



OCTOBER 2010

ARGENTINA HIGHLIGHTS

SENATE APPROVES BILL TO PROTECT GLACIAL AREAS

Argentina's Senate has approved a bill to protect its glacial areas (*Proyecto de Ley de Presupuestos Mínimos para la Protección de los Glaciares y del Ambiente*) ("Bill"). The Bill prohibits activities in and around glaciers that may affect their natural condition or their function as strategic reserves for water resources. (Bill, Arts. 1 and 6) The following activities are expressly banned: (i) discharge, release or disposal of contaminating substances, chemical products or wastes; (ii) construction activities, except for those necessary for scientific investigation and prevention of risks; (iii) mining and hydrocarbon exploration and exploitation; and (iv) industrial activities. (Bill, Art. 6) Activities that are not banned in or around glaciers are subject to an environmental impact evaluation. (Bill, Art. 7) The Bill also provides for the development of a National Inventory of Glaciers. This inventory is to include all information necessary to ensure the adequate protection and monitoring of glaciers. (Bill, Art. 3) The Bill now awaits Presidential approval.

Reference Sources (in Spanish):

- Bill to Protect Glacial Areas, *Proyecto de Ley de Presupuestos Mínimos para la Protección de los Glaciares y del Ambiente*, available at www.bdlaw.com/assets/attachments/Argentina%20-%20Bill%20to%20Protect%20Glacial%20Areas.pdf

BILL WOULD ESTABLISH PROGRAM FOR CELL PHONE RECYCLING

A bill pending in the Argentine Chamber of Deputies (*Proyecto de Ley 5294-D-2010, Creación del Programa de Reciclado de Telefonos Celulares*) would create a Program for Cell Phone Recycling ("Bill"). The Bill would require cell phone companies, including companies that provide a cell phone only and those that provide both a cell phone and service, to take back their end of life products. (Bill, Arts. 5 and 6) Cell phone batteries and devices would need to be disposed of in separate phases. (Bill, Art. 5) Cell phone companies would be required to register with the National Registry of Generators of Hazardous Wastes. They would also be held responsible for any hazardous wastes from generation to final disposition. (Bill, Art. 3)

Reference Sources (in Spanish):

- Bill to Create Program for Cell Phone Recycling (*Proyecto de Ley 5294-D-2010, Creación del Programa de Reciclado de Telefonos Celulares*), available at www.bdlaw.com/assets/attachments/Argentina%20-%20Cell%20Phone%20Law.pdf

MEMBER COUNTRIES OF MERCOSUR ENTER INTO AGREEMENT TO PROTECT GUARANÍ AQUIFER

During a recent meeting of the Mercosur trade bloc held in San Juan, Argentina, the governments of Argentina, Brazil, Paraguay and Uruguay entered into an agreement to protect

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the Guarani Aquifer (*Acuerdo sobre el Acuífero Guaraní*) (“Agreement”). The Guarani Aquifer is one of the largest aquifer systems in the world and is located beneath the surface of the four countries. Under the Agreement, the parties agree to promote the conservation and environmental protection of the aquifer in a manner that will ensure a rational, sustainable and equitable use of this water resource. (Agreement, Art. 4) Any party carrying out activities for the use or exploitation of the aquifer will adopt measures to avoid harm to the other parties or the environment. (Agreement, Art. 6) The parties agree to exchange technical information relating to studies, activities and other works that contemplate the sustainable use of the aquifer. (Agreement, Art. 8) The parties also agree to cooperate in the identification of critical areas, particularly in border areas requiring specific treatment. (Agreement, Art. 14)

Reference Source (in Spanish and Portuguese):

- Agreement relating to the Guarani Aquifer. See <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/acordo-sobre-o-aquifero-guarani>

BRAZIL HIGHLIGHTS

NATIONAL DEVELOPMENTS

COMPREHENSIVE NATIONAL SOLID WASTE FRAMEWORK LAW ENACTED

On August 2, 2010, Brazil’s President Luiz Inácio Lula da Silva signed into law the National Solid Waste Policy (*Política Nacional de Resíduos Sólidos*; Law No. 12.305; the “Law”), establishing a nationwide waste management framework. The Law is the culmination of over twenty years of debate and has the potential to affect the operations of companies in a wide variety of industries. Taking waste reduction as its central priority, the Law may effectively prohibit disposal of wastes unless all non-disposal alternatives have been exhausted. (Art. 7) Other significant provisions include: extended producer responsibility for certain end-of-life products; restrictions on packaging; waste management planning requirements; and authority for agencies to require the remediation of contaminated sites.

Among the Law’s hallmark features is the concept of “reverse logistics” (*logística reversa*), a regime under which a product’s distribution system must flow in reverse at the end of its useful life, returning the item to the manufacturer or importer for recycling or other treatment. Products subject to reverse logistics include: pesticides, their packaging and other packaging considered hazardous; batteries; tires; lubricants and their packaging; fluorescent, sodium and mercury vapor bulbs; and electronic products and their components; with additional products and packaging to be determined by regulation. (Art. 33) The Law also imposes broad new requirements on producers and providers of packaging; to minimize the quantity and require that packaging be reusable or recyclable. (Art. 32)

Certain provisions of the Law indicate a likely increase in compulsory contaminated site remediation throughout Brazil: such as requiring both municipal authorities and individual facilities to identify contaminated sites and applicable remediation measures (Art. 19, XVIII; Art. 21, VIII) and authorizing government agencies to decontaminate “orphan contaminated sites” (*área órfã contaminada*) then to recover the costs from parties later determined to be responsible for the contamination. (Art. 41)

