



VOLUME II, 2012

NOTES FROM THE LATIN AMERICAN PRACTICE GROUP

Greetings from the Latin American Practice Group! We are pleased to provide our Latin American Region Environmental Quarterly covering highlights from the second quarter (April - July) 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.



Practice Group Members

Texas Office

98 San Jacinto Boulevard
Suite 1820
Austin, TX 78701

Madeleine B. Kadas
mkadas@bdlaw.com

Daniel P. Berner
dberner@bdlaw.com

Washington, DC Office

1350 I Street, NW
Suite 700
Washington, DC 20005

Paul E. Hagen
phagen@bdlaw.com

Russell N. Fraker
rfraker@bdlaw.com

K. Russell LaMotte
klamotte@bdlaw.com

Annise 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

Edward M. Grauman
egrauman@bdlaw.com

In collaboration with
Melissa Owen, *ambientelegal*

FIRM HOLDS FOURTH LATIN AMERICAN REGION ENVIRONMENTAL ROUNDTABLE

Beveridge & Diamond was honored to hold its Fourth Latin American Region Environmental Roundtable. The Roundtable, held on June 14, 2012 at the Firm's Headquarters Office in Washington D.C., included a day of lively exchange on issues relating to product stewardship, contaminated sites, Brazilian hot topics, insurance issues, environmental tribunals among other key topics.

The Keynote Speaker was Luis Bernal Jiménez, Executive Director of the Energy Affairs Administration of Puerto Rico. The Roundtable concluded with a festive dinner at local Latin restaurant, La Ceiba. Our Latin American Region practice group is planning a series of webinars for 2013.

ARGENTINA HIGHLIGHTS

NEW LNG PORT TERMINAL SITING REGULATIONS INCLUDE ENVIRONMENTAL PROTECTION PROVISIONS

On June 12, 2012, the Secretariat of Energy (*Secretaría de Energía*) issued a resolution (*Resolución 338/2012*; "Resolution") promulgating regulations on the siting of liquid natural gas ("LNG") port terminals and associated environmental protection requirements. The regulations require that any proposed LNG terminal project be examined in light of a wide array of environmental considerations, from land, air, and water protection to biodiversity and cultural preservation concerns. (Resolution, Art. 1 & Annex I, sec. 2)

The Resolution contains detailed requirements for an Environmental Impact Assessment that must be prepared in connection with planned projects and submitted to the Secretariat. (Annex I, sec. 3.) An Operational Risk Analysis is also required. (Annex I, sec. 4) In addition, annual security and environmental audits must be conducted. (Art. 7 & Annex V)

The Resolution went into effect on June 26, 2012, when it was published in the *Boletín Oficial*. (Art. 9)



Reference Sources (in Spanish):

- *Resolución 338/2012 (Secretaría de Energía)*, June 12, 2012 (published June 26, 2012), available at www.bdlaw.com/assets/attachments/Argentina%204%20-%20LNG%20Port%20Terminal%20Regs.pdf

CITY OF BUENOS AIRES PHASES OUT NON-BIODEGRADABLE BAGS AND ENVELOPES

On May 7, 2012, the Environmental Protection Agency of the City of Buenos Aires (*Agencia de Protección Ambiental de la Ciudad Autónoma de Buenos Aires*; “APrA”) issued a resolution (*Resolución No. 155/APRA/12*; “Resolution”) approving a plan that would phase out the use of non-biodegradable bags and envelopes within the City (*Plan de Reducción de Bolsas y de Sustitución de Sobres No Biodegradables*).

The Resolution places an immediate ban on distributing oxo-degradable bags. (Resolution, Annex I, sec. I.1.) Certain types of establishments (e.g., those that sell clothing, footwear, toys, books, beverages) are given 45 days to phase out all non-biodegradable bags. (Annex I, sec. I.2; see Annex II) Others are given 360 days to do so, with 25% and 50% reduction targets required at 90 and 180 days, respectively. (Annex I, sec. I.2; see Annex II) There are specific exemptions and requirements applicable to butchers, grocers, hospital suppliers, supermarkets, and similar establishments. (Annex I, secs. 3-4) The Resolution also provides standards for acceptable biodegradable paper and plastic bags. (Annex I, secs. I.2.1, 2.2) In addition, businesses and other organizations must phase out non-biodegradable envelopes in 90 (or, in some cases, 45) days. (Annex I, sec. II)

Under the Resolution, APrA must create a commission to promote the conversion of local production capacity from non-biodegradable to biodegradable bags. (Annex I, sec. IV) The Resolution also requires that APrA engage in public education efforts (Annex I, sec. V), and provides for fines in the case of noncompliance. (Annex I, sec. VI)

The Resolution went into effect on May 9, 2012, when it was published in the *Boletín Oficial de la Ciudad Autónoma de Buenos Aires*. (Art. 4)

Reference Sources (in Spanish):

- *Resolución No. 155/APRA/12 (Gobierno de la Ciudad de Buenos Aires)*, May 7, 2012 (published May 9, 2012), available at www.bdlaw.com/assets/attachments/Argentina%201%20-%20City%20of%20Buenos%20Aires%20Phases%20Out%20NonBiodegradable%20Bags%20Envelopes.pdf

MATANZA-RIACHUELO RIVER BASIN AUTHORITY ISSUES ENVIRONMENTAL INSURANCE REGULATIONS

On April 27, 2012, the Matanza-Riachuelo River Basin Authority (*Autoridad de Cuenca Matanza Riachuelo*; “ACUMAR”) enacted a resolution (*Resolución 661/2012*; “Resolution”) addressing several issues related to Argentina’s requirement that companies undertaking environmentally-risky activities obtain environmental insurance.

The Resolution creates a Registry of Environmental Insurance Policies and Registry of Environmental Contingencies. (Resolution, Art. 1) It requires owners of establishments in the River Basin that have a statutorily-defined “Environmental Complexity Level” of 2 or 3 to report to ACUMAR within 24 hours any event or contingency that might result in environmental damage. (Art. 2) The Resolution also requires owners to take action to minimize the environmental damage caused by such incidents. (Art. 3) Owners who do not timely report such incidents or take actions to mitigate their effects are subject to fines and other penalties.



(Arts. 5-6) ACUMAR, as the “insured” under Argentina’s approved policy (which acts more like a surety policy than true insurance), is required to report such incidents to the insurer. (Art. 4)

The Resolution was published in the *Boletín Oficial* on May 4, 2012, and took effect the following day. (Art. 9)

Reference Sources (in Spanish):

- *Resolución 661/2012 (Autoridad de Cuenca Matanza Riachuelo)*, April 27, 2012 (published May 4, 2012), available at www.bdlaw.com/assets/attachments/Argentina%202020-%20Matanze-Riachuelo%20River%20Basin%20Authority%20Env%20Insurance%20Regulations.pdf



ECO-LABELING BILL INTRODUCED IN SENATE

On April 19, 2012, a bill (*Proyecto de Ley S-0967/12*; “Bill”) was introduced in the Senate that would establish a voluntary ecological labeling system. (Bill, Art. 3) Under the Bill, an eco-label could be awarded to environmentally-friendly products and services that meet criteria established by the Secretariat of Environment and Sustainable Development (*Secretaría de Ambiente y Desarrollo Sustentable*; “SAyDS”). (Arts. 4, 6-7) The label would be required to contain scientifically-based information regarding the basis upon which it was awarded. (Art. 10) Toxic and hazardous substances as well as products manufactured through environmentally-harmful processes would be ineligible for the eco-label. (Art. 5)

The criteria for obtaining an eco-label would be subject to periodic review by SAyDS. (Art. 9) SAyDS would also be required to issue implementing regulations within 90 days of passage of the Bill. (Art. 15)

The Bill has been referred to the Committee on Environment and Sustainable Development and the Committee on Industry and Commerce.

