

LATIN AMERICAN REGION

ENVIRONMENTAL QUARTERLY



THIRD 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 third quarter (July - September) of the year. Please know that the Quarterly is designed to capture major regulatory developments and emerging regional trends and is not intended to provide comprehensive coverage of all environmental initiatives.

ARGENTINA HIGHLIGHTS

CONGRESS CONSIDERS BILLS TO ESTABLISH PROCEDURES FOR CLASS ACTIONS

In August, two bills were introduced in the Chamber of Deputies (the lower house of the Argentine National Congress) that would establish procedures for class actions in the Argentine courts. (*Proyecto de Ley 4033-D-2011*, *Proyecto de Ley de Acción de Clase*, August 10, 2011 (“Bill 4033”); *Proyecto de Ley 4055-D-2011*, August 12, 2011 (“Bill 4055”).) The bills follow the introduction of several bills in the Senate earlier this year and indicate significant continuing interest in the Congress in formalizing the legal framework for class actions.

As with previous proposals, the Bills incorporate several concepts that are found in Federal Rule of Civil Procedure 23, the rule governing class actions under U.S. federal law. For example, the Bills contain provisions requiring that a class meet the requirements of numerosity, commonality, adequacy of representation, and (in Bill 4055) typicality. (Bill 4033, Art. 3; Bill 4055, Art. 1.) The Bills also contain provisions on, among other things, class certification (Bill 4033, Art. 15; Bill 4055, Art. 7), the right to opt out of the class (Bill 4033, Art. 8; Bill 4055, Art. 9), and court approval of settlements (Bill 4033, Art. 10; Bill 4055, Art. 6).

Reference Sources (in Spanish):

- *Proyecto de Ley 4033-D-2011*, August 10, 2011, available at www.bdlaw.com/assets/attachments/Proyecto%20de%20Ley%204033-D-2011.pdf
- *Proyecto de Ley 4055-D-2011*, August 12, 2011, available at www.bdlaw.com/assets/attachments/Proyecto%20de%20Ley%204055-D-2011.pdf
- *Proyecto de Ley 0018-S-2011* (reintroducing *Proyecto de Ley 1786-S-2009*), March 2, 2011, available at www.bdlaw.com/assets/attachments/Proyecto%20de%20Ley%200018-S-2011.pdf
- *Proyecto de Ley 0204-S-2011* (reintroducing *Proyecto de Ley 1496-S-2009*), March 4, 2011, available at www.bdlaw.com/assets/attachments/Proyecto%20de%20Ley%200204-S-2011.pdf
- *Proyecto de Ley 1045-S-2011*, May 12, 2011, available at www.bdlaw.com/assets/attachments/Proyecto%20de%20Ley%201045-S-2011.pdf



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ARGENTINA BANS ENDOSULFAN AND 55 OTHER PESTICIDES

In August, the National Service for Agri-food Health and Quality (known by its Argentine acronym, SENASA) issued regulations phasing out endosulfan and banning 55 other pesticides. (*Resolución 511/2011, Prohíbese la importación del principio activo Endosulfán y sus productos formulados* (“Resolution 511”); *Resolución 532/2011, Prohíbese la elaboración, importación, exportación, fraccionamiento, comercialización y uso de diversas sustancias activas, para uso agropecuario* (“Resolution 532”).)

The endosulfan ban is intended to comply with the Stockholm Convention on Persistent Organic Pollutants, which Argentina has ratified. The ban will be phased in: importation of endosulfan and products containing it will progressively decrease from the second half of 2011 through the first half of 2012 and will be prohibited entirely as of July 1, 2012. (Resolution 511, Arts. 1, 4.) The development, formulation, marketing, and use of products containing endosulfan will be prohibited as of July 1, 2013. (Resolution 511, Art. 2.) As endosulfan is not currently produced in Argentina, this latter measure is preventative. (Resolution 511, Preamble.) Companies that continue to hold endosulfan or products containing it after July 1, 2013, must inform SENASA, which will then oversee the re-export or destruction of those products. (Resolution 511, Art. 7.)

The other regulation issued by SENASA places an immediate ban on the manufacture, import, export, marketing, or use of 55 pesticides designated by the World Health Organization as “extremely hazardous” or “highly hazardous.” (Resolution 532, Preamble, Art. 1.) None of the banned chemicals is currently in use in Argentina. (Resolution 532, Preamble.) The pesticides subject to the ban include allyl alcohol, bromethalin, calcium arsenate, calcium cyanide, dicotophos, diphacinone, flucythrinate, lead arsenate, mercury chloride, sodium arsenate, sodium fluoroacetate, and zinc phosphide. (Resolution 532, Annex.)