Reference Sources (in Portuguese):

- Law No. 12305 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Law%20No%2012305%20of%202010.pdf



ENVIRONMENT MINISTRY PUBLISHES DRAFT SUSTAINABILITY PLAN

On September 21, 2010, Brazil's Ministry of the Environment (the "Ministry") posted for public comment a draft Action Plan for Sustainable Production and Consumption (*Plano de Ação para Produção e Consumo Sustentáveis*) (the "Plan"). The original version of the Plan was released in 2008 as Portaria No. 44, which the current draft revises. According to a Ministry press release, the central idea of the Plan is to coordinate the diverse proponents of sustainability initiatives in Brazil – private companies, trade associations, non-profits, and all levels of government – to stimulate an economically sound process of shifting to more sustainable patterns of production and consumption. To this end, the Plan would focus the Ministry's efforts on six priorities during the first three years of implementation (2011 to 2013): public education on sustainability; sustainable construction; the environmental agenda in public administration; sustainable consumption; green procurement; and increased recycling of solid wastes. (Section 3.3) In its discussion of recycling, the Plan highlights the requirements of the new National Solid Waste Law (Law No. 12305/2010) and CONAMA resolutions in various stages of development to require producer take-back of end-of-life electronics, batteries, tires, pesticides, lubricants, fluorescent, mercury and sodium vapor lamps, and packaging. (Sections 2.5, 4.4) The posting of the Plan initiated a period of public comment, which the Ministry is coordinating through its website at www.mma.gov.br/ppcs. The Ministry indicates that it expects to complete the final version of the Plan by the end of 2010.

Reference Sources (in Portuguese):

- Portaria No. 44 of 2008, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Portaria%2044%20of%202008%20revised%20for%20public%20consultation%20Sept%202010.pdf
- Press Release: <http://noticias.ambientebrasil.com.br/clipping/2010/09/23/60746-governo-lanca-plano-ousado-para-promover-producao-e-consumo-sustentaveis.html>

NEW BRAZILIAN OIL COMPANY TO MANAGE PRE-SALT PETROLEUM RESERVES ESTABLISHED

On August 2, 2010, Brazil established a new national oil company, Pre-Salt Petroleum, S.A., under Law No. 12304 ("Empresa Brasileira de Administração de Petróleo e Gás Natural S.A. – Pré-Sal Petróleo S.A."; "PPSA"), to manage the deep-sea reserves widely expected to launch Brazil into the first rank of global oil exporters. PPSA will be an agency of the Ministry of Mines and Energy, formed to manage production sharing contracts and the marketing of hydrocarbons, but will not participate directly in exploration or production activities. (Art. 2) Additional PPSA functions include the evaluation of proposed exploration and production plans, and the monitoring and auditing of financial information. (Art. 4) The establishment of PPSA is a significant step in the development of pre-salt oil, which will entail large-scale investment both domestically and by foreign companies under the production sharing contracts that the new company will administer.

Reference Sources (in Portuguese):

- Law No. 12304 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Law%20No%2012304%20of%202010.pdf

BRAZILIAN BILL WOULD TAX OIL REVENUES TO CREATE A SPILL RESPONSE FUND

Brazil's Chamber of Deputies is considering Bill No. 7525 (the "Bill") which would establish a reserve fund to address environmental and socio-economic damage (*constituição de reserva para fazer frente a eventuais danos ambientais e sócio-econômico*) caused by leaks of oil or natural gas



into the ocean from the exploration and production of hydrocarbons. (Art. 1) The Bill would require all contracts for maritime oil and gas production to include a clause dedicating two percent of net revenues (“receita líquida”) to a national oil spill restoration and compensation reserve fund. As used in Brazil, the term net revenue refers to the gross revenue minus certain deductions, rather than net profits. The justification, published with the Bill, indicates that the inspiration for the fund is the 2010 spill of the Deepwater Horizon platform in the Gulf of Mexico. Offshore oil development, already significant to Brazil’s oil industry, is anticipated to grow dramatically in the coming decades due to the recent discoveries of “pre-salt” reserves located far beneath the seabed in deep water far offshore of Brazil. The Bill is intended to provide an insurance policy for the burgeoning industry to allow a rapid response to any serious incidents.

Reference Sources (in Portuguese):

- Chamber Bill No. 7525, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Chamber%20Bill%20No.%207525%20of%202010.pdf

BRAZIL BANS ENDOSULFAN

On August 16, 2010, Brazil’s National Health Surveillance Agency (*Agência Nacional de Vigilância Sanitária*; “ANVISA”) published Resolution No. 28 (the “Resolution”), banning endosulfan (*endossulfam*) from the Brazilian marketplace. Endosulfan is the active ingredient in various pesticides that are currently used widely in Brazil. ANVISA indicates that the decision is due to toxic effects on the endocrine and nervous systems and on reproduction and development. (Preamble) The Resolution schedules the ban over a period of three years, counting from July 31, 2010, through a series of staged restrictions that progressively limit the quantity and sources of endosulfan allowed in Brazil. In the first year, the Resolution permits an aggregate total of 14 million litres of endosulfan to be produced, formulated or imported. (Art. 2, I) The Resolution prohibits import of endosulfan as of July 31, 2011, and allows a total of 8 million liters of domestic production and formulation during the second year. (Art. 2, II-III) The Resolution prohibits all production as of July 31, 2012, and allows existing stocks to be sold until July 31, 2013. (Art. 2, IV-V) The Resolution further limits the allowable uses of endosulfan-based pesticides during the phase-out period, immediately prohibiting: use on cacao crops; aerial application; manual application; use on ants; and use as a wood preservative. (Arts. 4-7) In addition, the Resolution immediately bans all production and use of endosulfan from certain states, including Rio de Janeiro, Santa Catarina, and most Amazonian and northeastern states. (Art. 13) Endosulfan has been banned from a growing list of countries that includes the European Union, Australia and New Zealand, with bans also scheduled in the United States and elsewhere.

