de la Ley para la Gestión Integral de Residuos, No. 8839* ("Bill")) that would amend the country's Law for the Comprehensive Management of Wastes (Ley No. 8839, *Ley para la Gestión Integral de Residuos* ("Law")) to allow the importation of "special management waste."

Under Article 35 of the current Law, the Ministry of Health has authority to permit only the importation of "ordinary" (i.e., household) waste, provided it meets certain conditions. (Law, Art. 35.) The Bill would expand the Ministry's authority to encompass "special management waste," which the Law defines as waste that "by its composition, transportation requirements, storage conditions, manners of use or salvage value, or a combination thereof, involves significant risks to health and systematic degradation of ecosystem quality, and therefore must be taken out of the normal flow of ordinary waste." (Law., Art. 6.)

The Bill was introduced in April 2011 and later referred to the Special Permanent Committee on Environment, where it remains under consideration. In October 2011, the Assembly solicited views on the Bill from a number of executive agencies. All have responded aside from the Ministry of Health, which is still considering the Bill.

Reference Sources (in Spanish):

- *Proyecto de Ley, Expediente No. 18074, Reforma del Primer Párrafo del Artículo 35 de la Ley para la Gestión Integral de Residuos,* No. 8839, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Proyecto%20de%20Ley%20Expediente%20No.%2018074.pdf
- *Ley No. 8839, Ley para la Gestión Integral de Residuos,* available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Ley%20No.%208839.pdf

ECUADOR HIGHLIGHTS

Changes Could Affect Profit Margins for Hydrocarbon Industry

A bill submitted before the National Assembly on December 8, 2011, "Bill to Reform the Law on Hydrocarbons" (*Proyecto de Ley Reformatoria a la Ley de Hidrocarburos*) as No. GC-123-11-AN and memorandum No. PAN-FC-011-217, proposes a new method for allocating profits made by petroleum companies. Under the proposed bill, workers in the oil and gas industry would receive a 3% share of profits, while the remaining 12% would be paid to the State. (Art. 1) The 12% allocated to the State would come from oil surpluses of public enterprises and would be immediately invested in social development projects, healthcare, education, environmental health, potable water, risk management, sports, the provision of public services, transportation, and other public infrastructure projects. (*Id.*) The proposal would affect petroleum businesses and their subsidiaries, and would enter into effect on the date the Law is published in the Official Register. (Arts. 1-2)

Reference Sources (In Spanish):

- Bill No. GC-123-11-AN "Bill to Reform the Law on Hydrocarbons", available at www.bdlaw.com/assets/attachments/Ecuador%20-%20Bill%20No.%20GC-123-11-AN.PDF

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Comprehensive Biodiversity Law Introduced Before the National Assembly

On October 26, 2011, Bill No. 147-11-LTG-AN "Law of Biodiversity" (*Ley de Biodiversidad*) was presented before the National Assembly. The proposed law is notable for its length, and would establish a comprehensive system for protecting, conserving, and restoring biodiversity, and regulating its sustainable use. (Art. 1) In addition to setting forth obligations and duties of both government and private actors (Arts. 6-18), the bill proposes to achieve its goals through "in situ," "ex situ," and "on-farm" measures.

In situ provisions focus on the preservation of nature, ecosystems, biological communities, and varieties of plant and animal species (generally, biodiversity) (Arts. 19-49). Ex situ provisions would focus on intellectual property rights and genetic materials (generally, biological diversity of living organisms), and include articles on threatened and endangered species. (Arts. 51-72) Subsequent titles focus on biodiversity uses in management; notably, the State, through the Ministry of Environment, would be in charge of training, investigation, and development of biodiversity-based technologies. (Arts. 112-113) The remaining provisions of the proposed Biodiversity Law address administrative aspects, such as Incentives (Title VI), Financing (Title VII), and Legal Actions to Protect Biodiversity (Title VIII).