Reference Sources (in Spanish):

- *Proyecto de Ley S-0967/12* (Senate), April 19, 2012, available at www.bdlaw.com/assets/attachments/Argentina%203%20-%20Eco-Label%20Bill.pdf

BRAZIL HIGHLIGHTS

NATIONAL DEVELOPMENTS

IBAMA TO CONSOLIDATE ENVIRONMENTAL LICENSING OF DANGEROUS GOODS SHIPMENTS

Brazil’s federal environmental enforcement agency, IBAMA, has been directed to create the National System of Transport of Dangerous Goods (*Sistema Nacional de Transporte de Productos Perigosos*) to administer the environmental licensing of maritime and interstate land-based shipments of dangerous goods. IBAMA Normative Instruction No. 5 (the “Rule”), published May 10, 2012, provides IBAMA with the authority to license such shipments and a mandate to set up the system within one year, with details to be determined through future regulations. The Rule implements provisions of Complementary Law No. 140, enacted in December 2011, which defines the environmental licensing authorities of the federal, state and municipal governments, and assigns jurisdiction over regional and multi-state projects exclusively to the federal government. Previously, jurisdiction over environmental issues was unclear in many situations, and widely regarded as shared among the three levels of government, so interstate shipments were potentially subject to separate licensing by all of the states involved.



Although the Rule does not define the term “dangerous goods,” internal references indicate that it is likely coextensive with the risk-based categories regulated by the National Terrestrial Transport Agency (*Agência Nacional de Transporte Terrestre*; “ANTT”) and maritime transportation authorities, which generally correspond to the UN Recommendations on the Transport of Dangerous Goods. The need to comply with all applicable regulations of ANTT and other federal agencies remains unaffected by the Rule. (Art. 5)

Reference Sources (in Portuguese):

- *IBAMA Normative Instruction No. 5 of 2012*, available at www.bdlaw.com/assets/attachments/IBAMA%20Normative%20Instruction%20No.%205%20of%202012.pdf
- *Complementary Law No. 140 of 2011*, available at www.bdlaw.com/assets/attachments/Brazil%20Complementary%20Law%20140%20of%202011.pdf

BRAZIL MOVES TO INCORPORATE SUSTAINABILITY CONCEPTS INTO FEDERAL PROCUREMENT PRACTICES

On June 5, 2012, President Dilma Rousseff issued Decree No. 7746 to promote sustainable development through the procurement practices of the federal government and establishing the Interministerial Commission on Sustainability in Public Administration (*Comissão Interministerial de Sustentabilidade na Administração Pública*; “CISAP”). The Decree does not directly impose new procurement requirements, but instead authorizes agencies to include certain types of preferences and criteria in their requests for proposals and contracts for goods and services. (Arts. 5, 7) The Decree’s list of “standards of sustainability” (*diretrizes de sustentabilidade*) blends environmental and economic considerations—in addition to typically environmental concerns, such as natural resource consumption and energy efficiency, the standards include preferences for local production and job creation. (Art. 4)

The newly created CISAP will be a consultative body comprised of representatives of several federal agencies. (Arts. 9, 10) Under the terms of the Decree, CISAP is directed to propose a wide range of regulations, standards and plans to promote sustainable procurement. (Art. 11) The authority to issue binding rules based on CISAP’s proposals will be exercised by the Secretariat of Logistics and Information Technology (*Secretaria de Logística e Tecnologia da Informação*) under the Ministry of Planning, Budget and Management (*Ministério do Planejamento, Orçamento e Gestão*). (Art. 15)

Reference Sources (in Portuguese):

- *Decree No. 7746 of 2012*, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%207746%20of%202012.pdf

NEW LAW REPLACES 1965 FOREST CODE, PROVIDING LIMITED AMNESTY FOR PAST DEFORESTATION

Following a protracted and contentious legislative debate, on May 25, 2012, President Dilma Rousseff enacted Law No. 12651 (the “Law”), on the protection of native vegetation (*sobre a proteção da vegetação nativa*), replacing one of Brazil’s oldest environmental laws, the 1965 Forest Code (*Código Florestal*). When signing the bill, President Rousseff vetoed certain provisions under her line-item veto power, and added amendments through a provisional measure, No. 571, which remained open to further congressional action for a period 120 days. The Law provides amnesty for some past deforestation, as had the bills approved by significant majorities in both the Senate and the Chamber of Deputies, which brought widespread public controversy throughout the legislative process.

The Law retains the existing Forest Code obligation for rural landowners to maintain native



habitat on a certain portion of their properties, an area known as the “legal reserve” (“*reserva legal*”). (Art. 3) Properties that lack sufficient native vegetation to comprise the legal reserve are subject to fines and mandatory replanting. (Art. 17) In Amazonia the legal reserve is 80%; in the central Brazilian Cerrado it is 35%; elsewhere it is 20%. (Art. 12) The Law alters the existing requirements by reducing the legal reserve to 50% in any Amazonian state of which at least 65% of the land area is managed for conservation within public preserves such as parks and indigenous territories. (Art. 13)

As a mechanism to enable more consistent enforcement of forest preservation requirements, the Law establishes the “Rural Environmental Registry” (“*Cadastro Ambiental Rural*”), in which landowners must register their properties, delineating the boundaries of their legal reserves and existing native vegetation. (Arts. 29, 30) The Law provides for a process known as regularization (“*regularização*”), allowing for amnesty from both fines and replanting requirements for unpermitted clearing of properties of up to 400 hectares (988 acres) that occurred prior to July 22, 2008. The Law also provides amnesty for past cutting of “Permanently Preserved Areas” (“*Áreas de Preservação Permanente*”), which include riparian buffer zones, mangroves and slopes greater than 45 degrees. (Art. 3) Among President Rousseff’s amendments subject to congressional review, the Law allows for the maintenance of agroforestry operations in Permanently Preserved Areas. (Art. 61-A)

Reference Sources (in Portuguese):

- *Law No. 12651 of 2012*, available at www.bdlaw.com/assets/attachments/Brazil%20Law%2012651%20of%202012.pdf
- *Provisional Measure No. 571 of 2012*, available at www.bdlaw.com/assets/attachments/Brazil%20Provisional%20Measure%20571%20of%202012.pdf

REVERSE LOGISTICS COMMITTEE DELIBERATIONS INDICATE FUTURE PRODUCER RESPONSIBILITY FOR PRODUCT PACKAGING

On May 23 and June 22, 2012, the Orientation Committee for Implementation of Reverse Logistics Systems (*Comitê Orientador para a Implementação de Sistemas de Logística Reversa*; the “Orientation Committee”) published a series of five “Deliberations” that elaborate several aspects of Brazil’s evolving producer responsibility requirements. Of particular note, Deliberation No. 5 endorses the technical and economic viability of implementing a reverse logistics system for “packaging in general” (*embalagens em geral*). The phrase “packaging in general” is not explained, and by its plain meaning appears to expand the scope of producer responsibility to a dramatically wider range of products than had previously been established.