Reference Sources (in Spanish):

- *Resolución 511/2011, Prohíbese la importación del principio activo Endosulfán y sus productos formulados*, August 5, 2011 (SENASA), available at www.bdlaw.com/assets/attachments/Argentina%20-%20Prohíbese%20la%20importacion%20del%20principio%20activo%20Endosulfan.pdf
- *Resolución 532/2011, Prohíbese la elaboración, importación, exportación, fraccionamiento, comercialización y uso de diversas sustancias activas, para uso agropecuario*, August 12, 2011 (SENASA), available at www.bdlaw.com/assets/attachments/Argentina%20-%20Resolucion%20532-2011.pdf

ACUMAR REQUIRES ENVIRONMENTAL MANAGEMENT SYSTEMS AND FACILITY AUDITS IN THE MATANZA-RIACHUELO BASIN

On July 1, 2011, the Matanza-Riacheulo Basin Authority (*Autoridad de la Cuenca Matanza Riacheulo*; “ACUMAR”) published Resolution 609/2011 (the “Resolution”), under which ACUMAR may require facilities to establish an environmental management system (*sistema de gestión ambiental*). Such systems must identify the applicable environmental laws and evaluate the facility’s compliance with the laws. (Art. 1) Facilities must have their systems certified by a certification body accredited by the Argentine Accreditation Body (*Organismo Argentino de Acreditación*), and audited at least annually. (Arts. 3-4) The results of both audits and any monitoring required under the system must be submitted to ACUMAR within ten days of being conducted. (Arts. 4, 6) ACUMAR is further empowered to audit the systems at any time. (Art. 5) Under the terms of the Resolution, ACUMAR will notify facilities of the requirement, giving them one year to submit a certified system. (Art. 3)

ACUMAR is the environmental agency established under joint jurisdiction of the federal government, Buenos Aires Province and the City of Buenos Aires, as ordered by the Supreme



Court of Argentina in response to high levels of contamination and a public health crisis in the Matanza-Riachuelo Basin. The watershed of the two rivers, Matanza and Riachuelo, is the most heavily industrialized area in Argentina and includes portions of both the province and the separately incorporated city of Buenos Aires.

Reference Sources (in Spanish):

- ACUMAR Resolution No. 609 of 2011, available at www.bdlaw.com/assets/attachments/Argentina%20ACUMAR%20Resolution%20609%20of%202011.pdf

TWO BILLS IN ARGENTINE CONGRESS WOULD REQUIRE TAKE-BACK OF PRODUCT PACKAGING

Both houses of Argentina’s legislature are considering bills that would require packagers, importers and merchants of products to establish programs to take back and manage their used packaging. Senate Bill No. 1383, on the “regime of minimum standards for the management of packaging and its wastes” (*Regimen de Presupuestos Mínimos para la Gestión de Envases y sus Residuos*), would require covered companies to propose and implement either a deposit-and-return program or some form of integrated collection system under which consumers would return the packaging. Chamber of Deputies Bill No. 4212, on the “regime of minimum standards for the sustainable use of packaging and integral management of its wastes” (*Regimen de Presupuestos Mínimos para el Uso Sustentable de Envases y Gestión Integral de sus Residuos*), would create a national packaging management agency and require covered companies to submit a plan to the agency or establish an individual deposit-and-return program. Both bills would require that packaging be labeled with information on its material content. Senate Bill No. 1383 would additionally require that labels indicate the reusability or recyclability of the packaging, as well as information on where to return the used packaging. No committee action on either bill has yet been reported.

Reference Sources (in Spanish):

- Senate Bill No. 1383 of 2011, available at www.bdlaw.com/assets/attachments/Argentina%20Senate%20Bill%201383%20of%202011.pdf
- Chamber of Deputies Bill No. 4212 of 2011, available at www.bdlaw.com/assets/attachments/Argentina%20House%20Bill%204212%20of%202011.pdf

BRAZIL HIGHLIGHTS

NATIONAL DEVELOPMENTS

BRAZIL ISSUES DRAFT NATIONAL SOLID WASTE POLICY PLAN

On September 5, 2011, Brazil’s Ministry of the Environment (*Ministerio do Meio Ambiente*) published its draft National Solid Waste Policy Plan (the “Draft Plan”), as required under the landmark National Solid Waste Policy Law (No. 12305/2010; the “Law”), enacted last year following two decades of debate. The Draft Plan provides a general account of the current state of solid waste management throughout Brazil, focusing on the major sectors of urban solid wastes, industrial wastes, and wastes from transportation, health services, mining and agriculture. Subsequent chapters propose strategies for improvement in each of these areas and general nationwide goals for eliminating informal waste dumps, and increasing recycling and energy recovery. The Draft Plan does not illuminate the development of “reverse logistics” (*logística reversa*) programs, prominently featured in the Law, under which manufacturers and importers of several classes of products will be required to take back and manage their end-of-life products. Following a period of public consultation and review, a final version of the plan is expected to be published early in 2012.



Reference Sources (in Portuguese):

- Draft National Solid Waste Policy, available at www.bdlaw.com/assets/attachments/Brazil%20Draft%20National%20Solid%20Waste%20Policy.pdf
- Law No. 12305 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20Law%2012305%20of%202010.pdf
- Decree No. 7404 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%207404%20of%202010.pdf

IBAMA TIGHTENS ENFORCEMENT OF FEDERAL REGISTRY REQUIREMENTS

Brazil's environmental enforcement agency, IBAMA, has added penalties for companies that fail to submit required reports to the Federal Technical Registry of Potentially Polluting or Resource Consuming Activities (*Cadastro Técnico Federal de Atividades Potencialmente Poluidoras ou Utilizadoras de Recursos Ambientais*; "CTF"). Normative Instruction No. 7, issued on July 7, 2011, modifies the existing rule, Normative Instruction No. 31/2009, which provides a list of industries subject to mandatory registration. (Annex 2) In addition to registering and paying an annual fee, companies that operate in the listed industries must submit an annual report on the relevant activities.