Reference Sources (In Spanish):

- Bill No. 147-11-LTG-AN, "Law of Biodiversity," available at www.bdlaw.com/assets/attachments/Ecuador%20-%20147-11-LTG-AN.PDF

Proposed Changes to Mining Law Would Significantly Affect Ownership Rights of Noncomplying Companies

A new bill, No. T. 4441-SNJ-11-1255 "Bill To Reform Articles 109 and 122 of the Law of Mining" (*Proyecto de Ley Reformatoria a los Artículos 109 y 122 de la Ley de Minería*), would amend Ecuador's Mining Law to define "loss" of mining rights entails for the existing operator in violation of the law. (Explanation of Motives.) The proposed amendment would provide that the companies granted mining rights must comply with the Mining Law, including sustainable development and environmental protection. (*Id.*) Failure to comply with those obligations specified would result in the operator's loss of mining rights, and, in instances of significant contractual breaches or a serious breach by the operator of licensed activities, would result in ownership of the mine reverting back to the State. (*Id.*) Article 122 would be superseded by the amendment to Article 109, which would provide that the "expiration of mining rights" would include the immediate requisition to the State of the property and all associated equipment, machinery, etc., at no cost to the State. (Bill No. T. 4441-SNJ-11-1255, Art. 1) Furthermore, the value of any existing warranties would remain with the State, while the existing mining contract is terminated. (*Id.*)

Reference Sources (In Spanish):

- Bill No. 4441-SNJ-11-1255, "Bill To Reform Articles 109 and 122 of the Law of Mining", available at www.bdlaw.com/assets/attachments/Ecuador%20-%20Bill%20No.%204441-SNJ-11-1255.PDF

New Tax Reform Will Affect Manufacturers and Importers of Nonrecyclable Plastic Bottles

One component of the new "Environmental Taxes" section of Ecuador's revised tax code will impose a tax on all nonrecyclable plastic bottles. Manufacturers and importers of such products will be held liable for a $.02 per bottle tax.

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Reference Sources (In Spanish):

- Supplement to the Official Register, No. 583 (November 24, 2011), "Environmental Development Law and Optimization of State Revenues," available at www.bdlaw.com/assets/attachments/Ecuador%20-%20Supplement%20to%20Official%20Register%20No.%20583.PDF

MEXICO HIGHLIGHTS

Mexican Senate Approves Comprehensive Climate Change Bill

Mexico's Senate has a passed a comprehensive bill to regulate greenhouse gas emissions that would institute nation-wide programs for adapting to and mitigating effects from climate change. Entitled the General Law of Climate Change (*Ley General de Cambio Climático*), if passed, the Bill would impose numerous regulatory changes with far-reaching consequence for numerous sectors. Key elements of the bill include:

- Creation of national Climate Change System (*Sistema Nacional de Cambio Climático*). The System would be comprised of several new governmental climate change bodies to coordinate the regulatory activities of federal, state and municipal entities, including (1) a new National Institute of Ecology and Climate Change (INECC), (2) an Intersecretarial Commission on Climate Change; and (3) a Climate Change Counsel; as well as state and municipal representatives. (Art. 44). The System would, collectively, be charged with developing national climate change policies, strategies and programs and coordinating the efforts of government agencies charged with regulating greenhouse gas emissions and climate change programs.

- Establishment of two central climate change programs, one for adaptation and another for mitigation. As part of the mitigation program, environmental authorities would be authorized to require public and private entities to reduce their greenhouse gas emissions, institute energy efficiency practices, and preserve or restore ecosystems (Art. 36)

- Creation of a National Climate Change Information System that would include a National Greenhouse Inventory and Registry and information about greenhouse gas reduction projects, as well as: data about the atmosphere, sea level, soil quality (including carbon content); annual estimates for Climate Change costs including the calculation of a Net Internal Ecological Product; vulnerable populations, infrastructure and areas; and the protection, adaptation and management of biodiversity. (Art. 82).

- Establishment of a Climate Change Fund (Art. 85), funded by a variety of public and private sources, to be directed towards climate change adaptation and mitigation activities, public education, and technical studies, among others.

- Creation of a National Registry of Greenhouse Gas Emissions (Art. 94), through which regulated entities would be required to provide comprehensive annual reports of indirect and direct greenhouse gas emissions.

- Authorization for the development of a greenhouse gas trading system (Art. 100).

The Bill has been sent to the Chamber of Deputies for consideration.