Brazil’s 2010 National Solid Waste Policy Law (No. 12305; the “Law”) requires manufacturers, importers, distributors and merchants of pesticides, batteries, tires, lubricating oils, fluorescent lamps, and electronics to establish “reverse logistics” systems to collect and manage their end-of-life products and certain classes of product packaging. Decree 7404/2010 (the “Regulation”) provides for the development of “sectoral agreements” (“*acordos setoriais*”) to define reverse logistics responsibilities for each product category. The Regulation confers broad powers on the Orientation Committee to decide upon the technical and economic feasibility of reverse logistics systems, establish terms of their development, set timetables, and review the resulting systems and sectoral agreements.

The Deliberations record the Orientation Committee’s decisions on several topics. They bear dates from August 2011 to May 2012, although in principle any binding effect accrued only upon their eventual publication in Brazil’s official gazette. In addition to the endorsement of reverse logistics for packaging, the other Deliberations address:

- public consultations on proposed reverse logistics systems (Deliberation No. 1);
- criteria for the evaluation of social and economic impacts of reverse logistics systems will



- be in relation to 23 listed criteria (Deliberation No. 2);
- terms of reference for studies that evaluate the technical and economic viability of reverse logistics systems, requiring a profile of the product as a post-consumption waste, as well as the likely infrastructure needs, scale, costs, and benefits of potential systems (Deliberation No. 3); and
- endorsement of the technical and economic viability of reverse logistics systems for fluorescent and certain other lamps, as already provided in the Law (Deliberation No. 4).

Reference Sources (in Portuguese):

- *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
- *CO Deliberation No. 1 of 2012*, available at www.bdlaw.com/assets/attachments/CO%20Deliberation%20No.%201%20of%202012.pdf
- *CO Deliberation No. 2 of 2011*, available at www.bdlaw.com/assets/attachments/CO%20Deliberation%20No.%202%20of%202011.pdf
- *CO Deliberation No. 3 of 2011*, available at www.bdlaw.com/assets/attachments/Brazil%20-%20CO%20Deliberation%20No.%203%20of%202011.pdf
- *CO Deliberation No. 4 of 2012*, available at www.bdlaw.com/assets/attachments/Brazil%20-%20CO%20Deliberation%20No.%204%20of%202012.pdf
- *CO Deliberation No. 5 of 2012*, available at www.bdlaw.com/assets/attachments/Brazil%20-%20CO%20Deliberation%20No.%205%20of%202012.pdf

BRAZILIAN STATE DEVELOPMENTS

SÃO PAULO ESTABLISHES NEW AIR QUALITY STANDARDS AND STATIONARY SOURCE REGULATIONS

In a significant development in Brazilian air regulation, on June 19, 2012, São Paulo's State Environmental Council (*Conselho Estadual do Meio Ambiente*; "CONSEMA") published Deliberation No. 25 (the "Rule"), establishing new statewide air quality standards (*Padrões de Qualidade do Ar*; "PQARs") for several pollutants, and emissions control requirements for stationary sources, among other things. As under previous regulations, the Rule will be administered primarily by São Paulo's environmental licensing and enforcement agency, CETESB.

The pollutants regulated under the Rule are sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone, lead, and four classes of particulate matter: large (PM₁₀), small (PM_{2.5}), total, and smoke (*fumaça*). PQARs for each pollutant will begin with a Stage 1 Intermediate Target (*Meta Intermediária Etapa 1*; "MI1"), then progress through successively stricter stages to a Final Standard (*Padrão Final*; "PF"). (Art. 9) In all cases, the MI1 standard goes into effect January 1, 2013; effective dates for the successive stages will be determined through future agency decisions.

The Rule revises the existing geographical divisions of Air Quality Control Regions (*Regiões de Controle de Qualidade do Ar*), matching them to the state's Water Resource Management Units (*Unidades de Gerenciamento de Recursos Hídricos*), and adding subregions that, in most cases, correspond to the municipalities that have at least one air quality monitoring station. (Art. 3) Subregions will be classified on an air quality scale based on their frequency and degree of PQAR exceedances for sulfur dioxide, nitrogen dioxide, ozone, and large and small particulate matter. (Art. 5) Subregions classified as having low air quality will be placed under an Atmospheric Emissions Control Plan (*Plano de Controle de Emissões Atmosféricas*), comprised of subplans specific to mobile and stationary sources (*Plano de Redução de Emissão de Fontes Estacionárias*;



“PREFE”). (Art. 6)

Stationary sources located in subregions that exceed an applicable standard will be subject to two major emissions control regimes:

- First, where a PREFE is in effect, CETESB will inventory and classify all stationary sources according to an “ABC Curve,” wherein the highest emitting group of sources will be deemed “Class A.” To renew their operating licenses, Class A sources will be required to install emissions control systems that meet the “best available practical technology” (*melhor tecnologia prática disponível*) standard. (*Id.*) Non-Class A sources may ultimately be required to reduce emissions as well, in the event that the subregion continues to exceed an applicable air quality standard. (*Id.*)
- Second, in subregions that exceed the MI1 standard, proposed new and modified stationary sources will be required to obtain emissions offsets before the issuance of the construction permit (*Licença de Instalação*), and to implement the “most efficient emissions control technology” (*tecnologia mais eficiente no controle das emissões*). (Art. 11) The Rule provides for the generation of emissions reduction credits to supply the offset market and provide an economic incentive for reductions. (Art. 12)

Reference Sources (in Portuguese):

- *São Paulo CONSEMA Deliberation No. 25 of 2012*, available at www.bdlaw.com/assets/attachments/Brazil%20-%20CONSEMA%20Deliberation%20No.%2025%20of%202012.pdf

SÃO PAULO REORGANIZES STATE SECRETARIAT OF THE ENVIRONMENT

Through Decree No. 57933 (the “Decree”), published April 3, 2012, São Paulo has formally reorganized its State Secretariat of the Environment (*Secretaria do Meio Ambiente*; “SMA”). The reorganization serves primarily to clarify the hierarchy and responsibilities of offices within SMA. Under the new formal structure, SMA is comprised of ten subagencies: the Office of the Secretary; the State Environmental Council (*Conselho Estadual do Meio Ambiente*; “CONSEMA”); Coordination Offices of Biodiversity and Natural Resources, Environmental Education, Environmental Planning, Environmental Enforcement, and Urban Parks; and Institutes of Botany, Forestry, and Geology. (Art. 3) Each of the subagencies is further subdivided into numerous departments, centers and other offices with competence in particular issue areas. (Arts. 4-18) The lengthy Decree enumerates the specific authorities of the major subdivisions and office-holders of SMA, including formal liaisons to other agencies, joint commissions, and major programs. (Arts. 28-126)

São Paulo’s environmental licensing and enforcement agency, CETESB, is treated as a separate but related (*vinculada*) entity, outside the SMA hierarchy. (Art. 3) Of potential interest to companies whose activities are regulated by CETESB, the Decree provides no formal relationship between CETESB and SMA’s Environmental Enforcement offices, and does not elaborate on CETESB’s authority.