Under Normative Instruction No. 7, failure to register or submit required reports is punishable by fines that range from R\$50 to R\$100,000, depending on the nature of the offender and the offense, as provided under Decree 6514/2008. Normative Instruction No. 7 also clarifies that the scope of the CTF includes companies that transport or market products that are potentially hazardous to the environment (*produtos potencialmente perigosos ao meio ambiente*), in addition to the producers, industrial facilities, and resource extraction operations that are traditionally regulated by IBAMA.

Reference Sources (in Portuguese):

- IBAMA Normative Instruction No. 7 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20IBAMA%20Normative%20Instruction%207%20of%202011.pdf
- IBAMA Normative Instruction No. 31 of 2009, available at www.bdlaw.com/assets/attachments/Brazil%20IBAMA%20Normative%20Instruction%2031%20of%202009.pdf
- Decree No. 6514 of 2008, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%206514%20of%202008.pdf

IBAMA IMPLEMENTS ENVIRONMENTAL COMPENSATION FEES FOR LARGE PROJECTS

With its publication of Normative Instruction No. 8, on July 7, 2011, Brazil's environmental enforcement agency, IBAMA, has implemented an "Environmental Compensation" (*Compensação Ambiental*) fee requirement for "projects of significant environmental impact" (*empreendimentos de significativo impacto ambiental*). The Environmental Compensation fee applies to projects that are subject to licensing by IBAMA, meaning that their impact is regional or extends beyond the borders of any one state. Such projects must undergo an environmental impact assessment process, and receive a construction, or "installation" license (*Licença de Instalação*).

The Environmental Compensation fee was established by Decree 6848/2009, which set basic parameters—principally, a ceiling of 0.5% of the project's value and a formula for determining the exact percentage based on the project's degree of impact (*Grau de Impacto*) on certain conservation priorities. Normative Instruction No. 8 provides additional detail to the calculation of the project's "reference value" (*Valor de Referência*) and the conservation uses to which the collected funds will be applied. Under the new rule, IBAMA's licensing division will prepare an Environmental Compensation Plan, proposing protected areas that will receive the



funds from each project. Normative Instruction No. 8 went into effect upon publication.

Reference Sources (in Portuguese):

- IBAMA Normative Instruction No. 8 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20IBAMA%20Normative%20Instruction%208%20of%202011.pdf
- Decree No. 6848 of 2009, available at www.bdlaw.com/assets/attachments/Brazil%20Decree%206848%20of%202009.pdf

BRAZILIAN CONGRESSIONAL COMMITTEE APPROVES PHARMACEUTICAL TAKE-BACK BILL

The Committee on Economic Development, Industry and Commerce voted unanimously on August 3, 2011, to approve Chamber of Deputies Bill No. 595/2011 (the “Bill”) on the collection and sensible discard of medicines (*recolhimento e o descarte consciente de medicamentos*), which would require producers to take back and adequately dispose of their pharmaceutical products. The accompanying justification statement cites both risks to children and environmental contamination as factors requiring an easy and secure mechanism for eliminating excess medicine.

The Bill would amend Law No. 5991/1973 on the sanitary control of the commerce of drugs, medicines, pharmaceutical ingredients and related items (*sobre o controle sanitário do comércio de drogas, medicamentos, insumos farmacêuticos e correlatos*) by requiring pharmacies and other providers to receive unwanted medicines from the public and to return each to the laboratory that produced it. Laboratories would be required to dispose of the returned medicines in a manner that is safe and sustainable for the environment. The Bill has been referred to the Committee on Social Security and Family.

Reference Sources (in Portuguese):

- Chamber of Deputies Bill No. 595 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20Chamber%20Bill%20595%20of%202011.pdf
- Law No. 5991 of 1973, available at www.bdlaw.com/assets/attachments/Brazil%20Law%205991%20of%201973.pdf

BRAZILIAN STATE DEVELOPMENTS

SÃO PAULO REQUIRES TAKE-BACK PROPOSALS FROM PRODUCERS OF MANY CONSUMER PRODUCTS

On August 3, 2011, São Paulo’s Environmental Secretariat (*Secretaria do Meio Ambiente*; “SMA”) issued Resolution No. 38 (the “Resolution”), requiring manufacturers and importers of a wide array of products to submit proposals for their end-of-life management. The list of covered products includes: automotive lubricants and filters, cooking oil, batteries, electro-electronic products, mercury-containing lamps, tires, and packaging of foods, beverages, personal hygiene products, pesticides, and cleaning products.

The Resolution, which was not widely anticipated, set a 60-day deadline for affected companies to respond with descriptions of their plans for collection, storage, transport, treatment and final destination of the products. Among other elements, the management proposals were required to include collection targets, a justification of these targets, and a timetable for program implementation. The Resolution implements provisions of the State Solid Waste Policy Law (No. 12300/2006, Art. 53; *Política Estadual de Resíduos Sólidos*) and its primary regulation (Decree No. 54645/2009, Art. 19) that generally impose post-consumption responsibility on producers of products that may require special management systems to avoid harms to the environment or public health.