Reference Sources (In Spanish):

- *Proyecto Ley General de Cambio Climático*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Climate%20Change.pdf

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Mexican Senate Unanimously Approves Watershed Environmental Harm and Natural Resource Damages Law

The Mexican Senate has passed a new bill that would dramatically expand the types of compensation that can be obtained for environmental harm and natural resource damages. The Law would provide new judicial mechanisms for seeking liability for "environmental harm," defined broadly as any "adverse and measurable loss, change, deterioration, impairment, effect or modification to habitat, ecosystems, natural resources and elements and their chemical physical or biological conditions, including the relationship between these and the environmental uses they provide." (Art. 2(III)).

All persons whose actions or omissions indirectly or directly cause environmental harm would be liable for repairing those harms and where reparation is impossible, for compensative damages established in the law. (Art. 10). Certain types of acts that cause environmental harm can also trigger economic damages (penalties) as well. (Art. 19).

The law would impose strict (objective) liability for harms derived from acts and omissions related to hazardous wastes or materials, the use and operation of watercraft near coral reefs, implementation of activities considered inherently risky (altamente riesgosas), and certain civil activities identified in Article 1913 of the Civil Code. (Art. 12). Liability for environmental harms resulting from other activities would be subjective, i.e., requiring proof of a causal nexus.

The bill would also establish a judicial procedure for seeking environmental harms, in accordance the Federal Code of Civil Actions. Parties granted standing to seek redress for environmental harms under the bill would include: (1) individuals who live in communities adjacent to the environmental harm; (2) non-profit entities who represent individuals in communities adjacent to environmental harm; (3) the Attorney General of the environment; and (4) other state and Federal District authorities charged with protecting the environment.

The bill is now before the Chamber of Deputies.

Reference Sources (In Spanish):

- *Proyecto Ley Federal e Responsabilidad Ambiental*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Natural%20Res%20Damages.pdf

Chamber of Deputies Approves E-Waste Take-back Bill

Mexico's Chamber of Deputies has passed a Bill that would amend the General Law for the Prevention and Comprehensive Management of Wastes to clarify when importers and producers must submit management plans for their end-of-life technological products and streamline jurisdiction over all e-wastes at the federal level. The products for which plans must be submitted include desktop and laptop computers, telecommunication equipment, cellular telephones, CRT telephones and monitors, plasma and liquid crystal televisions and screens, video and audio records, and printers (including multifunctional devices). (Art. 30(Bis). Notably, this list is similar to a recently proposed NOM, NOM-161, that would implement the existing provisions of the Waste Law.

The Bill consolidates a number of proposals pending before the house, some of which would have designated e-wastes as hazardous wastes. However, as proposed, the bill leaves open the question of final classification, but leaves in tact the presumption that most e-wastes are special management wastes. As a consequence, if adopted, the major implications of the Bill, as drafted, would largely be jurisdictional in nature, removing the current bifurcated jurisdiction between federal and state jurisdiction. The Bills is now before the Senate.

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Reference Sources (In Spanish):

- *Proyecto de decreto que reforma y adiciona diversas disposiciones de la Ley General para la Prevención y Gestión Integral de los Residuos en Materia de Desechos Electrónicos*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20E-Waste%20Bill.pdf

Mexican Senate Weighs Bill That Would Designate Most Batteries as Hazardous and Subject to Producer Take-back Programs

The Mexican Senate has adopted a short bill that would designate a broad range of batteries as hazardous products subject to producer take-back requirements under Mexico's existing waste law, the General Law for the Prevention and Comprehensive Management of Wastes. Specifically, the bill would list piles and electric batteries that contain lithium, nickel, mercury, cadmium, manganese, lead or zinc as presumptively hazardous wastes subject to management plans. Mexico's waste law already provides that certain batteries (mercury and ni-cad) are presumptively hazardous and subject to such plans.