Reference Sources (in Portuguese):

- ANVISA Resolution No.28 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20-%20ANVISA%20Resolution%20No%2028%20of%202010.pdf

BRAZILIAN STATE DEVELOPMENTS

SÃO PAULO REQUIRES PRODUCER TAKE-BACK OF LUBRICANT PACKAGING

On July 15, 2010, São Paulo Governor Alberto Goldman signed Law No. 14186 (the “Law”) on the Collection and Final Disposal of Plastic Packaging of Lubricants (*sobre a coleta, o recolhimento e o destino final das embalagens plásticas de óleos lubrificantes*) requiring producer take-back of these products. The Law imposes a complete ban on disposal of lubricant packaging in landfills and in the soils, subsoils and waters of São Paulo. (Art. 5) Producers, importers and distributors of covered products are responsible for providing collection stations



at points of sale and properly handling and managing the collected packaging. (Arts. 2, 3) The Law allows for the contracting of authorized third parties to perform most tasks. (Art. 5) Although the Law prohibits direct reuse of lubricant packaging, it allows recycling with prior approval of the particular recycling process. (Art. 5) The Law sets timetables of 90 days for the publication of implementing regulations and 180 days for full compliance by producers, importers and distributors, counting from its date of publication: July 15, 2010. (Arts. 8-10)

Reference Sources (in Portuguese):

- São Paulo Law No. 14186 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Sao%20Paulo%20Law%2014.186.pdf



RIO DE JANEIRO BEGINS IMPLEMENTING NEW MODEL OF WATER RESOURCE MANAGEMENT

Acting under the authority of Rio de Janeiro Law No. 5639 (the “Law”) on Water Resource Management Delegation Contracts (*Sobre os Contratos de Gestão entre o Órgão Gestor e Executor de Política Estadual de Recursos Hídricos e Entidades Delegatárias*) the state environmental agency (*Instituto Estadual do Ambiente*; “INEA”) in July 2010 signed contracts with five local conservation groups, granting them the use of state funds for watershed management in two river basins. The Law provides for such contracts to delegate the responsibility for implementing water quality projects from the state water agency (*Agência de Água*) to non-profit organizations. Funds for the program come from water usage fees collected by INEA. The projects are selected from plans approved by the state’s regional watershed committees (*Comitês de Bacia Hidrográfica*). The Law, enacted in January 2010, adopts a collaborative model of water resource management under which the state agency, regional committees and civil society organizations each play roles in the formation, administration and implementation of policy decisions. The first set of contracts signed transfer operational control over projects in two of the state’s nine watershed regions, the Paraíba do Sul and Lagos São João basins.

Reference Sources (in Portuguese):

- Rio de Janeiro Law No. 5639 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Rio%20de%20Janeiro%20Law%20No.%205639%20of%202010.pdf
- Press Release: http://www.inea.rj.gov.br/noticias/noticia_dinamica1.asp?id_noticia=889

PERNAMBUCO AND ESPÍRITO SANTO ENACT STATE CLIMATE CHANGE LAWS

Two small Brazilian states recently passed climate change policy laws (*política estadual de mudanças climáticas*), bringing the number of such state laws to five, and following the passage of a federal law on the same subject matter late in 2009. Both the northeastern state of Pernambuco’s Law No. 14090 and the southeastern state of Espírito Santo’s Law No. 9531 require the completion of statewide greenhouse gas emissions inventories, and neither sets reduction targets. Of the five state climate change policy laws currently in effect, only São Paulo’s Law No. 13798 sets a quantitative target: promising to reduce its statewide emissions by 20% from 2005 to 2020. The Pernambuco law contains a general requirement that state agencies adopt a green procurement policy, but without identifying particular criteria (Art. 42), and directs the state government as a whole to require an assessment of climatic impacts (*avaliação da dimensão climática*) in policy decisions (Art. 7). Espírito Santo’s law requires a climate impact evaluation to be incorporated into the environmental licensing process (Art. 14) and establishes a set of climate change mitigation and adaptation principles for land use decisions (Art. 17). Both new laws include financial incentives for private sector actions that would reduce emissions, but leave the details on funding and other practical questions to be provided, if at all, through implementing regulations.



Reference Sources (in Portuguese):

- Pernambuco Law No. 14090 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Pernambuco%20Law%2014090%20of%202010.pdf
- Espírito Santo Law No. 9531 of 2010, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Espirito%20Santo%20Law%20No.%209531%20of%202010.pdf
- São Paulo Law No. 13798 of 2009, available at www.bdlaw.com/assets/attachments/Brazil%20-%20Sao%20Paulo%20Law%20No.%2013798%20of%202009.pdf