Reference Sources (in Portuguese):

- São Paulo SMA Resolution No. 38 of 2011, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20SMA%20Resolution%2038%20of%202011.pdf
- São Paulo Law No. 12300 of 2006, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20Law%2012300%20of%202006.pdf
- São Paulo Decree No. 54645 of 2009, available at www.bdlaw.com/assets/attachments/Sao%20Paulo%20Decree%2054645%20of%202009.pdf

RIO DE JANEIRO SETS GREENHOUSE GAS EMISSIONS REDUCTION GOALS

On September 30, 2011, Rio de Janeiro Governor Sérgio Cabral signed Decree No. 43216 (the “Decree”), implementing State Law No. 5690/2010, the State Policy on Global Climate Change and Sustainable Development (*a Política Estadual sobre Mudança Global do Clima e Desenvolvimento Sustentável*). The Decree sets a general goal of reducing the state’s carbon intensity (*intensidade de carbono*; i.e., carbon per unit of production) by 2030 to a below that of 2005, and provides greenhouse gas emissions reductions targets for various sectors. The solid waste sector, for example, is directed to reduce its emissions in 2030 by 65% relative to 2005. The Decree also authorizes the establishment of emissions limits in environmental licensing.

In addition to emissions reductions, the Decree sets a goal of recycling 15% of total domestic waste by 2030, compared with the current rate of 2%, and a goal of increasing “clean energy” (*energia limpa*) by 40% during the period 2010 to 2030. The Decree doubles the portion of petroleum royalties, from 5% to 10%, to be dedicated to projects that mitigate greenhouse gas emissions, including restoration of Atlantic Rainforest.

Reference Sources (in Portuguese):

- Rio de Janeiro Decree No. 43216 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20Rio%20de%20Janeiro%20Decree%2043216%20of%202011.pdf

MATO GROSSO BANS ALL USES OF ASBESTOS

Through Law No. 9583 (the “Law”), the state of Mato Grosso has prohibited all uses of all forms of asbestos in any product or material. The ban is unusually comprehensive in that it covers chrysotile as well as the more commonly restricted amphibole forms of asbestos, and extends to all materials in which any quantity of asbestos is present under any circumstances. In the case of certain minerals, such as talc, vermiculite and soapstone, that are known to contain traces of asbestos at times, their use must be preceded by a study proving the absence of asbestos.

Brazil is among the world’s leading producers and consumers of asbestos. According to a 2003 report by Brazil’s Ministry of Labor, Brazil was the world’s fifth largest producer (approximately 200,000 tons annually) and over 3,000 types of manufactured products in Brazil contained some asbestos. The Law went into effect on its date of publication, July 5, 2011.

Reference Sources (in Portuguese):

- Mato Grosso Law No. 9583 of 2011, available at www.bdlaw.com/assets/attachments/Brazil%20Mato%20Grosso%20Law%209583%20of%202011.pdf

CHILE HIGHLIGHTS

CHILE’S FOREIGN MINISTRY COMMENCES GLOBAL CARBON FOOTPRINT MEASUREMENT PROGRAM

On August 8, 2011, Chile’s Deputy Foreign Minister, Fernando Schmidt, and Joseph Deiss, President of the United Nations General Assembly, announced that Chile had launched its



Carbon Footprint Measurement Program (CFMP). Though a study awarded to Fundación Chile, the CFMP will measure the Ministry's greenhouse gas (GHG) production in 2010 at buildings both in Chile and abroad (e.g., Chilean Embassies in Brazil and China and the Consulate General of Chile in San Francisco, U.S.). The terms of the CFMP also require Fundación Chile to provide training to foreign ministry officials and advise the Ministry on continuing GHG measurements for 2011. Deputy Minister Schmidt said the CFMP was developed because of concerns about the adverse impacts of climate change, a desire to raise public awareness of how daily activities impact the environment, an increasing international commitment to "green diplomacy," and Chile's efforts to develop a robust green economy. The Ministry intends to use the information collected to reduce its GHG emissions through changes to facility operations and with offsets.

Reference Sources (In English):

- Foreign Ministry Launches Carbon Footprint Measurement Program, available at www.bdlaw.com/assets/attachments/Chile%20-%20Foreign%20Ministry%20Launches%20Carbon%20Footprint%20Program.pdf

CHILE'S HOUSE OF REPRESENTATIVES VOTES IN SUPPORT OF ENVIRONMENTAL TRIBUNALS

The Chilean House of Representatives recently voted in favor of establishing Environmental Tribunals (Tribunals) within the Ministry of the Environment. The project, initially submitted before the Senate in November 2009 defines the Tribunals as "special tribunals" supervised by the Superintendence of the Ministry and authorized to resolve environmental conflicts. The project creates three Tribunals, one situated in Antofagasta, a second in Santiago, and the third in Valdivia, each serving surrounding regions. The bill has not yet been approved by the Senate.

Reference Source (In Spanish):

- Project to create environmental tribunals, available at www.bdlaw.com/assets/attachments/Chile%20-%20Boletin%207866-08.pdf

LAW INTRODUCED TO PROTECT COMMUNITIES AND THE ENVIRONMENT FROM ADVERSE EFFECTS OF MINING

A bill was recently submitted to the Chamber of Deputies in Chile that would establish rules to protect communities and the environment from mining projects. The introduction to the proposed law notes that people living in communities close to mining projects are often unaware of the scope of the project or associated risks. To protect the members of the community and to ensure environmental protections, the proposed law would require mining companies to prepare an operations plan that must be sent to the community at least 45 days prior to commencing any projects, or the project can be stopped by the government. To date, the proposed law is still in the initial constitutional review phase.