Reference Sources (In Spanish):

- *Decreto por el que se reforma el artículo 31 de la leg general para la prevención gestión integral de los residuos*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Batteries%20Bill.pdf

PERU HIGHLIGHTS

Mexico-Peru Free Trade Agreement (FTA) Approved

Mexico's Senate has voted to replace its existing FTA with Peru, originally signed in 1987. (Manuel Vigo, Peru Free Trade Agreement Ratified by Mexico's Senate.) Trade between Mexico and Peru has increased 13% annually between 2000 – 2010, with annual profits in excess of $1.4 billion. (AQ Online, Mexico Ratifies Trade Agreement with Peru.) Peru is Mexico's eighth largest trading partner in Latin America, and under the new FTA, the scope of goods covered increases from 765 products to more than 12,000 goods. (Vigo, Peru Free Trade Agreement Ratified by Mexico's Senate.) The Peruvian Government also announced that the FTA includes language to prevent double taxation and to protect both countries from tax evasion. (Andina, Peru-Mexico FTA includes agreement against double taxation, fiscal evasion.)

Reference Sources (In Spanish and English):

- Peru-Mexico Accord, available at http://www.acuerdoscomerciales.gob.pe/index.php?option=com_content&view=category&layout=blog&id=77&Itemid=100
- Manuel Vigo, Peru Free Trade Agreement ratified by Mexico's senate, Peru thisWeek.com (Dec. 16, 2011), available at www.bdlaw.com/assets/attachments/Peru%20-%20Dec%2016%202011%20Mexico%20Ratifies%20Trade%20Agreement%20with%20Peru.PDF
- Peru-Mexico FTA includes agreement against double taxation, fiscal evasion, Andina (Dec. 20, 2011), available at www.bdlaw.com/assets/attachments/Peru%20-%20Dec%2016%202011%20Mexico%20Ratifies%20Trade%20Agreement%20with%20Peru.PDF

Peru Institutes a 10 Year Ban on the Import, Production of Living Modified Organisms (LMOs)

The Peruvian legislature has issued a ban on the import and production of Living Modified Organisms (LMOs), to allow the government time to establish a national infrastructure capable of evaluating activities associated with releasing LMOs into the environment. (Art. 2) Law No. 29811, "Establishing A Moratorium on the Import and Production of LMOs within Peru

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for a Period of Ten Years" was signed into law on December 9, 2011. Despite such a broad moratorium, three categories of LMOs are excluded from the ban: (1) those intended for use in confined spaces and for investigative purposes; (2) those viewed as pharmaceutical and veterinary and products, which are governed by international treaties and special rules to which Peru is a party; and (3) LMOs and/or products derived from LMOs that are imported and intended for human or animal feed or its processing. (Art. 3)

Reference Sources (In Spanish):

- Law No. 29811, "Establishes A Moratorium On The Import And Production of LMOs Within Peru For A Period Of Ten Years", available at www.bdlaw.com/assets/attachments/Peru%20-%20Bill%20No.%20365_2011-CR%20.PDF

Peru Proposes Sustainable Mining Plan To Eradicate Informal Mining

Peru's Congress is evaluating a proposed law, No. 365/2011-CR "Bill to Formalize, Organize, and Supervise Informal Mining" (*Proyecto de Ley para la Formalización, Ordenamiento y Fiscalización de la Minería Informal*), that would eradicate informal mining. (Arts. 1-3) The goal of the Bill is to address problems associated with informal mines, such as hiring undocumented workers, inadequate labor protections, and unsustainable development, by regulating informal mining operations. (Explanation of Motives & Art. 2)

The Bill would give the Ministry of Energy and Mines ninety days after the law is promulgated to develop and implement a "National Plan to Fight Informal Mining Practices." The National Plan would provide a path forward for informal mines to formalize, or eradicate those mines that refuse to come into compliance. (Art. 3) The Bill provides an exhaustive set of obligations with which the Ministries of Energy and Mines and the Environment would be required to comply, ranging from administrative duties (developing a national development plan and associated rules and regulations) to more technical standards. (Art. 5)

Reference Sources (In Spanish):

- Bill No. 365/2011-CR "Bill to Formalize, Organize, and Supervise Informal Mining," available at www.bdlaw.com/assets/attachments/Peru%20-%20Bill%20No.%20365_2011-CR%20.PDF

Ministry of Environment Designated As Exclusive Competent Authority for Environmental Evaluations and Certifications