CHILE HIGHLIGHTS

CHAMBER OF DEPUTIES CONSIDERING BILL TO PROTECT BIOLOGICAL DIVERSITY

Chile's Chamber of Deputies is considering a bill intended to protect the genetic patrimony and biological diversity of the country (*Boletín No. 6867-12, Proyecto de Ley, Protección de Patrimonio y de la Diversidad Biológica*) ("Bill"). Among other things, the Bill would declare, of high national interest, the identification, classification, inventory and scientific study of the species and habitats that comprise the national biological diversity. (Bill, Art. 1(b)) The Bill would prohibit the destruction, degradation or diminution of natural ecosystems and flora and fauna without the required authorization. (Bill, Art. 4) Hunting, fishing, capturing, importing or exporting threatened, endangered and protected species of flora and fauna would also be prohibited. (Bill, Art. 5) Absent extenuating circumstances, the Bill would also ban the introduction of exotic species of flora and fauna into the country that would present risks to the biodiversity and genetic patrimony of Chile. (Bill, Arts. 7(b) and Art. 8)

Reference Source (in Spanish):

- Biological Diversity Bill (*Boletín No. 6867-12, Proyecto de Ley, Protección de Patrimonio y de la Diversidad Biológica*), available at www.bdlaw.com/assets/attachments/Chile%20-%20Biological%20Diversity%20Bill.pdf

SENATE CONSIDERING BILL TO STRENGTHEN NATIONAL SYSTEM FOR PROTECTED AREAS

Chile's Senate is considering a bill to strengthen its National System for Protected Areas (*Boletín No. 7.172-12, Proyecto de Ley que refuerza el Sistema Nacional de Areas Silvestres Protegidas*) ("Bill"). The Bill would prohibit activities, programs and works capable of producing environmental impact in areas such as national parks, national reserves, nature sanctuaries, and marine reserves that form part of the National System for Protected Areas (SNASPE). (Bill, Introductory Clauses and Art. 1). Any currently approved projects in operation in these areas would be able to continue to operate. However, the Bill anticipates that all such projects would be relocated within ten years of adoption of the Bill. (Bill, Transitory Article). The Bill is currently pending before the Senate Committee on Environment and National Resources.

Reference Source (in Spanish):

- Senate Bill to Strengthen National System for Protected Areas, *Boletín No. 7.172-12, Proyecto de Ley que refuerza el Sistema Nacional de Areas Silvestres Protegidas*, available at www.bdlaw.com/assets/attachments/Chile%20-%20Protected%20Areas%20Bill.pdf

MINISTRY OF HEALTH BARS IMPORT OF USED TIRES INTO CHILE

In October of this year, Chile's Ministry of Health published Decree No. 1.358 (*Decreto Ex. No. 1.358, Prohibición de Ingreso de Neumáticos Usados, Recauchados o Reacondicionados*)



(“Decree”) barring the import of used, retreaded and reconditioned tires into the national territory. The Decree is intended to prevent the spread of mosquito-borne diseases. (Decree, Introductory Clauses) The ban applies to such tire imports for any purpose and regardless of the country of origin. (Decree, Art. 1) However, notwithstanding the general ban, used, retreaded and reconditioned tires that are part of a vehicle may be imported into the country. In such case, measures must be undertaken to minimize the risk of transport of mosquito larvae. (Decree, Art. 2) All parties, directly or indirectly, participating in import activities, including transporters, consignees, customs agent or final recipients, are required to comply with the Decree and must immediately notify the sanitary authority in the event of any noncompliance. (Decree, Art. 5)

Reference Source (in Spanish):

- Decree No. 1.358 (*Decreto Ex. No. 1.358, Prohibición de Ingreso de Neumáticos Usados, Recauchados o Reacondicionados*), available at www.bdlaw.com/assets/attachments/Chile%20-%20Decreto%20No%201%20358.pdf

MINISTRY OF ENVIRONMENT ENTERS INTO COOPERATIVE AGREEMENTS PROMOTING ELECTRIC CARS

Chile’s Ministry of Environment is promoting the development of an infrastructure for electric cars. In October, the Ministry of Environment signed cooperative agreements with Nissan and China ByD. Increased performance efficiency, lower emissions and inclusion of solar panels are some of the innovative characteristics included in the “green cars” that are covered by the cooperative agreements.

Reference Source (in Spanish):

- Chile Ministry of Environment Press Release, available at www.bdlaw.com/assets/attachments/Chile%20-%20Electric%20Car%20Agreement%20Press%20Release.pdf

COLOMBIA HIGHLIGHTS

MINISTRY OF ENVIRONMENT ADOPTS PENALTIES AND PENALTY CRITERIA FOR ENVIRONMENTAL VIOLATIONS

Signaling Colombia’s progressive environmental regime once again, the Ministry of the Environment (MAVDT) has issued a Decree establishing penalties and criteria for assessing penalties under its new environmental sanctions law, Law 1333. Penalties allowed include fines five times the minimum salary; partial or final closure of a facility; environmental permit or license revocation; demolition of a facility; destruction of products causing the harm; habitat restitution; and community works. (Decree, Art. 2). The Decree also establishes a formula for determining penalties that includes a number of factors relating to gravity of the harm, economic benefit, socioeconomic status of the violator, among others. (Decree, Art. 4). The Decree, which may well be the first of its kind in the region and may help establish transparency in calculating penalties, implements one of the most progressive environmental sanctions laws in the world for its presumption of guilt when environmental crimes have occurred.

Reference Sources (in Spanish):

- Penalty Decree, *Decreto 3678 de 2010, Por el cual se establecen los criterios para la imposición de las sanciones consagradas en el artículo 40 de la Ley 1333 del 21 de julio de 2009 y se toman otras determinaciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20

PRODUCT STEWARDSHIP REGULATIONS FOR END-OF-LIFE COMPUTERS, LIGHTING WASTES, AND USED TIRES FINALIZED

Relying on a combination of its omnibus authority and authority under its waste regimes, the Ministry of Environment finalized several product stewardship programs for electronic wastes, lighting waste and tires, all waste streams the Ministry has viewed as a priority for some time. In a nutshell, the new Resolutions are based on Colombia's product stewardship model which requires producers -- broadly defined as those who manufacture, import or otherwise place products on the market -- to develop take-back plans for their end-of-life products. Take-back is envisioned as free to the consumer and at established quotas, phased-in over time. The new Resolutions originally required demonstration of plan approval at the time of import, but those provisions of the Resolutions were quickly repealed when Colombian customs authorities began demanding demonstration of plan development from certain manufacturers. The Resolutions are now binding and plans will be required to be developed during 2011.

