

The International Comparative Legal Guide to:

Environment Law 2007

A practical insight to cross-border Environment Law



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Peru

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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in Peru and which agencies/bodies administer and enforce environmental law?

According to the Constitution and the General Law of the Environment, the basis of environmental policy in Peru is the protection of the environment and natural resources, for the improvement of the citizen's quality of life and the achievement of sustainable development. From a formal standpoint, the law provides that the national environmental policy must be regulated by a Supreme Decree outlining its objectives and goals, as well as strategies and instruments for its implementation. This Decree has not been produced so far.

Environmental administration is based on the Sistema Nacional de Gestión Ambiental - SNGA (national system of environmental management). The SNGA is headed by the Consejo Nacional del Ambiente - CONAM (national council of the environment), and integrated by all the environmental agencies from national, regional and local governments. The main purpose of CONAM is to articulate the work of all agencies in the SNGA.

In general, public administration at the national level is organised by Ministries corresponding to different Sectors (i.e. industry, agriculture, public health, etc.). Environmental affairs are managed by specialised offices within each Ministry. These offices are in charge of issuing environmental permits and controlling compliance with environmental regulations in each Sector. In terms of enforcement of environmental law, these agencies play the most important role in Peru.

Local governments are mainly focused on managing environmental matters related to domestic and commercial affairs within the area of their jurisdiction (district or province).

Regional governments were recently created in Peru. Presently, they have little participation in environmental administration, but this will probably change in the near future.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

In enforcing environmental law, each Ministry manages an environmental control system. The system operates on the basis of periodic in-site controls and environmental audit of operations, as well as special examination (i.e. environmental accidents).

Environmental agencies can impose corrective measures and penalties for non-compliance with environmental obligations (see the answer to question 2.1).

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

Authorities are legally obliged to facilitate public access to environmental information under their control. Any person is entitled to access this kind of information without expression of cause or justification. However, public access to information related to industrial, technological or commercial secrets, among others, is restricted by law.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

The most important environmental permits in Peru are the Environmental Impact Study and the Environmental Management and Adjustment Programme, respectively known under their Spanish acronyms as EIA and PAMA. These permits are regulated and administered by each Ministry, and their characteristics may vary from one particular Ministry to another. The projects that need an EIA or a PAMA are indicated in the each ministerial regulation.

The EIA is basically the Peruvian equivalent to an environmental impact assessment as known in North America and Europe. It is required for new projects, and consists in the analysis of possible adverse effects on the physical and social environment that the proposed project may have. This information enables the authority to judge whether or not to grant permission for the project.

A PAMA is required for ongoing operations. It confers to the owner a period of time to implement technological changes in his operations in order to meet new environmental standards as they are approved from time to time by the Government. During the PAMA term the new standards are not applicable to the owner.

EIAs and PAMAs, as well as other environmental permits, may be transferred from the owner to the acquirer or lessee of the project or operation.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

This kind of decision can be appealed administratively. A last instance decision from environmental administration can be appealed before the judiciary.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Yes. Industrial activities, installations or projects which are capable of producing an important impact on the environment require an EIA. These activities are indicated in specific ministerial regulations.

Presently, the Sistema Nacional de Evaluación de Impacto Ambiental - SEIA, a general management system for EIAs, is in the process of being implemented. The SEIA introduces a uniform EIA procedure, and will replace ministerial regulations on the matter. A list of projects and activities that will require an EIA under the SEIA is being prepared by the government.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Environmental regulators can impose corrective measures (mitigation of risks, compensatory obligations, etc.) as well as penalties. Penalties may range from fines (up to US\$ 10 million approximately) to the shutting down of installations.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

“Waste” is defined in general as any substance, product or by-product, in solid or semi-solid state, that the generator is obliged to dispose of by mandate of law or because of the risks it presents to human health or the environment.

Management of industrial waste, as opposed to domestic waste, as well as hazardous wastes, involves additional duties and controls for the producer.

Hazardous waste is defined as the kind of waste that represents a significant risk to human health or the environment, and meets at least one of the following criteria: self-combustible; explosive; corrosive; reactive; toxic; radioactive; or pathogenic.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

A producer of industrial waste must obtain a permit from the environmental authority to store and/or dispose of said waste within the area of operation (i.e. industrial facilities, mining concession). The permit will require a favourable opinion from the Ministry of Public Health.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

Upon delivery to an authorised waste management company, the producer of industrial waste will be exempted from liability for damages to the environment or public health produced during waste transportation, treatment, final disposal or commercialisation. The producer will retain full responsibility if he incurred damage through wilful misconduct or negligence, or hid information about the management, origin, quantity or hazardous characteristics of waste.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Producers are responsible for the management of industrial waste. This responsibility comprises take-back or recovery of their waste, within the limits explained in question 3.3 above.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

A breach of environmental laws and/or permits can give rise to administrative liability. If damages are produced, civil liability (third party damages and/or damages to diffuse interest) and criminal liability may also be present.

Defences will vary depending on the circumstances surrounding each case. In certain cases, demonstrating that the breach of the law or permit did not entail any consequence to the environment can reduce the penalty or even justify an exemption.