In Peru, local and regional governmental bodies, as well as several national Ministries, can all be considered a "competent authority" for environmental evaluations and certifications. See Law No. 27,446 (National System for Environmental Impact Assessments) and Law No. 28,611 (General Environmental Law). To streamline the system and provide for more uniform decisions on key environmental matters, Bill No. 593/2011-CR would designate the Ministry of Environment as the sole governmental authority in Peru in charge of matters related to environmental impact assessments and environmental certifications. (Art. 1) The Bill would specifically modify Articles 17-18 of Law No. 27,446, Article 58 of Law No. 28,611, and Article 7 of Legislative Decree No. 1013 (Law Creating the Ministry of Environment and Specifying its Organization and Functions) to specify that the Ministry of Environment is the sole competent authority for such matters.

Reference Sources (In Spanish):

- Bill No. 593/2011, "Bill to Establish the Ministry of Environment as the Sole Competent Authority for Environmental Evaluations and Certifications", available at www.bdlaw.com/assets/attachments/Peru%20-%20Bill%20No.%20593_2011.PDF

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PUERTO RICO HIGHLIGHTS

Puerto Rico Enacts Electronic Recycling and Disposal Law

In December 2011, both chambers of the Puerto Rican Legislative Assembly passed a landmark electronic recycling and disposal bill (*Proyecto de la Cámara 2*) that would implement the principle of producer responsibility with respect to a wide range of electronic equipment. On January 17, 2012, the Governor of Puerto Rico signed the bill into law. The law ("Law"), designated Law No. 18 (*Ley Núm. 18 de 17 de enero de 2012*), is known as the Electronic Equipment Recycling and Disposal Law of Puerto Rico (*Ley de Reciclaje y Disposición de Equipos Electrónicos de Puerto Rico*). (Law, Sec. 1.01.) It goes into effect May 16, 2012. (Sec. 14.01.)

The Law applies to a broad range of "electronic equipment" (*e.g.*, TVs, computers, computer peripherals, CD/DVD players, fax machines), including "cellular equipment" (*e.g.*, cell phones, PDAs, beepers) but not including products outside the high-technology sector.. (Secs. 2.01(h), (i).) Beginning 18 months after the Law is enacted (*i.e.*, July 17, 2013), it will be illegal to dispose of any of these products or cathode ray tubes (CRTs) in a landfill or any other location other than a government-authorized collection center. (Sec. 3.01.)

Starting six months after enactment (*i.e.*, July 17, 2012), the Law imposes end of life responsibility upon manufacturers, importers, and exclusive distributers of electronic equipment and cell phones. (Sec. 6.01.) These entities are required to register with the Environmental Quality Board (Junta de Calidad Ambiental). (Sec. 6.01.) To register, they must show that they have adopted a Recycling and Disposal Plan. (Sec. 6.01.) Such plans must, at a minimum, outline the methods of collection and processes to be used for the recycling, reuse, recovery or disposal of electronic waste, and must contain data regarding the amount of e waste processed in the previous year and anticipated to be processed in the coming year. (Sec. 7.01.)

The Law also, among other things, lays out the respective supervisory and enforcement roles of the Environmental Quality Board, Solid Waste Management Authority (*Autoridad de Desperdicios Sólidos*), and municipalities. (Secs. 8.01-8.03.)

Reference Sources (in Spanish):

- *Ley Núm. 18 de 17 de enero de 2012*, available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Ley%20Num.%2018%20de%2017%20de%20enero%20de%202012.pdf

U.S. EPA Enters Settlement with Puerto Rico Land Authority Requiring Wetlands Preservation

On November 9, 2011, the U.S. Environmental Protection Agency (EPA) announced a settlement with the Puerto Rico Land Authority (PRLA, or *Autoridad de Tierras de Puerto Rico*) requiring PRLA to preserve 1,000 acres of wetlands in the town of Loiza. The agreement is part of an EPA initiative focusing on the Canóvanas area of northeastern Puerto Rico, where EPA claims that unpermitted housing and roads have been built on PRLA property (including wetlands). The land, which is currently being leased by PRLA for "low impact" agriculture, will be preserved through a conservation easement. Under the settlement, PRLA also was required to pay a $25,000 penalty and spend $100,000 to establish a wetlands management program.