Reference Sources (in Spanish):

- Computer Take-Back Resolution. *Resolución No. 1512 de 2010, Por la cual se establecen los Sistemas de Recolección Selectiva y Gestión Ambiental de Residuos de Computadores y/o Periféricos y se adoptan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Computer%20Take-Back%20Resolution%20Resolucion%201512%20de%202010.pdf
- Lighting Waste Take-Back Resolution. *Resolución No. 1511 de 2010, Por la cual se establecen los Sistemas de Recolección Selectiva y Gestión Ambiental de Residuos de Bombillas y se adoptan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Lighting%20Waste%20Take-Back%20Resolution%20Resolucion%201511%20de%202010.pdf
- Used Tire Take-Back Resolution. *Resolucion No. 1457 de 2010, Por la cual se establecen los Sistemas de Recolección Selectiva y Gestión Ambiental de Llantas Usadas y se adoptan otras disposiciones*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Used%20Tire%20Take-Back%20Resolution%20Resolucion%201457%20de%202010.pdf
- Modifying Decree. *Resolución 1739 de Septiembre 08 de 2010 del MAVDT modificatoria de las resoluciones 1297 posconsumo pilas, 1511 de posconsumo luminarias y 1512 de posconsumo computadores*, available at www.bdlaw.com/assets/attachments/Colombia%20-%20Modifying%20Decree%20Resolucion%201739.pdf

MINISTRY OF ENVIRONMENT REVISES ENVIRONMENTAL LICENSING REGULATION AND ADOPTS METHODOLOGIES FOR PREPARING ENVIRONMENTAL STUDIES

Colombia's Ministry of the Environment has made final proposed amendments to its environmental licensing rules which implement licensing requirements from Law 99/1993. See Decreto 2820 of 2010. The thrust of the most significant changes are to establish the procedures and requirements for submitting an environmental impact study required for obtaining the licensing requirements. (Decreto, Art. 25). The Ministry also adopted a guidance document, the General Methodology for Presenting Environmental Studies, a detailed technical document for preparing environmental and economic impacts of covered projects.

Reference Sources (in Spanish):

- License Decree, *Decreto 2820 de 2010, Por el cual se reglamenta el Titulo VIII de la Ley 99 de 1993 sobre licencias ambientales*, available at www.bdlaw.com/assets/attachments/



[Colombia%20-%20License%20Decree%20Decreto%202820%20de%202010.pdf](#)

- Environmental Impact Guidance, *Resolución no. 1738 de 2010, Por la cual se suprime el requisito establecido en el párrafo 2 del artículo 11 de la Resolución 371 de 2009*, available at [www.bdlaw.com/assets/attachments/Colombia%20-%20Environmental%20Impact%20Guidance%20Resolucion%201738%20de%202010.pdf](#)
- Environmental Impact Methodology, *Metodología General para la Presentación de Estudio Ambientales (MAVDT, 2010)*, available at [www.bdlaw.com/assets/attachments/Colombia%20-%20Environmental%20Impact%20Methodology%20MAVDT%202010.pdf](#)

COSTA RICA HIGHLIGHTS

BILL PROPOSED TO STRENGTHEN INDEPENDENCE OF THE NATIONAL TECHNICAL SECRETARIAT OF THE ENVIRONMENT (SETENA)

A new bill was proposed in the Costa Rican unicameral Congress to depoliticize the National Technical Secretariat of the Environment (SETENA) by transforming it into an independent autonomous technical and administrative body with quasi-judicial authorities. The new SETENA's objectives would be to comply with Costa Rica's commitments under the Rio Declaration, guarantee and defend the fundamental rights of persons to enjoy environmental health and ecological balance; harmonize environmental impact with productive processes where possible; and promote and make effective the rights of Costa Ricans to actively participate in environmental issues and decision-making. (Bill, Art. 1).

As envisioned, the new SETENA would have a range of specific and significant responsibilities. Among other key authorities, the SETENA would be charged with evaluating, approving or denying environmental impact studies; granting, denying or rescinding environmental permissions for works and projects for which environmental impact studies are required; and recommend actions for minimizing environmental impacts. (Bill, Art 2). The SETENA would also be charged with investigating public complaints about environmental harms, establishing a registry of local environmental organizations, recommending policies and regulations to the Legislature and Executive Branch, and broadly -- any other functions necessary to effectuate its purposes. *Id.*

Several sections of the Bill are designed to prohibit political influences on the body. These include a requirement that SETENA base all decisions on technical criteria and adhere strictly to environmental laws. (Bill, Art. 4). It also prohibits government officials from interfering with or unduly influencing decision-making of the SETENA, with sanctions of prison terms from 2-8 years. The bill is unique for its progressiveness but reflects the regional trend in demands for transparency in environmental decision-making.

Reference Sources (in Spanish):

- SETENA Bill, *Proyecto de Ley, Ley Para Rescatar, Despolitizar y Fortalecer la Secretaría Técnica Nacional Ambiental (SETENA)*, available at [www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20SETENA%20Bill%20Proyecto%20de%20Ley.pdf](#).