Reference Source (In Spanish):

- Boletín N° 7866-08, available at www.bdlaw.com/assets/attachments/Chile%20-%20Boletin%207866-08.pdf

ECONOMIC COMMISSION FOR LATIN AMERICAN AND THE CARIBBEAN (ECLAC) MEETING IN SANTIAGO, CHILE, IDENTIFIES ENVIRONMENTAL ISSUES AS KEY TO ACHIEVING SUSTAINABLE DEVELOPMENT

In advance of the 2012 United Nations Conference on Sustainable Development (Rio+20) in Rio de Janeiro, Brazil, Ministers and government representatives from Latin American and



Caribbean countries met at the Economic Commission for Latin American and the Caribbean's (ECLAC) headquarters in Santiago, Chile. The September meeting focused on the importance of developing a global framework for sustainable development that incorporates ECLAC's three pillars: economic, social, and environmental.

Over the course of three days the Ministers and representatives reviewed progress made since the 1992 Earth Summit and prepared a document with the meeting's conclusions, identifying the key barriers to achieving sustainable development. The summary document and conclusions named mitigation and adaptation to climate change as one of the key issues, as well as a need to fully implement "the right of access to environmental information, participation and justice, enshrined in Principle 10 of the Rio Declaration on the Environment and Development."

Reference Sources (In English):

- Latin America and the Caribbean Conclude the Regional Meeting Preparatory to Rio+20, available at www.bdlaw.com/assets/attachments/Chile%20-%20Regional%20Preparatory%20Meeting.pdf

COLOMBIA HIGHLIGHTS

ORGANIZATIONAL STRUCTURE AND DUTIES OF NEW ENVIRONMENT MINISTRY OUTLINED

Following on mandates published earlier this year, Colombia's President Santos has issued standards establishing the new organizational structure and functions of the new Ministry of the Environment and Sustainable Development (*Ministerio de Ambiente y Desarrollo Sostenible*). Decree 3570 organizes the agency into four main bodies, namely the Office of the Ministry, the Office of the Vice-Ministry, the General Secretary, and Consulting Bodies (Organs, Committees, and Coordinating and Advisory Committees).

Generally speaking, the Office of the Ministry is charged with policy, planning, legal issues, and green and sustainable business. (Art. 5 (1)). The Office of the Vice-Ministry will house most of the core environmental duties, including issues related to forests, biodiversity, aquatic and coastal resources, and all sectoral environmental issues. (Art. 5(2)). Perhaps most notable is the creation of an entire group devoted to climate change issues within the Vice-Ministry's Office. Id. The Secretary is charged with finance and administration issues. The technical groups and advisory committees are stand-alone, but their importance is made clear by their stand-alone organizational placement within the new agency.

Reference Sources (In Spanish):

- Decreto No. 3570 (2011), *Por el cual se modifican lo objetivos y la estructura del Ministerio de Ambiente y Desarrollo Sostenible y se Integra el Sector Administrativo de Ambiente y Desarrollo Sostenible*, available at www.bdlaw.com/assets/attachments/Decreto%20No.%203570.pdf

COLOMBIA PROPOSES NEW RULES FOR MANAGING AND PHASING OUT PCB CONTAINING EQUIPMENT AND WASTES

Citing to its commitments under the Stockholm Convention on Persistent Organic Pollutants, the Ministry of the Environment has proposed rules to regulate equipment and wastes contaminated with PCBs. The rules would apply to any person or entity that possesses equipment or wastes that contain, consist of, or are contaminated with PCBs (Art. 2). Equipment and wastes would be required to be identified, quantified and labeled. (Art. 4). Equipment and wastes that are certified to contain less than 0.005% or 50 ppm would not be viewed as "contaminated" under the proposed rules, as long as the equipment has not been modified. (Art. 7).



The rules provide storage and transportation rules and require owners of PCB containing equipment and wastes to develop management plans to address risks from their management. (Art. 29). The proposal includes a phase-out of all PCB containing wastes and equipment by 2028. (Art. 27). The proposal prohibits any production of PCBs and import of PCB-containing equipment in Colombia. (Art. 31). The use of all PCB-containing equipment is banned by 2025. (Art. 31).

Reference Sources (In Spanish):

- *Proyecto Resolución XXX por la cual se establecen requisitos para la gestión ambiental integral de equipos y desechos que consisten, contienen o estén contaminados con Bifenilos Policlorados (PCB)*, available at www.bdlaw.com/assets/attachments/Proposed%20regulations%20for%20equipment%20and%20wastes%20contaminated%20with%20PCBs.pdf

MINISTRY PROPOSES NEW NOXIOUS ODORS THRESHOLDS AND COMPLAINT MECHANISMS

Colombia's environment ministry has proposed new permissible limits for substances with offensive odors and tolerance thresholds for offensive odors as well as citizen complaint procedures. The new standards would apply to any emission sources that generate offensive odors, excluding restaurants, laundry mats, and small businesses. (Decree, Art. 1, 2). Thresholds are set for hydrogen sulfide, total reduced sulfur, ammonia, and mixtures of substances; levels are monitored and established through existing Protocols on the Monitoring, Control and Enforcement of Noxious Odors (*Protocolo para el Monitoreo, Control y Vigilancia de Olores Ofensivos*). Complaints can be made according to the Code of Contentious Administration (*Código Contencioso Administrativo*). (Art. 4). The new rules would require all emission sources to develop contingency plans for offensive odors; the contingency plans would become part of the permit for air emissions, the environmental management plan or the environmental license (Article 15).