Reference Sources (in English):

- U.S. Environmental Protection Agency News Release, "EPA Action Preserves One Thousand Acres of Wetlands in Loiza, Puerto Rico," November 9, 2011, available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20EPA%20News%20Release%20Nov%209%202011.pdf

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Bill Introduced to Reduce Air Emissions from Idling Heavy Vehicles

In November 2011, a bill was introduced in the Puerto Rican Senate to reduce air emissions from heavy vehicles whose engines are left idling for extended periods of time (*Proyecto del Senado 2412* ("Bill")). The Bill would amend Article 9 of the Environmental Public Policy Law (Ley 416-2004, Ley sobre Política Pública Ambiental) to provide the Environmental Quality Board (Junta de Calidad Ambiental) with authority to prohibit heavy vehicles from operating for more than 10 minutes when not in motion.

The Bill defines "heavy vehicles" as those whose weight exceeds 8,500 pounds and that are designed to transport persons or property. It also includes certain exceptions to the idling restriction, including (1) vehicles that are forced to stop due to traffic, (2) engines that are used to provide auxiliary power for purposes such as loading, unloading, cargo processing, cargo temperature control, construction, and maintenance, and (3) emergency vehicles.

Reference Sources (in Spanish):

- *Proyecto del Senado 2412* (Senate), available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Proyecto%20del%20Senado%202412%20Senate.pdf
- *Ley 416-2004, Ley sobre Política Pública Ambiental*, available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Ley%20416-2004.pdf

URUGUAY HIGHLIGHTS

Bill Would Expand Regulation of Marine Pollution to Include Terrestrial Discharges and Invasive Species

Uruguay's Ministry of National Defense, along with five other ministries, has proposed a bill (the "Bill") to the Congress that would significantly broaden restrictions on marine pollution under the National System of Pollution Spill Control (*Sistema Nacional de Control de Derrame de Contaminantes*). The Bill would expand existing provisions of Law 16.688/1994, Uruguay's marine pollution law. Whereas Law 16.688 currently covers pollutants in general, but only from ships, airplanes and maritime installations; the Bill would include terrestrial sources (Art. 1), incorporate the definition of pollutants from the International Maritime Organization's Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000, and add invasive aquatic species and pathogens (Art. 2).

The Bill would create a schedule of maximum fines for illegal discharges, varying from 1,000 to 10,000 "readjustable units" ("unidades reajustables"; a measure of value that is currently between U.S. $20 and $30), depending on the severity of the event. (Art. 6) The Bill would also strengthen liability provisions and add financial guaranty and insurance requirements for ships and maritime installations. (Arts. 7-9) Uruguay's government and legislature are controlled by the same party, which, along with the large number of co-sponsoring ministries, suggests that the Bill's prospects for enactment are strong.

Reference Sources (in Spanish):

- MDN Bill No. 1171 of 2011, available at www.bdlaw.com/assets/attachments/Uruguay%20MDN%20Bill%201171%20of%202011.pdf
- Uruguay Law No. 16.688 of 1994, available at www.bdlaw.com/assets/attachments/Uruguay%20Law%2016688%20of%201994.pdf

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Uruguay Institutes Total Ban of Endosulfan

The Ministry of Housing, Zoning and Environment (*Ministerio de Vivienda, Ordenamiento Territorial y Medio Ambiente*; "MVOTMA") has acted to prohibit all import, production and use of the pesticide endosulfan in Uruguay. Decree 104/2011 (the "Decree") makes the ban effective upon its publication, on December 5, 2011. Any party in possession of endosulfan is required to declare the quantity to MVOTMA within three months of that date. For such remaining quantities, MVOTMA will determine any allowable use or mode of disposal, which must be complete by December 5, 2012. The Decree follows a global ban of endosulfan agreed under the Stockholm Convention on Persistent Organic Pollutants, set to take effect in stages from 2012 to 2017, and outright bans or phase-outs announced by more than 80 other countries.

Reference Sources (in Spanish):

- MVOTMA Decree No. 104 of 2011, www.bdlaw.com/assets/attachments/Uruguay%20MVOTMA%20Decree%20104%20of%202011.pdf

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