BROAD USED CONTAINER MANAGEMENT BILL PROPOSED IN COSTA RICAN LEGISLATURE

A new bill proposes to create a national system for managing a broad range of used containers. The bill would define a container as any product manufactured with any material and that is used to contain, protect, manipulate, distribute, and present goods, from raw materials to used articles, and in whatever phase in the chain of manufacturing, distribution and consumption.



Bill Art. 5(1). A container also includes any discarded article that has been used for this end. *Id.* The new bill would distinguish an industrial or commercial container as one that has been used and consumed exclusively in industry, business establishments, services or agriculture or livestock ends and for which cannot be ordinarily used or consumed in individual domiciles. *Id.*

The Bill imposes take-back requirements on container manufacturers and those who market products in containers, and if the former cannot be identified, those who first place the contained products on the market. (Bill, Art. 8.) These requirements include accepting for return container and container wastes for those products or containers placed on the market and delivering them to recycling centers. (Bill, Arts. 8, 12.) Those who do not participate in such a program for their products would be required to pay 1% of the price of the contained product. (Bill, Art. 6.)

Municipalities and local entities, which would continue to be allowed to engage in management of used containers, would participate in the take-back programs through contracts. (Bill, Art. 10.) The bill signals that producer responsibility -- now firmly established as policy in Costa Rican solid waste laws -- may well be applied to a range of consumer products.

Reference Sources (in Spanish):

- Container Bill, *Proyecto de Ley, Fortalecimiento de la Responsabilidad Social Medio Ambiental y Desarrollo de Gestiones de Calidad*, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Container%20Bill%20Proyecto%20de%20Ley%2017.683.pdf

ENVIRONMENT MINISTRY ISSUES ENERGY POLICY

Costa Rica's Ministry of the Environment, Energy and Telecommunications (MINAET) issued an energy policy that outlines plans for meeting Costa Rica's energy needs in a sustainable manner, in the short and long terms. The policy is broad, but is based on principles of conservation, sustainable development, universality, solidarity, efficiency, competitiveness, innovation, environmental viability and private and public social and economic participation. Policy at 25. In more concrete terms, the objectives are to reduce dependence on imported oil and increase clean energy technologies and the use of alternative fuels. *Id.* at 26. The policy is guidance and not binding, but could serve to influence or drive development of new laws, for example, the recently proposed General Electricity Law, which would promote electric development based on renewable energy. (Bill, Art. 1).

Reference Sources (in Spanish):

- Energy Policy, *Hacia un Nuevo Modelo Energético para Nuestr País* (MINAET, 2010), available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Energy%20Policy%20MINAET%202010.pdf
- Electricity Bill, *Proyecto Ley, Ley General de Electricidad*, available at www.bdlaw.com/assets/attachments/Costa%20Rica%20-%20Electricity%20Bill%20Proyecto%20de%20Ley%2017.666.pdf

ECUADOR HIGHLIGHTS

ECUADOR AMENDS ITS OIL LAW, ESTABLISHING TWO NEW AGENCIES

When the Congress missed its deadline to act on his Oil Law Reform Bill, President Rafael Correa Delgado invoked a constitutional provision allowing him to enact the same proposal unilaterally, as a Decree Law (*Decreto Ley*; "Decree"). With the publication of the Decree, on July 27, 2010, Ecuador amended its Oil Law (*Ley de Hidrocarburos*), expanding the national government's authority over the country's oil reserves and increasing its share of the revenue.



The Decree creates the Agency of Hydrocarbon Regulation and Control (*Agencia de Regulación y Control Hidrocarburífero*) tasked with the oversight of petroleum production and enforcement of regulations. (Art. 5) The second new oil office is the Hydrocarbon Secretariat (“Secretaría de Hidrocarburos”), which will perform various administrative functions, including the execution of contracts with companies involved in the exploration, extraction, refining and transport of petroleum. (Art. 6) The Decree also requires all contracts for oil production to provide for a “sovereignty margin” of 25% of gross revenue to be paid directly to the national government. (Art. 7)

Reference Sources (in Spanish):

- Ecuador 2010 Decree Amending Oil Law, available at www.bdlaw.com/assets/attachments/Ecuador_2010_Decree_Amending_Oil_Law.pdf



TRUST FUND AGREEMENT TO ELIMINATE OIL DEVELOPMENT IN AMAZONIAN PARK SIGNED

On August 3, 2010, Ecuador and the United Nations Development Program (“UNDP”) signed a memorandum of agreement (“MOA”) to close Ecuador’s Yasuni National Park from oil development. The park, a World Biosphere Reserve, is outstandingly rich in biodiversity and rain forest above the soil and in hydrocarbons beneath—an estimated 846 million barrels, or about 20% of Ecuador’s known reserves. Under the MOA, Ecuador will leave the park’s oil reserves intact, and in exchange, the UNDP will create and administer the Yasuni ITT Trust Fund (the “Trust Fund”) that will partially replace the revenue that near-term development would have produced. (MOA, Art. 1) The Trust Fund is divided into two accounts, with distinct income sources and terms of withdrawal. First, under the Capital Fund, Ecuador will solicit direct contributions from foreign governments and other donors. (Terms of Reference (“TOR”), Art. 8) Ecuador can use capital funds only for renewable energy projects. Second, the Revenue Fund will issue a form of carbon credit, Yasuni Guarantee Certificates (“CGYs”), in a quantity that corresponds to the estimated 407 million metric tons of CO₂ emissions avoided by leaving the oil underground. (TOR, Art. 22) The Revenue Fund will sell CGYs and may use the proceed for any of five program areas: conservation, reforestation, energy efficiency, social programs, and research and innovation. (TOR, Fig. 1) The Agreement creates a governance structure with provisions for audits and participation of contributors. (TOR, Arts. 31-41, 47-51) Ecuador’s fulfillment of the Agreement is contingent on the Trust Fund’s receipt of at least \$100 million by the end of 2011. (Art. 30) If the funding falls short, Ecuador has the option of returning contributions and resuming plans for development. When fully capitalized, after an estimated 13 years, the Trust Fund is expect to reach \$3.6 billion.