Reference Sources (In Spanish):

- *Proyecto Resolución No. XXX Por la cual se establecen los niveles permisibles or de inmisión u límites de emisión de sustancias de olores ofensivos, umbrales de tolerancia de olores ofensivos se dictan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Proposed%20Standards%20for%20Noxious%20Substances.pdf

COSTA RICA HIGHLIGHTS

COSTA RICA PUBLISHES AIR EMISSIONS FOR BOILERS AND FURNACES

Costa Rica's has made final published its recently adopted air emissions standards for boilers and indirect furnaces, repealing an existing 2002 standard. *See Decreto No. 36551-S-MINAET-MTSS* (July 20, 2011). Decree Art. 28. Signed earlier in the year, the revised standards impose maximum emissions standards from regulated equipment for several contaminants, including particulates, sulfur dioxide, nitrogen oxides and carbon. Decree Art. 7. The new regulation also includes monitoring standards and reporting requirements. Decree Art. 9, 15.

Reference Sources (In Spanish):

- *Decreto No. 36551-S-MINAET-MTSS (Reglamento Sobre Emisión de Contaminantes Atmosféricos Povenientes de Calderas y Hornos de Tipo Indirecto)*, available at www.bdlaw.com/assets/attachments/Politica%20National%20Para%20la%20Gestion%20Integral%20de%20Residuos.pdf



ECUADOR HIGHLIGHTS

NEW HAZARDOUS CHEMICAL SUBSTANCES AND HAZARDOUS AND SPECIAL WASTES LAW ADOPTED

Ecuador's Ministry of Environment signed Accord No. 161 on August 31, 2011, repealing Titles V and VI of the Unified Text of Secondary Environmental Legislation and substituting a new Title V *Reglamento para la prevención y control de la contaminación por sustancias químicas peligrosas, desechos peligrosos y especiales* (Regulation for the Prevention and Control of Contamination by Hazardous Chemical Substances, Hazardous Wastes, and Special Wastes).

The new Title V includes a number of new definitions and notable for its adopted of several key concepts, including extended producer responsibility and polluter pays. Art. 151. The Regulation then sets forth the scope of its application and definitions of hazardous and special wastes. Arts. 152-156. The remainder of Title V addresses competent authorities and their responsibilities (Arts. 157-160); the integral management of hazardous chemical substances (Arts. 161-177); the integral management of hazardous and special wastes (Arts. 178-180); waste production and generators (Arts. 181-186); waste storage (Arts. 187-196); collection of waste (Arts. 197-203); ground shipment of hazardous chemical substances and hazardous and/or special wastes (Arts. 204-226); transport via national maritime and waterways (Arts. 227-229); systems for final disposal of hazardous and/or special wastes (Arts. 230-248); import, export, and international shipments (Arts. 249-256); illegal shipments (Arts. 257-260); and finally, general to specific provisions and a glossary of terms.

Reference Sources (In Spanish):

- Ecuador Waste Law, available at www.bdlaw.com/assets/attachments/Ecuador%20Waste%20Law.pdf

ECUADOR, PERU, AND COLOMBIA SIGN HISTORIC AGREEMENT TO PROTECT THE AMAZON

This summer, the governments of Peru, Ecuador, and Colombia signed a Memorandum of Understanding to execute a tri-national program for the conservation and sustainable development of the corridor of protected areas between the three countries. The protected areas include the Gueppí Reserved Area in Peru, the La Paya Natural National Park in Colombia, and the Cuyabeno Wildlife Reserve in Ecuador. Peru's National Service of Natural Areas Protected by the State (SERNANP) announced the coordinated management efforts of the three countries, although the agreement has not yet been made publicly available.

Reference Sources (In Spanish):

- Perú, Colombia y Ecuador firman entendimiento por la conservación de la Amazonía, available at www.bdlaw.com/assets/attachments/Peru%20Colombia%20Ecuador%20Article.pdf
- Perú, Ecuador y Colombia trabajan juntos para conservar áreas protegidas colindantes, available at www.bdlaw.com/assets/attachments/Peru%20Ecuador%20Colombia%20art%202.pdf



MEXICO HIGHLIGHTS

CLASS ACTION PROCEDURES TO REDRESS ENVIRONMENTAL HARMS SIGNED INTO LAW

Mexico's President Calderón has signed into law congressional mandates implementing constitutional changes allowing class actions (*acciones colectivas*) in Mexico. Historically, judicial review has only been allowed for individual cases and there were no procedural mechanisms for consolidating class actions. The lack of a class action mechanism -- together with generally low damage awards and lengthy and complicated court proceedings -- has been long viewed as a key reason for the lack of the robust plaintiffs' bar.

The Decree amends several codes including the country's framework environmental law, the *Ley General del Equilibrio Ecológico y la Protección al Ambiente* (LGEEPA), specifically allowing class actions to be brought for environmental harms. The law grants standing to the environmental attorney general (PROFEPA), representatives of classes greater than thirty members, and non-profit civil associations. It also sets limits on attorneys fees, ranging between 3% and 20% of the fee, depending upon the size of the award. The Decree will go into effect six months from the publication date of August 30, 2011.