Reference Sources (in Portuguese):

- *São Paulo Decree No. 57933 of 2012*, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Sao%20Paulo%20Decree%2057933%20of%202012.pdf

SÃO PAULO PUBLISHES STATE SUSTAINABLE DEVELOPMENT STRATEGY

On June 5, 2012, Governor Geraldo Alckmin signed Decree No. 58107, promulgating the São Paulo State Sustainable Development Strategy 2020 (*Estratégia para o Desenvolvimento Sustentável do Estado de São Paulo 2020*; the “Strategy”). The ambitious Strategy summarizes many aspects of the state’s current economic and environmental circumstances, including most major elements of its environmental legislation, and establishes forty specific sustainable



development goals and milestones to be attained by 2020. (Annex) Among these goals, the Strategy gives particular emphasis to the following, which it terms “commitments” (*compromissos*):

- Increase, by 2020, the share of renewables (hydro, biomass, biogas, biodiesel, ethanol, solar, wind and solid waste) to between 55% and 69% of all energy consumed in the state.
- Achieve, by 2020, vegetative cover of 20% of the state’s territory.
- Reduce by 20% carbon dioxide emissions, relative to the 2005 baseline, as established in the State Policy on Climate Change (*Política Estadual de Mudanças Climáticas*).
- Modernize and expand metro lines from the current 74.2 km to 244.2 km in 2020.
- Modernize and expand commuter rail lines from the current 260.7 to 369.0 km in 2020.
- Eradicate extreme poverty (family income ≤ R\$70/month) by 2014.
- Provide universal sanitation by 2020: 100% clean water supply; 100% trash collection; and 100% sewage treatment in all municipalities.

The Subsecretariat of Strategic Management (*Subsecretaria de Gestão Estratégica*) is charged with implementing the Strategy. (Art. 3)

Reference Sources (in Portuguese):

- *São Paulo Decree No. 58107 of 2012*, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Sao%20Paulo%20Decree%2058107%20of%202012.pdf

CHILE HIGHLIGHTS

CHILEAN CONGRESS APPROVES LAW FOR CREATION OF ENVIRONMENTAL COURTS

On June 18, 2012, the Chilean Congress promulgated law 20600 (*Ley 20600*, the “Environmental Courts Law”), which establishes three environmental courts (the “Environmental Courts”) located in different Chilean cities. One of the Environmental Courts (*Primer Tribunal Ambiental*, the “First Environmental Court”), located in Antofagasta, will have jurisdiction over Chile’s northern regions; another court (*Segundo Tribunal Ambiental*, the “Second Environmental Court”), located in Santiago, will have jurisdiction over Chile’s central region; the third court (*Tercer Tribunal Ambiental*, the “Third Environmental Court”), located in Valdivia, will have jurisdiction over Chile’s southern region. Between them, the three Environmental Courts will have jurisdiction over the entire Chilean territory.

Among other matters, the Environmental Courts, which will form part of Chile’s judiciary branch and will be supervised by the Chilean Supreme Court, will be charged with the resolution of any complaints relating to emissions norms, decontamination plans, environmental damage remediation measures and environmental disputes in general. Each Environmental Court shall be composed of three “ministers,” two of whom will be attorneys and one of whom will be an environmental sciences professional with at least ten years of experience in the field.

The Second Court will begin functioning on December 28, 2012; the First and Third Environmental Courts will begin functioning on June 28, 2013.

Reference Sources (in Spanish):

- *Ley Núm. 20.600: Crea Los Tribunales Ambientales*, available at www.bdlaw.com/assets/attachments/Chile%20-%20Ley%2020600%20Environmental%20Tribunal%20law.pdf



BILL INTRODUCED IN CHILEAN LEGISLATIVE ASSEMBLY PROPOSES TAXES TARGETING PRODUCTS WITH SHORT LIFESPANS AND LONG DECAY PERIODS

On April 26, 2012, Chilean President Sebastián Piñera announced the proposal of a broad taxation package that would include, among other things, the imposition of “green taxes” on products with a short useful lifespan and a long period of decay. Such products include oils and lubricants, batteries, electric and electronic waste, glass containers, plastics and metals. Under the proposal, a 2% tax would be imposed at the first instance of the affected products’ sale or importation. The tax is intended to serve as an incentive for the separation and recycling of affected products. The Chilean internal revenue authority (*Ministerio de Hacienda*) estimates that these measures will generate roughly \$100 million annually in increased revenues, a portion of which will be dedicated to subsidize recycling projects.

Reference Sources (in Spanish):

- *Mensaje N° 058-360*, available at www.bdlaw.com/assets/attachments/Chile%20-%20Mensaje%20N%20058-360%20-%20Tax%20on%20polluting%20products.pdf

MINISTRY OF THE ENVIRONMENT PROPOSES STRINGENT NORMS FOR COPPER FOUNDRY EMISSIONS

On July 3, 2012, Chile’s Ministry of the Environment published, in Chile’s Official Gazette (*Diario Oficial*), proposed norms (the “Proposed Norms”) for the reduction of emissions from copper foundries. The Proposed Norms aim to reduce foundries’ emissions of particulate matter, sulphur dioxide, arsenic and mercury, imposing separate requirements on existing emission sources (“Existing Emission Sources”) and any new emission sources (the “New Emission Sources”) for which government permits are issued after the date of publication of the finalized version of the Proposed Norms.

For Existing Emission Sources, the Proposed Norms set forth numeric maximum annual sulphur dioxide and arsenic emissions limits (in tons per year) specified on a foundry by foundry basis. These limits are to be met within five years of the publication of the finalized version of the Proposed Norms. In addition to these absolute limits on emissions, the Proposed Norms also require Existing Emission Sources to capture 95% of their sulphur and arsenic emissions. For New Emission Sources, the Proposed Norms impose even more stringent annual emissions limits, allowing only the emission of 2% or less of the weight of sulphur received by the New Emission Sources and 0.024% or less of the weight of arsenic received. The Proposed Norms also impose maximum hourly chimney emission rates for both Existing Emission Sources and New Emission Sources.

The period of public consultation on the Proposed Norms ends on October 2, 2012.

Reference Sources (in Spanish):

- Proposed Norms can be found on the Ministerio del Medio Ambiente Website at www.mma.gob.cl/1304/w3-article-52489.html

CHILEAN MINISTRY OF ENVIRONMENT LAUNCHES FIRST COMPREHENSIVE NATIONAL ENVIRONMENTAL REPORT

On June 6, 2012, Chile’s Ministry of the Environment launched the country’s first comprehensive report on the environment (*Informe del Estado del Ambiente*, the “Report”). The twelve chapter Report is divided into three sections: “Health Risks and Quality of Life”; “Environmental Patrimony”; and “Global Climate Change.” The Report includes chapters on air and ground pollution, waste management, potable water access, biodiversity, water resources and climate change. The Report was issued in an effort to increase environmental transparency pursuant to a 2010 amendment (*Ley 20.417, Art. 70 n*) to Chile’s General Environmental Law



(*Ley 19.300, Bases General del Medio Ambiente*), which requires the issuance, every four years, of a report detailing the status of environmental quality at the national, regional and local levels and the yearly issuance of a consolidated report regarding environmental quality at the national level.