Reference Sources (in English):

- Ecuador UNDP Yasuni ITT Fund MOA August 3, 2010, available at www.bdlaw.com/assets/attachments/Ecuador%20-%20UNDP%20Yasuni%20ITT%20Fund%20MOA.pdf
- Ecuador UNDP Yasuni ITT Fund TOR August 3, 2010, www.bdlaw.com/assets/attachments/Ecuador_UNDP_Yasuni_ITT_Fund_TOR.pdf

MEXICO HIGHLIGHTS

NEARLY 200 PRODUCTS WILL REQUIRE ENERGY EFFICIENCY LABELING

Mexico has adopted a catalogue of equipment that will be subject to mandatory energy consumption labeling. The catalogue implements requirements of the Regulation to the 2008 Law on Sustainable Energy Use and the Law. The National Commission for Efficient Energy Use (CONUEE) published the final catalogue of 186 products on September 10, 2010 and



products will be required to be labeled within one year. New listed equipment and devices distributed or sold in Mexico must include the following information on the product in a clear and visible form: (1) energy consumption per unit of time in operation; (2) energy consumption in standby mode per unit of time, if applicable, and (3) the quantity of product or service offered by the equipment per unit of energy consumed, where applicable. The Catalogue has been met with significant industry opposition regarding a range of issues -- in particular the meaning of "clear and visible" and the testing and methodology for energy consumption. CONUEE has recently signaled a willingness to receive information regarding alternatives for compliance but has so far remained unpersuaded to provide meaningful regulatory flexibility on this massive new labeling requirement.

Reference Sources (in Spanish):

- Catalogue. *CATALOGO de equipos y aparatos para los cuales los fabricantes, importadores, distribuidores y comercializadores deberán incluir información sobre su consumo energético*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Catalogue.pdf

VOLUNTARY ROHS TESTING STANDARDS ADOPTED

Even without a law that would restrict hazardous substances in electronic products (RoHS), Mexico has adopted voluntary standards for testing the levels of lead, mercury, cadmium, hexavalent chromium, PBB and PBDE in electrotechnical products. NMX-J-634-ANCE-2010 (the "Standard") is based on IEC Standard 62321, edition 1.0 (12/2008). Although Mexico lacks a law specifically restricting priority chemicals of concern in electronics products, it has several product standards that govern various types of electric and electronic products and components. The NMX voluntary standards can be made binding by being incorporated by reference into an Official Mexican Norm (NOM) or by being subsequently adopted as NOMS. The NMX standards also can be used to establish criteria for government procurement requirements and typically become industry standard over time. The standards will go into effect within sixty days.

Reference Sources (in Spanish)

- ROHS Testing Standard, *Declaratoria de vigencia de las norma mexicanas*, NMX-J-521/2-6-ANCE-2010, available at www.bdlaw.com/assets/attachments/Mexico%20-%20ROHS%20Testing%20Standard.pdf

SEMARNAT PROPOSES AMENDMENTS TO CLEAN-UP STANDARDS FOR HYDROCARBONS

Mexico's environmental agency has proposed reforms to its core hydrocarbon clean-up standard, NOM-138-SEMARNAT/SS-2003. Although the clean-up standards themselves are not proposed to be changed, the new standard would incorporate by reference a number of testing standards to provide certainty and consistency to test results. These testing standards, which are based in significant part on U.S. Environmental Protection Agency (EPA) standards and are widely used in practice as voluntary standards (NMX), their incorporation into the NOM would render them binding for purposes of determining whether soils standards have been met. These new proposed standards reflect the rapidity with which clean-up standards can evolve in Latin America -- less than a decade ago legal provisions requiring soil remediation for contaminated properties in Mexico were ambiguous at best. Today, there are well-established polluter pay principles set forth as part of a robust legal regime that includes constituent specific clean-up standards that must be demonstrated according to detailed testing methods.

Reference Sources (in Spanish):

- NOM-138. *Proyecto de la Modificación a la Norma Oficial Mexicana NOM-138-*



SEMARNAT/SS-2003, Límites máximos permisibles de hidrocarburos en suelos y las especificaciones para su caracterización y remediación, para quedar como Norma Oficial Mexicana NOM-138 SEMARNAT/SA1-2208, Límites máximos permisibles de hidrocarburos en suelos y lineamientos para el muestreo y la remediación, available at www.bdlaw.com/assets/attachments/Mexico%20-%20NOM-138.pdf

MEXICO ISSUES FOURTH NATIONAL COMMUNICATION OF MEXICO TO UNFCCC

Mexico has issued its Fourth National Communication on the United Nations Framework Convention on Climate Change reporting the country's progress on climate change mitigation. The lengthy report highlights Mexico's National Emissions Inventory (1990-2006) and outlines new Institutional Arrangements to address adaptation and mitigation strategies. Notably, the reports finds that Mexico's increase of GHG emissions between 1990 and 2006 was approximately 40%, representing an annual average growth of 2.1%. In the report, Mexico reiterates its commitment to climate change mitigation activities, calling out its Special Program on Climate Change for 2009-2012(PECC), which will likely drive new requirements for energy efficiency and sustainability measures as well as off-set measures and GHG reduction regulations. The last Communication was in 2006.