Reference Sources (In Spanish):

- *DECRETO por el que se reforman y adicionan el Código Federal de Procedimientos Civiles, el Código Civil Federal, la Ley Federal de Competencia Económica, la Ley Federal de Protección al Consumidor, la Ley Orgánica del Poder Judicial de la Federación, la Ley General del Equilibrio Ecológico y la Protección al Ambiente y la Ley de Protección y Defensa al Usuario de Servicios Financieros*, available at www.bdlaw.com/assets/attachments/DECRETO%20reforman%20Código%20Federal%20de%20Procedimientos%20Civiles.pdf

SEMARNAT FINALIZES MINING WASTE MANAGEMENT PLAN STANDARDS

Standards for developing management plans for mining wastes, first developed in 2009, have been made final. NOM-157-SEMARNAT-2009 outlines procedures and elements for management plans for mining wastes through which generators are required to outline programs to address source reduction, separation, "valorization," treatment, storage and final disposal of the mining wastes (Art. 5.3.2). Plans must be approved by SEMARNAT in accordance with its general waste law, *Ley General para la Prevención y Gestión Integral de los Residuos*, and its regulation. The management plans are intended to satisfy hazardous waste management permitting obligations otherwise required by the Law.

Reference Sources (In Spanish):

- *NOM-157-SEMARNAT-2009, Que establece los elementos y procedimientos para instrumentar planes de manejo de residuos mineros*, available at www.bdlaw.com/assets/attachments/NOM-157.pdf

MEXICO PUBLISHES DRAFT PRODUCER RESPONSIBILITY AND WASTE MANAGEMENT STANDARDS

After nearly a decade and lengthy stakeholder negotiations, Mexico published for comment two draft standards to implement its 2003 waste management law, including provisions for take-back of electronic wastes and management of hazardous wastes. The first of the NOMS, PROY-NOM-160-SEMARNAT, establishes the elements for management plans for hazardous wastes, including hazardous products subject to take-back. The second, PROYECTO NOM-161-SEMARNAT-2011, lists those special management wastes (including electronics products



and packaging) subject to producer and importer take-back plans and outlines the requirements for management plans. The comment period on the NOMS lasted for sixty days and has closed. Local observers anticipate publication near the end of 2011 or in early 2012. Together, these NOMS will implement Mexico’s producer responsibility program and amended program for managing hazardous wastes.

Reference Sources (In Spanish):

- *PROYECTO de Norma Oficial Mexicana PROY-NOM-160-SEMARNAT-2011, Que establece los elementos y procedimientos para formular los planes de manejo de residuos peligrosos*, available at www.bdlaw.com/assets/attachments/Proy-NOM%20160.pdf
- *PROYECTO de Norma Oficial Mexicana PROY-NOM-161-SEMARNAT-2011, Que establece los criterios para clasificar a los residuos de manejo especial y determinar cuáles están sujetos a plan de manejo; el listado de los mismos, el procedimiento para la inclusión o exclusión a dicho listado; así como los elementos y procedimientos para la formulación de los planes de manejo*, available at www.bdlaw.com/assets/attachments/PROY-NOM%20161%20Semarnat.pdf

PERU HIGHLIGHTS

PERU ENACTS LAW REQUIRING CONSULTATION WITH INDIGENOUS COMMUNITIES ON EXTRACTIVE INDUSTRY PROJECTS

On September 6, 2011, Peru enacted a law that requires the government to consult with indigenous communities before taking any “legislative or administrative measures that directly affect their collective rights regarding their physical existence, cultural identity, quality of life or development.” (*Ley No. 29785, Ley del derecho a la consulta previa a los pueblos indígenas u originarios, reconocido en el Convenio 169 de la Organización Internacional del Trabajo (OIT) or “Law”*.) Under the Law, consultation will be required before mining, oil and gas, or timber projects on traditionally-owned indigenous lands can move forward.

The Law aligns Peruvian law with International Labour Organization Convention No. 160 (the Indigenous and Tribal Peoples Convention), which Peru ratified in 1994. (Law, Art. 1.) It sets forth criteria for identifying potentially-affected indigenous communities. (Law, Art. 7.) The Law also lays out a multi-phase consultation process consisting of the following: (1) identification of the relevant government measure; (2) identification of the indigenous communities to be consulted; (3) notification of the communities about the measure; (4) provision to the communities of information about the measure; (5) evaluation of the measure by the communities; (6) a dialogue between the government and the communities; and (7) a final decision by the government. (Law, Arts. 8-15.) The purpose of the consultation is to achieve an agreement between the government and the communities (Law, Art. 3), but in the absence of such an agreement, the government may still act provided it takes measures to guarantee the collective rights of the affected communities (Law, Art. 15).

Reference Source (in Spanish):

- *Ley No. 29785, Ley del derecho a la consulta previa a los pueblos indígenas u originarios, reconocido en el Convenio 169 de la Organización Internacional del Trabajo (OIT)*, September 6, 2011, available at www.bdlaw.com/assets/attachments/Peru%20-%20Indigenous%20Consultation%20Law.pdf



PERU RATIFIES CONVENTION FOR PROTECTION OF NEW VARIETIES OF PLANTS; CHILE MOVES FORWARD WITH THE ADOPTION OF THE 1991 REVISIONS TO THE CONVENTION

Peru has acceded to the Convention and approved of the 1991 amendment, officially becoming a member of the UPOV on July 8, 2011. Chile, which first acceded to the 1961 Convention, as amended in 1972 and 1978, became a member of the UPOV in January of 1996.

The 1961 Convention for the Protection of New Varieties of Plants, revised in Geneva, Switzerland, on November 10, 1972, then on October 23, 1978, and finally in 1991, grants property and other rights to developers (“breeders” in the Convention) of new seed variants, to encourage innovation and provide economic protection for development of new seeds. Members to this Convention are part of an intergovernmental organization based in Geneva, known as the International Union for the Protection of New Varieties of Plants (UPOV).