Reference Sources (in Spanish):

- *Ley 20.417*, available at www.bdlaw.com/assets/attachments/Chile%20-%20Ley%2020.417.pdf
- *Ley 19.300*, available at www.bdlaw.com/assets/attachments/Chile%20-%20Ley%2019.300.pdf
- The *Chile Environmental Report* can be found on the Ministerio del Medio Ambiente Website at <http://www.mma.gob.cl/1304/w3-article-52016.html>



COLOMBIA HIGHLIGHTS

COLOMBIAN CONGRESS ADOPTS WEEE AND ROHS BILL; PRESIDENT OBJECTS

The Colombian Congress has adopted a bill that would impose sweeping producer and importer responsibility for end-of-life electronic equipment. Unlike other regional e-waste proposals, the Colombian bill is not modeled on the European Union Directive, instead proposing a framework law that delegates significant discretion to the Ministry of Environment to establish implementing provisions. Thus, the precise scope of equipment and specific requirements for the private sector is not identified. Nonetheless, the Bill would grant the Ministry broad authority to require producer responsibility for a range of electronic equipment and their components as well as establish hazardous materials restrictions.

Recently, the President objected to certain provisions of the Bill as unconstitutional, making it unclear when or if the Bill will become law. Even without legislative authority, the Colombian environmental ministry has adopted several regulations requiring take-back of end-of-life products, including computers, printers and certain batteries, among others.

Reference Sources (In Spanish):

- *Artículo 36, Ley 5a. de 1992*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Articulo%2036%20Ley%205a%201992.pdf
- *Presidential Objection to PL 277/2011 - PL 071/2010*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Presidential%20Objection%20to%20PL%20277_2011%20-%20PL%20071_2010.pdf

NEW DISASTER RISK MANAGEMENT LAW PROPOSED IN COLOMBIA

On April 24, 2012, Colombia adopted a comprehensive disaster management and response law, Ley No. 1523 of 2012. The law charges public and private entities, together with the community at large, with shared responsibility for disaster management, although most of the planning and organization duties are assigned to federal, state and municipal governments. (Chapter II).

The framework law creates a framework of institutional bodies that would be charged with disaster management, risk assessment and reduction, technical committees, and political and geographical coordination. (Chapter II). The law also requires federal, state and municipal authorities to develop risk management and implementation plans (Art. 32) that would be implemented during times of emergency. (Art. 32). Risk management considerations to be incorporated into public investment projects and regional planning and development. (Art. 38-39). A national information system for management of disaster risks is also created (Art. 45) as well as a fund for disaster relief (Art.47).



National disasters may be declared by the President upon the recommendation of the National Counsel on Risk Management (Art. 56). The law allows for special property rules during times of emergency, including temporary occupation of buildings and expropriation of property. (Chapter V). Although the Law goes into effect on the date of its publication, implementing regulations as well as a series of disaster relief plans are required for full implementation.

Reference Sources (In Spanish):

- *Ley 1523 de 2012, por el cual se adota La Política Nacional de Gestión del Riesgo de Desastres y Se Establece el Sistema Nacional de Gestión del Riesgo de Desastres y se Dictan Otras Disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Ley%201523%20del%2024%20de%20Abril%20de%202012.pdf

COLOMBIA TAKES STEPS TO IMPLEMENT ACCESS RIGHTS TO GENETIC RESOURCES AND THE CONVENTION ON BIOLOGICAL DIVERSITY

Colombia's Ministry of the Environment has proposed an initial draft framework for implementing provisions relating to access and profit sharing from use of biological resources under the Convention on Biological Diversity and Andine Decision 391. The proposal would implement procedures and provide model private-public contracts for sharing benefits from the utilization of genetic and biological resources. (Chapeau) Contracts would require approval by the Ministry of Environment, charged with guaranteeing the participation and equitable distribution of benefits (both tangible and intangible) derived from the access and use of genetic resources. (Art. 5) The proposal is unfinished and includes several placeholders for "chapters under construction" subject to development with ethnic communities, suggesting that a final proposal is not likely to be forthcoming in the near future and additional work is needed to complete the proposed draft.

Reflecting the country's focus on biodiversity, the Ministry also proposed a Manual for Assigning Compensation for the Loss of Biodiversity, a project developed in association with the World Wildlife Fund and the Nature Conservancy. (Manual at 1). The manual would be used for assigning damages in cases where environmental harms could not be restored as well as in conjunction with issuing licenses when environmental harm cannot be prevented or mitigated based on environmental impact studies.

Reference Sources (In Spanish):

- *Decreto XX del XX de 2011, Por el cual se reglamenta el acceso a los recursos genéticos, sus productos derivados y el componente intangible asociado y la distribución justa y equitativa de beneficios derivados de su utilización y se dictan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Decreto%20XX%20del%20XX%202011.pdf
- *Régimen Común sobre la Acceso a los Recursos Genéticos*, available at www.comunidadandina.org/normativa/dec/D391.htm
- *Listado nacional Factores de Compensación*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Listado%20nacional%20factores%20de%20compensacion.xls

MINISTRY OF THE ENVIRONMENT PROPOSES MASSIVE OVERHAUL OF WASTEWATER DISCHARGE STANDARDS

The fourth draft of a proposal that would significantly revise Colombia's surface water quality standards was published for public comment on May 1, 2012. The lengthy proposal, intended to implement Decree 3930 of 2012, would establish monitoring and maximum permissible discharge limits from point source discharges into surface water bodies and public sewer systems. General monitoring and discharge standards are established for pH, temperature, active pesticide ingredients, oxygen limits, solids, floating materials, oils and gases, nitrates, and heavy metals. (Art. 20) Separate industry standards are set for agriculture, horticulture, forestry, and a large



range of manufacturing concerns (Chapter 4). The proposal includes provisions that would ban detectable limits of a number of heavy metals, hydrocarbons and toxics. (Art. 12)

In a separate companion proposal, the Ministry also proposed a formula for establishing fees for the direct or indirect use of hydraulic resources from point sources. The fees would apply to both point sources discharges and public sewer systems. (Art 2) The formula takes into consideration the discharge load and the concentration of regulated contaminants. (Art. 3)

Reference Sources (In Spanish):

- *Resolución Número _____, Por la cual se establecen los parámetros y los valores límites máximos permisibles en vertimientos puntuales a cuerpos de aguas superficiales y a sistemas de alcantarillado public, y se dictan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Parametros%20y%20los%20valores%20limites%20en%20vertimientos%20puntuales%20a%20aguas.pdf
- *Resolución Número _____, Por la cual se reglamenta la tasa retributive por la utilización directa e indirecta del agua como receptor de los vertimientos puntuales, ye se toman otras determinaciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Reglamenta%20la%20tasa%20retributive.pdf
- *Decreto 3930 de 2010*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Decreto%203930.pdf

COSTA RICA HIGHLIGHTS

BILL INTRODUCED TO REFORM FRAMEWORK ENVIRONMENTAL LAW TO EXPRESSLY PROTECT MARINE AND COASTAL RESOURCES

On June 25, 2012, a bill (*Proyecto de Ley No. 18,493*; “Bill”) was introduced in the Legislative Assembly that would reform Costa Rica’s Framework Environmental Law (*Ley No. 7554, Ley Orgánica del Ambiente*, as amended) to expressly protect marine and coastal resources. According to the Bill’s preamble, its purpose is to fill gaps in the language of the Framework Environmental Law and highlight the importance of marine and coastal resources, which to date purportedly have not received the same level of attention as terrestrial wilderness areas.