Reference Sources (in Spanish):

- Fourth Communication, *México, Cuarta Comunicación Nacional ante la Convención Marco de Las Naciones Unidas Sobre el Cambio Climático*, available at www.bdlaw.com/assets/attachments/Mexico%20-%20Fourth%20Communication.pdf

PERU HIGHLIGHTS

NATIONAL PROGRAM FOR FOREST CONSERVATION TO MITIGATE CLIMATE CHANGE ESTABLISHED

Peru has adopted a decree establishing a National Program for Forest Conservation to Mitigate Climate Change (Decreto Supremo No. 008-2010-MINAM) ("Decree"). The primary objectives of the program are to: (i) identify and map areas for conservation; (ii) promote the development of sustainable production; and (iii) strengthen capacities for forest conservation among regional and local governments as well as native communities. (Decree, Art. 3) The program is to be undertaken under the oversight of the Ministry of Environment (MINAM) with appropriate coordination with the Ministry of Agriculture, the Ministry of Foreign Commerce and Tourism as well as regional governmental authorities. (Decree, Art. 7) To implement the program, MINAM has adopted a Manual for Operations ("Manual"). (Resolución Ministerial No. 167-2010-MINAM). The Manual includes detailed provisions related to the administrative, economic and technical aspects of the ten-year program.

Reference Source (in Spanish):

- National Program for Forest Conservation to Mitigate Climate Change, available at www.bdlaw.com/assets/attachments/Peru%20-%20National%20Program%20for%20Forest%20Conservation%20to%20Mitigate%20Climate%20Change.pdf

PERU ADOPTS IMPLEMENTING REGULATION TO LAW OF RECYCLERS

Peru has now adopted an implementing regulation to Law No. 29.419, its Law of Recyclers, (Ley Que Regula la Actividad de los Recicladores), which was enacted last year. (Decreto



Supremo No. 005-2010-MINAM, Reglamento de la Ley No. 29419, Ley que regula la Actividad de los Recicladores) (“Regulation”). The objective of the Regulation is to promote the protection, training and social development of recyclers thereby contributing to the adequate management of solid wastes. (Regulation, Art. 1) The focus of the Law and the Regulation is on “recyclers,” (i.e., those persons involved on a small-scale basis in the selective collection of non-hazardous solid wastes for recycling, segregation and sale). (Law, Art. 2 and Regulation, Art. 2)

The Regulation requires inter-institutional coordination among the Ministry of Environment, Ministry of Health and local governmental authorities to ensure accomplishment of its objectives. (Regulation, Art. 9) The Ministry of Environment is tasked with promoting the integral management of solid wastes, assisting with local government programs for formalization of recyclers and promoting environmental education. (Regulation, Art. 5) The Ministry of Health is charged with implementing programs for tetanus and hepatitis B immunization for recyclers and developing sanitary vigilance programs that will address the occupational health of recyclers. (Regulation, Art. 6) The responsibilities of local governments include developing and implementing programs for formalization of recyclers and selective collection of solid wastes in their jurisdictions, providing annual reports to the Ministry of Environment on the implementation of such programs and developing incentive programs to promote segregation of solid wastes at their source. (Regulation, Art. 7)

Reference Sources (in Spanish):

- Law No. 29.419 (*Ley Que Regula la Actividad de los Recicladores*), available at www.bdlaw.com/assets/attachments/Peru%20-%20Law%20No%2029.419.pdf
- Regulation to Law No. 29.419 (*Decreto Supremo No. 005-2010-MINAM, Reglamento de la Ley No. 29419, Ley que regula la Actividad de los Recicladores*), available at www.bdlaw.com/assets/attachments/Peru%20-%20Reg%20to%20Law%2029419.PDF

MINISTRY OF ENVIRONMENT AND SUPERIOR COURT OF JUSTICE SIGN AGREEMENT TO IMPROVE ENVIRONMENTAL COMPLIANCE

In September, Peru’s Minister of Environment, Antonio Brack Egg, and César Vega, President of the Superior Court of Justice in Lima, signed a cooperative agreement (Acuerdo de Colaboración Interinstitucional) to implement joint action to improve compliance with environmental norms. Key aspects of the agreement include technical and legal assistance and training as well as information exchange relating to environmental protection and conservation of natural resources. The agreement also promotes identification of funding sources to implement these objectives. The agreement is effective for two years, but may be renewed.

Reference Source (in Spanish):

- Peru Ministry of Environment Press Release, available at www.bdlaw.com/assets/attachments/Peru%20-%20Ministry%20of%20Environment%20Press%20Release%20re%20Compliance%20with%20Environmental%20Norms.pdf

VENEZUELA HIGHLIGHTS

MINISTRY OF ENVIRONMENT DEVELOPS NATIONAL PLAN FOR WATER

Venezuela’s Ministry of Environment has developed a National Plan for the Integral Management of Water (Plan Nacional para Gestión Integral de las Aguas). The plan is intended to guide and manage the country’s water resources over the next sixty years. Key objectives include water conservation in each of the regions of the country, promotion of sustainable use



and addressing the nation's current and future water needs. The plan anticipates the creation of regional water management councils that will include community participation.

Reference Source (in Spanish):

- Venezuela Ministry of Environment (MINAMB) Press Release at http://www.minamb.gob.ve/index.php?option=com_content&task=view&id=2743&Itemid=43



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