Unlike Peru, Chile has not yet approved of the 1991 amendment. However, during the same period of time that Peru acceded to the Convention and became a member of the UPOV, the Chilean government passed the final hurdles to officially adopting the 1991 amendment. During this past spring and summer, a divided Senate voted to approve the 1991 revision and the Chilean Constitutional Court issued a decision upholding the constitutionality of the Convention against arguments that it infringed on the rights of indigenous farmers. As of the date of publication of this article, the UPOV has not yet listed Chile as completing the accession process for the 1991 revision of the Convention.

Reference Sources (In Spanish):

- Peru’s approval of UPOV, available at www.bdlaw.com/assets/attachments/Peru%20-%20Approval%20of%20UPOV.pdf
- Chile Law 19342, available at www.bdlaw.com/assets/attachments/Chile%20-%20Law%2019342.pdf
- Chile Decree Approving Law 19342, available at www.bdlaw.com/assets/attachments/Chile%20-%20Decree%20Approving%20Law%2019342.pdf
- Chilean Constitutional Court decision, available at www.bdlaw.com/assets/attachments/Chile%20-%20Constitutional%20Court%20decision.pdf

PERUVIAN MINISTRY PUBLISHES NEW E-WASTE REGULATIONS FOR PUBLIC COMMENT

On July 27, Peru’s Ministry of the Environment published for public comment a new regulation for the management of Wastes Electrical and Electronic Equipment (WEEE), as Resolution No. 160-2011-MINAM (Res. No. 160) and Supreme Decree No. ___-2011-MINAM (Decree). The regulation published for comment covers the production, collection, transport, storage, treatment, reuse, and final disposal of WEEE, and incorporates “Extended Producer Responsibility” (EPR) obligations. The Decree also discusses responsibilities and obligations of: competent government authorities (Arts. 6-9); generators, producers, and operators (Arts. 10-15); systems for managing WEEE (Arts. 16-18); and penalties for non-compliance (Arts. 20-21). The comment period closed on August 24, 2011.

In addition to the publication of Res. No. 160 and the Decree for public comment, three Peruvian agencies—MINAM, DIGESA and INDECOPI—have been developing technical standards (Normas Técnicas Peruanas: “NTPs”) on the Management of WEEE: one entitled “General Provisions” (“Draft General E-Waste NTP”) and the other “Generation, Collection, Classification, Storage, Transport and Temporary Storage” (“Draft E-Waste Management NTP”). The Draft General E-Waste NTP is dominated by definitions and lists. Section 7 identifies ten



stages of e-waste management: generation; internal collection; classification (i.e., segregation into the general WEEE Directive classes of e-waste); storage; selective collection; transport; reception; treatment; valorization (reaprovechamiento, which is subdivided into refurbishment, recycling, and material and energy recovery); and final disposal. Section 5 sets forth three duties of producers, and requires an assessment of the presence of any hazardous components and management in accordance with applicable standards. The Draft Annex B lists categories of equipment for which some form of “treatment” would be mandatory, while Draft Annex D provides a list of hazardous components. The Draft E-Waste Management NTP would set general standards for the major stages of e-waste management: generation, collection, temporary storage, transport, aggregation, sorting, classification and long-term storage. Although the technical standards would be voluntary, non-binding standards, they would likely be given the de facto force of law through the Regulation, once made final.

Reference Sources (In Spanish):

- Peru Draft NTP re WEEE Management General Provisions (September 22 2011), available at www.bdlaw.com/assets/attachments/Peru%20Draft%20NTP%20re%20WEEE%20Management%20General%20Provisions%20September%2022%202011.pdf
- Peru Draft NTP re WEEE Management Standards July 2011, available at www.bdlaw.com/assets/attachments/Peru%20Draft%20NTP%20re%20WEEE%20Management%20Standards%20July%202011.pdf

BILL BEFORE CONGRESS WOULD PLACE A MORATORIUM ON THE IMPORT OF LIVING MODIFIED ORGANISMS (LMOs)

On August 3, 2011, Law No. 05-2011 was introduced before Peru’s Congress. Law No. 05-2011 proposes a fifteen year moratorium on the import of LMOs that are intended for release in the environment. The bill’s supporters argue that the country’s infrastructure is insufficient to properly regulate LMOs, and therefore a moratorium should be issued to give Peru time to enact all necessary regulations. Multiple versions of the law have submitted before Congress (Nos. 13, 170, 233, 376, and 394) and each has a different proposed period the moratorium should last (e.g., No. 13-2011 also calls for a fifteen year moratorium, while No. 170-2011 calls for a lesser ten year moratorium and No. 233-2011 calls for only a three year moratorium). Additionally, some versions call for specific exclusions for LMOs intended for use in confined spaces or for medical or pharmaceutical reasons (No. 13-2011). By the end of September 2011, the various proposals were being discussed by committees in Peru’s House and Senate.

Reference Source (In Spanish):

- Peru - LMOs 05-2011, available at www.bdlaw.com/assets/attachments/Peru%20-%20LMOs%205-2011.pdf
- Peru - LMOs 13-2011, available at www.bdlaw.com/assets/attachments/Peru%20-%20LMOs%2013-2011.pdf
- Peru - LMOs 170-2011, available at www.bdlaw.com/assets/attachments/Peru%20-%20LMOs%20170%202011.pdf
- Peru - LMOs 233-2011, available at www.bdlaw.com/assets/attachments/Peru%20-%20LMOs%20233-2011.pdf

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