In addition to amending several provisions of the Framework Environmental Law to clarify jurisdiction over marine and coastal natural resources, the Bill would add several new provisions. One would require the state to implement national marine-area-management policies that would guide the use of natural resources and conservation of ecosystems. (Bill, Art. 6) Another sets forth the goals of marine-area management, which again include both resource exploitation as well as conservation. (Art. 8) Finally, the Bill would establish an annual “Our Coast” award to be awarded by the president to a person or organization who has contributed to the improvement of the country’s marine coastal environment. (Art. 19)

Reference Sources (in Spanish):

- *Proyecto de Ley No. 18,493*, introduced June 25, 2012, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Proyecto%2018493%20Marine%20Coast%20Bill.pdf
- *Ley No. 7554, Ley Orgánica del Ambiente*, September 28, 1995, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Ley%207554%20Organic%20Environment.pdf

ENVIRONMENTAL MINISTRY FORMALIZES CARBON NEUTRALITY COUNTRY PROGRAM

On May 21, 2012, the Ministry of Environment, Energy and Telecommunications (*Ministerio*



de Ambiente, Energía y Telecomunicaciones; “MINAET”) issued a ministerial accord (*Acuerdo No. 36-2012-MINAET*; “Accord”) formalizing Costa Rica’s Carbon Neutrality Country Program in line with the country’s stated goal of becoming carbon neutral by 2021. The voluntary program provides two levels at which organizations may participate.

The first level requires that the organization report an inventory of its greenhouse gas (“GHG”) emissions, which is then subject to third-party verification. (Accord, Arts. 1-3) The second, more demanding, level of participation is the Declaration of Carbon Neutrality, which requires the GHG inventory, compliance with the national Management System for Carbon Neutrality Demonstration, emissions offsets, and reporting of emissions and offsets to a national registry. (Arts. 1-6) Organizations that meet the carbon-neutrality requirements may use the trademark “C-Neutral,” subject to various restrictions. (Arts. 7-9)

The Accord went into effect upon publication in *La Gaceta* on June 19, 2012.

Reference Sources (in Spanish):

- *Acuerdo No. 36-2012-MINAET (Ministerio de Ambiente, Energía y Telecomunicaciones)*, May 21, 2012 (effective June 19, 2012), available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Acuerdo%2036-202%20MINAET.pdf

ECUADOR HIGHLIGHTS

MINISTRY OF ENVIRONMENT ISSUES REGULATIONS GOVERNING PROCESS OF CLOSURE AND CLEANING OF SOLID WASTE LANDFILLS

On April 4, 2012, Ecuador’s Ministry of the Environment issued an amendment (*Acuerdo 031*, the “Amendment”) to the country’s landfill closure regulations (*Reforma al Texto Unificado de Legislación Secundaria del Ministerio del Ambiente Del Libro VI, Anexo 6*). The Amendment enhances landfill closure procedural requirements, requiring local governments (*Gobiernos Autónomos Descentralizados*) to assess the sanitary design and infrastructure of each landfill to be closed and analyze all closure alternatives. These assessments are to be conducted pursuant to the requirements set forth in the technical closure form (*Estudio de Cierre Técnico y Saneamiento de Botaderos*, the “Technical Closure Form”) and the environmental management form (*Ficha Ambiental y Plan de Manejo Ambiental*, the “Environmental Management Form”) attached to the Amendment as Annex 1 and Annex 2, respectively.

The Technical Closure Form requires a two phase assessment of closure plans: Phase I, analyzing the landfill’s existing situation, and Phase II, describing the consequences of approved closure plans. Information to be provided in Phase I includes (a) an analysis of the affected landfill’s geological and hydrological characteristics, (b) an analysis of the types and characteristics of the solid waste in the landfill, (c) an assessment of the landfill’s infrastructure, and (d) a description and analysis of potential closure alternatives which takes into account technical, environmental, financial and social factors. Information to be provided in Phase II includes, (a) the design plans for the proposed landfill closure, (b) budget and timeline for closure, (c) technical specifications of all construction to be undertaken for closure, and (d) the closure operations manual.

The Environmental Management Form requires a description of, among other things, the landfill’s location, the characteristics of the area to be affected by the landfill’s closure, geological characteristics of the ground under the landfill, and a description of the project.

Pursuant to the Amendment, Ecuador’s National Environment Authority (“*Autoridad Ambiental Nacional*”) shall be the entity charged with monitoring compliance with landfill closure requirements and the Subsecretary of Environmental Quality of the Ministry of the Environment (*Subsecretaria de Calidad Ambiental del Ministerio del Ambiente*) shall be charged with granting local government bodies technical authorization for solid waste management plans.



Reference Sources (in Spanish):

- *Acuerdo 031*, available at www.bdlaw.com/assets/attachments/Ecuador%20-%20Acuerdo%20031.pdf

MEXICO HIGHLIGHTS

MEXICO ADOPTS HISTORIC CLIMATE CHANGE LAW

President Felipe Calderón has signed into a law a comprehensive climate change law, the *Ley General de Cambio Climático* (the “Law”). The Law sets as an “aspirational goal” (but not commitment) for the reduction of greenhouse gases (GHGs) of 30 percent by 2020 and 50 percent by 2050 (2000 as the baseline) and outlines policies associated with climate change adaptation and mitigation. (Transitorios, Art. 2). The overarching goal of the Law is to address climate change and transit to a competitive, sustainable and low-carbon emission economy. (Art. 60).

The Law does not impose concrete measures on public or private entities to ensure that those reduction goals are met. Instead, the Law establishes a new administrative infrastructure for addressing climate change policy to be overseen by the National Institution of Ecology and Climate Change (INECC) (Arts 13-22). The INECC is established as a decentralized public entity housed within SEMARNAT and is granted a host of authorities to develop policies, planning instruments, rules and norms necessary to implement the Law. To support the work of the INECC, the Law establishes a National System of Climate Change, intended to provide information sharing on federal, state and municipal activities; an Intersecretarial Commission on Climate Change, to coordinate federal agency activities; and a Climate Change Counsel, a 15 member private-public advisory committee to the INECC.

The Law creates the framework for several climate change regulatory programs that once fully implemented will likely implicate private party responsibilities. These include:

- GHG Inventory (Art. 74)
- Information System on Climate Change (Art. 76)
- Climate Change Fund (Art. 80)
- Registry of emission from stationary and mobile sources (Art. 87)
- Economic Instruments to incentivize climate change reductions (Art. 91)
- Mexican official standards to address adaption and mitigation (Art. 96)

Climate change programs will be evaluated periodically to determine progress and for the purposes of proposing changes or modifications. (Art. 98.) Penalties are established against GHG emitting sources for failure to report emissions or falsifying emissions data. (Art. 114-15). No penalties or incentives are established for failure to meet GHG commitments.

The law goes into effect 90 days from its date of publication.

Reference Sources (in Spanish):

- *Decreto por el que se expide la Ley General de Cambio Climático*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Decreto%20Ley%20General%20Cambio%20Climatico.pdf

MEXICO RATIFIES NAGOYA PROTOCOL TO THE CONVENTION ON BIOLOGICAL DIVERSITY

Mexico has become the fifth country to ratify the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to



the CBD and is heralded to be the first of the “mega-diverse” countries to do so. Adopted on 29 October 2010 in Nagoya, Japan, the Protocol will enter into force 90 days after the deposit of the 50th instrument of ratification; there are currently 92 signatories.

The Nagoya Protocol is a supplementary agreement to the Convention on Biological Diversity intended to provide a transparent legal framework for the effective implementation of one of the three objectives of the CBD, namely, the fair and equitable domestic-level sharing of benefits arising out of the utilization of genetic resources. Benefits may be monetary or non-monetary and can include royalties and the sharing of research results.

Reference Sources (in Spanish):

- *Nagoya Protocol*, available at <http://www.cbd.int/abs/text/>
- *Mexico Instrument of Ratification*, available at <http://www.cbd.int/abs/nagoya-protocol/signatories/>

MEXICO CONTINUES ENERGY EFFICIENCY STANDARDS SETTING FOR CERTAIN PRODUCTS

Following its sweeping and controversial energy reform law, the Law of Sustainable Energy Development (*Ley para el aprovechamiento sustentable de la energía*), Mexico continues its aggressive pace in implementing energy efficiency requirements for affected products.

Technical standards on energy efficiency for self-ballasted LED lamps for general lighting purposes were made final. The rule includes test methods, labeling requirements, as well as procedures for certifying conformance. See *NORMA Oficial Mexicana NOM-030-ENER-2012, Eficacia luminosa de lámparas de diodos emisores de luz (LED) integradas para iluminación general. Límites y métodos de prueba*.

The Secretariat of Energy also proposed similarly structured standards for domestic washing machines for clothes. See *PROYECTO de Norma Oficial Mexicana PROY-NOM-005-ENER-2012, Eficiencia energética de lavadoras de ropa electrodomésticas. Límites, método de prueba y etiquetado*.

The standards are among a series of rules targeted to listed equipment set forth in a 2010 Catalogue. See *Catálogo de equipos y aparatos para los cuales los fabricantes, importadores, distribuidores, y comercializadores deberán incluir información sobre su consumo energético*.

Reference Sources (in Spanish):

- *NORMA Oficial Mexicana NOM-030-ENER-2012, Eficacia luminosa de lámparas de diodos emisores de luz (LED) integradas para iluminación general. Límites y métodos de prueba*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20NORMA%20Oficial%20Mexicana%20NOM-030-ENER-2012.pdf
- *PROYECTO de Norma Oficial Mexicana PROY-NOM-005-ENER-2012, Eficiencia energética de lavadoras de ropa electrodomésticas. Límites, método de prueba y etiquetado*, available at www.diariooficial.gob.mx/nota_detalle.php?codigo=5248699&fecha=16/05/2012

PERU HIGHLIGHTS

NEW REGULATION GOVERNING MANAGEMENT OF WEEE APPROVED

On June 26, 2012, Peru adopted national regulations for the management of Wastes Equipment Electronic and Electronic (“WEEE”) (*Aprueban el Reglamento Nacional para la Gestión y Manejo de los Residuos de Aparatos Eléctricos y Electrónicos*).

The WEEE management regulation establishes rules governing the life cycle of Equipment



Electronic and Electronic (“EEE”) and incorporates the concept of “responsibility extended to the producer.” (Art. 1.) The regulation applies to anyone within Peru involved in activities or actions related to the management of WEEE (Art. 2). The scope of covered products includes:

1. Large household appliances.
2. Small household appliances.
3. Computer equipment and telecommunications.
4. Consumer electronics devices.
5. Lighting equipment.
6. Electrical and electronic tools.
7. Toys or sports and leisure equipment.
8. Medical devices.
9. Monitoring and control instruments.
10. Vending machines.

Obligations of generators, producers, and operators are set forth under Articles 10-15. Requirements unique to producers include preparation and filing of: a WEEE Management Plan that includes basic information on the producer and waste management system (Art. 12); and an Annual Declaration that summarizes key information about WEEE (e.g., quantity collected, operator used, quantity exported) (Art. 13). After plans have been submitted and approved by either the Ministry of Production or the Ministry of Transportation and Communication (depending on the business’ principal activity), the importer and/or vendor must implement their waste management plan within six months. (*Minam Approves WEEE Regulation* at ¶ 4.)

To incentivize participation and cooperation, producers, operators, local governments and institutions with a good environmental track record for waste management will be publicly distinguished and recognized. (Decree No. 1-2012, Art. 20; see also *Minam Approves WEEE Regulation* at ¶ 6.) Failure to comport with the WEEE management regulation could result in sanctions imposed by the Ministry of Environment. (Decree No. 1-2012, Art. 21; see also *Minam Approves WEEE Regulation* at ¶ 7.)

Reference Sources (in Spanish):

- *DS No. 1-2012-MINAM WEEE Management*, available at www.bdlaw.com/assets/attachments/Peru%20-%20DS%20No.1-2012-MINAM%20WEEE%20Management.pdf
- *MINAM Approves WEEE Regulations*, available at www.bdlaw.com/assets/attachments/Peru%20-%20MINAM%20Approves%20WEEE%20Regulations.pdf

FIRST PHASE OF POLLUTANT RELEASE AND TRANSFER REGISTER COMPLETED

In April 2012, Peru’s Deputy Minister of Environmental Management, Mariano Castro, presented the first phase of the country’s Pollutant Release and Transfer Register (“PRTR”). The PRTR is a tool used to advance a community’s “right to know” by collecting and publishing information on the release and transfer of toxic chemicals from industrial and other facilities.

Peru’s first phase of the PRTR focused on creating a catalog that identifies emissions of more than ninety hazardous chemicals, as well as the nature and quantity of the releases of these contaminants into the air, water, and soil. The catalog also specifically identifies the industries and businesses responsible for such emissions.

In addition to providing the public with information about emissions of toxic chemicals and their source, the Ministry of Environment has stated that the purpose of the PRTR is also to allow industries to track their own emissions and self-regulate, and to help the government develop policies to regulate pollution.

Reference Sources (in Spanish):

- *PRTR Phase 1 Completed*, available at www.bdlaw.com/assets/attachments/Peru%20-%20

PERU LAUNCHES PLAN FOR LOW-CARBON ECONOMIC DEVELOPMENT THROUGH CLIMATE CHANGE PLAN

Peru's Ministries of Environment, Economy, and Foreign Affairs, and the National Center for Strategic Planning, launched the "Planning for Climate Change" ("PLACC") project, designed to update the 2000 inventory of emissions of greenhouses gases and provide scientific evidence that the government can use in creating a strategy for low-carbon economic development.

PLACC was announced by Environment Minister Manuel Pulgar Vidal on April 26, 2012, and was created with the participation of four government agencies, private sector institutions, and non-governmental organizations. Minister Vidal stated that the ultimate goal is to involve all twenty of Peru's government ministries for a comprehensive effort to address climate change. Additionally, Luisa Elena Guinard, the project's director, said that the information collected by the project will be used to develop investment policies that focus on climate change, but also provide economic, social, and environmental benefits.

The Plan will roll out in three phases. The first phase is set to begin in 2013 and focuses on generating scientific evidence, strengthening the National System for Strategic Planning, managing information, and improving communication and advocacy. During the second phase, which is estimated to last six months to one year, the government will develop plans and policies to implement the PLACC. The third phase is implementation, and will be the period of transitioning to policies compatible with climate change and creating an environment appropriate for low-carbon investments.

Reference Sources (in Spanish):

- *Ministries Join to Support Climate Change Plan*, Development, available at www.bdlaw.com/assets/attachments/Peru%20-%20Ministries%20Join%20to%20Support%20Climate%20Change%20Plan%20Development.pdf

PUERTO RICO HIGHLIGHTS

SENATE PASSES BILL TO CREATE PESTICIDE ADVISORY COMMITTEE

On June 24, 2012, the Puerto Rico Senate passed a bill (*Proyecto del Senado 2536*; the "Bill") that would amend the Pesticide Act of Puerto Rico (*Ley de Plaguicidas de Puerto Rico*) to create the Agricultural Service Advisory Committee for the Evaluation of Pesticides for Agricultural Use (*Comité Asesor del Servicio Agrícola para la Evaluación de Plaguicidas de uso Agrícola*; "Committee") within the commonwealth's Department of Agriculture. The Committee would consist of representatives from the Department of Agriculture (*Departamento de Agricultura*), the Environmental Quality Board (*Junta de Calidad Ambiental*), the University of Puerto Rico, and the Department of Environment and Natural Resources (*Departamento de Recursos Naturales y Ambientales*). (Bill, Art. 2)

Among the various responsibilities set forth in the Bill, the Committee would advise the governor and the Secretary of Agriculture on matters regarding the use of pesticides and toxic chemicals, and would monitor compliance with the Pesticide Act. (*Id.*) It would also set policies for pesticide disposal in coordination with the commonwealth's Department of Agriculture and the U.S. Environmental Protection Agency, and would ensure that environmental risk assessments were carried out in the event of pesticide-related pollution events. (*Id.*) The Committee also would also promote the study, development, and use of alternatives to pesticides. (*Id.*) The Bill provides that implementing regulations must be promulgated by the Department of Agriculture within 90 days of enactment.





The Bill has been referred to the commonwealth's House of Representatives, where it is under consideration by the Committee on Agriculture and the Committee on Natural Resources, Environment and Energy.

Reference Sources (in Spanish):

- *Proyecto del Senado 2536, June 24, 2012*, available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Pesticide%20Bill%20S2536.pdf

RESOLUTION INTRODUCED IN SENATE TO PROHIBIT USE OF COAL ASH IN CONSTRUCTION PROJECTS

On May 22, 2012, a joint resolution (*Resolución Conjunta del Senado 1038*; “Resolution”) was introduced in the Puerto Rico Senate that would prohibit the transport, distribution, and use of coal ash from coal-fired power plants as material for construction projects. (Resolution, Sec. 1.) The prohibition would last until the Environmental Quality Board (*Junta de Calidad Ambiental*; “JCA”) has established adequate engineering controls on the practice in accord with best practices and available technologies. (*Id.*) According to the Resolution’s preamble, its purpose is to put Puerto Rico in line with U.S. Environmental Protection Agency (“EPA”) regulations that limit the use of coal ash to use for mixing with cement, stabilization of landfills, and incorporation into construction products.

The Resolution also would prohibit all transport, distribution, and use of coal ash in connection with government projects paid for with public funds (Sec. 2), and would order government agencies to require that construction projects paid for with public funds or done in connection with agricultural operations certify that no coal ash has been used (Sec. 3). Finally, the JCA would be required to implement regulations based on the EPA regulations referred to above. (Sec. 4)

Reference Sources (in Spanish):

- *Resolución Conjunta del Senado 1038*, introduced May 22, 2012, available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Coal%20Ash%20Bill.pdf

BEVERAGE CONTAINER RECYCLING BILL INTRODUCED IN SENATE

On May 7, 2012, a bill (*Proyecto del Senado 2608*; “Bill”) was introduced in the Puerto Rico Senate that would create a new Beverage Container Recycling Law. The Bill would require that all bottled beverages be sold in returnable containers and would prohibit retailers from buying bottled beverages from manufacturers or distributors that refuse to accept returned containers. (Bill, Art. 4) The Bill provides for a minimum five-cent per container refundable deposit, and requires that, with certain exceptions, retailers, manufacturers, and distributors accept returnable containers. (Arts. 4-5)

The Bill also includes provisions on labeling requirements (Art. 6), licensing of container redemption centers by the Solid Waste Authority (Autoridad de Desperdicios Sólidos) (Art. 7), an educational program (Art. 8), and reporting requirements for manufacturers and distributors (Art. 9). Violations may be punished administratively or criminally, and penalties can range from \$100 to \$1000 per violation or up to six months imprisonment. (Arts. 10, 12)

The Bill has been referred to the Committee on Natural and Environmental Resources.

Reference Sources (in Spanish):

- *Proyecto del Senado 2608*, introduced May 7, 2012, available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Bottle%20Recycling%20Bill.pdf



INTERSECTORAL COMMITTEE ISSUES REPORT ON ENERGY ALTERNATIVES FOR COMPLYING WITH EPA REGULATIONS

On June 15, 2012, the Intersectoral Committee on Environmental Compliance and Energy Alternatives (*Comité Intersectorial de Cumplimiento Ambiental y Alternativas Energéticas*) issued a report (“Report”) laying out a series of alternatives for complying with the U.S. Environmental Protection Agency’s recently modified Mercury and Air Toxic Standards and National Ambient Air Quality Standards for sulfur dioxide. The Committee was created by the governor of Puerto Rico in February 2012 to conduct a comprehensive study and make recommendations on measures for complying with the regulations.

The Report notes that as of 2012, the distribution of fuel usage in Puerto Rico’s installed electric generating capacity was 67.5% liquid fossil fuels, 22.8% natural gas, 8% coal, and 1.7% renewable fuels. (Report at 3.) In light of that, the Committee concluded that “[t]he fastest and most economically viable way to comply with EPA regulations is the conversion of power plants to natural gas on or before 2016.” (*Id.* at 22.) Notably, in addition to a north-south pipeline that has been supported by the governor, the Report proposes three other alternatives for supplying gas to power plants in the northern part of the island, including the use of small vessels, buoys, and a compressed natural gas terminal and pipeline system. (*Id.* at 16-19.)

The Report concludes with several recommendations for deciding between and implementing the alternatives under consideration. They include, among other things, consultation with relevant federal agencies, efforts by the Puerto Rican Electric Power Authority (*Autoridad de Energía Eléctrica*) to advocate that jurisdictions be given a “reasonable amount” of time to comply with the regulations, and an extension of the term of the Committee through December 2012. (*Id.* at 22-23.) By a June 22 executive order, the governor did extend the Committee’s term through that date.

Reference Sources (in Spanish and English):

- *Comité Intersectorial de Cumplimiento Ambiental y Alternativas Energéticas*, “Informe Sobre las Medidas Necesaria para Cumplir con las Nuevas Reglas de la EPA, Conversión de Plantas y Uso de Gas Natural en las Plantas Generadoras del Norte,” June 15, 2012
 - Spanish Version available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20CCIAAE%20Report%20re%20Natural%20Gas%20-%20Spanish.pdf
 - English Version available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20CCIAAE%20Report%20re%20Natural%20Gas%20-%20English.pdf
- *Boletín Administrativo Núm. OE-2012-29 (Orden Ejecutiva del Gobernador de Puerto Rico para Extender la Vigencia del Comité Intersectorial de Cumplimiento Ambiental y Alternativas Energéticas)*, June 22, 2012, available at www.bdlaw.com/assets/attachments/Puerto%20Rico%20-%20Executive%20Order%20re%20Alternative%20Energy.pdf

Office Locations:

Washington, DC

Maryland

New York

Massachusetts

New Jersey

Texas

California