In relation to criminal liability, the EIA and the PAMA provide the owner with an important protection, as no lawsuit for environmental crimes can be brought against him as long as he conducts his operation in compliance with the EIA or the PAMA.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Yes. The PAMA (see question 2.1 above) temporarily allows the owner to release effluents and emissions above legal limits. However, in some cases the owner can be held liable for ambient quality impairment (i.e. his operation is the sole source of pollution). This may also happen with regard to other permits even if the operation is in compliance with the limits.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Administrative liability is limited to the company. However, directors and officers can be held personally responsible in the case of environmental criminal liabilities, damages to third parties and damages to environmental diffuse interests, provided there is wilful misconduct or negligence.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

Liability incurred by the company doesn't affect shareholders. The owner of an asset can be held personally responsible for environmental liability related to it.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

Lenders are not liable for environmental wrongdoing and/or the remediation costs of borrowers.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

In matters of liability for contamination of soil or groundwater, Peruvian legislation follows the polluter-must-pay principle. According to this, the polluter must assume the cost of all environmental damages and hazards generated by his activities. This includes prevention, control, restoration, rehabilitation, remediation, and compensation costs.

Historic contamination for abandoned operations has been specifically regulated for the mining industry. Under this regulation, in certain cases, if the person responsible for the contamination cannot be identified, the Peruvian State will assume the costs of environmental remediation.

5.2 How is liability allocated where more than one person is responsible for the contamination?

If several persons are responsible for environmental damages they will be jointly and severally liable. The party who paid the damages has recourse to claim back recovery from co-responsible parties.

5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

Environmental regulators are not entitled to negotiate or enter into remediation agreements with a private party. Environmental remediation programmes are governed by specific regulations and are mandatory for companies. Regulators will evaluate the environmental programme presented by a company, and decide whether to approve it or not.

Once approved, if a major problem or defect in the programme is detected, the regulator can require its correction even if it involves additional works. On the other hand, the owner of a programme can propose modifications to it and submit said modification to regulators' approval.

A third party can challenge the decision of a regulator to approve the programme if it affects his private interest. The decision can also be challenged if it affects environmental diffuse interests.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

There is not a specific action of this kind contemplated in the law. However, as seller or lessor is generally liable for the good condition of land, the acquirer or lessor has an action for the recovery of pecuniary compensation or indemnity for the detriment to his rights or property caused by the pollution.

The acquirer of contaminated land also has a private right of action against the seller under the hidden defect doctrine. The seller is liable for contamination that is not discoverable by reasonable inspection (hidden defect). If contamination causes harm to the acquirer, he is entitled either to revoke the contract and recover damages, or to a reduction in the price taking into consideration the real situation of the land. The hidden defect doctrine is also applicable to transfer of use or possession of land.

The polluter can validly transfer the risk of contaminated land liability to a purchaser by the means of a contractual agreement. To make this agreement valid against third parties, it will need to be attested by a public deed and recorded at the Public Registry.

5.5 Does the government have authority to obtain from a polluter monetary damages for aesthetic harms to public assets, e.g., rivers?

Yes. The government is legitimated to claim indemnity from a polluter for damages to the environment by filing a lawsuit against him in defence of the diffuse interest. In this case indemnity will go to the local government for the reclamation of the affected area.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

As part of the control system described in question 1.2, environmental regulators have ample powers to require production of documents, take samples, conduct site inspections, interview employees, etc. In some Sectors, such as Energy and Mines, they are allowed to get support from the police in the case of resistance by operators.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

Yes. In certain cases, notice to environmental regulator must be given within 24 hours from the polluting event (i.e. environmental accidents in mining activities).

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

In the exercise of its control duties, the environmental authority can

order the owner of potentially polluted land to investigate the contamination and report the results.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

It is sound business practice to disclose environmental problems in transactions, specially where the subject of hidden liabilities is significant or material.

Under Peruvian corporate law there is no requirement for private companies to disclose environmental problems to third parties, even in the context of takeover or merger transactions. Peruvian law only requires target companies to publish a notice of the planned merger indicating the effective date of the merger in order to protect creditors whose rights might be affected by the transaction.

In the case of publicly-traded companies, they have to comply with the obligation to notify “important facts” to the market. Among those facts are the initiation of any administrative or judicial action against them and any facts that could influence the price of the stock. Environmental problems that can be included in this general description have to be disclosed.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier’s potential liability for that matter?

Limitation of environmental liability is valid except in the case of wilful misconduct and gross negligence. However, this kind of agreement won’t discharge the indemnifier’s potential liability before third party claims, administrative or criminal responsibility.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

Financial reporting requires full disclosure of all known environmental liabilities. To dissolve companies, a procedure must be followed through which the publishing of notices is mandatory and the creditor can oppose liquidation or demand guaranties.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

Liability incurred by the company doesn’t affect shareholders. Suing a Peruvian parent company for pollution caused by a foreign subsidiary/affiliate is not possible in Peruvian courts, except in the case of foreign branches.

8.4 Are there any laws to protect “whistle-blowers” who report environmental violations/matters?

There are no specific legal protections.

8.5 Are group or “class” actions available for pursuing environmental claims, and are penal or exemplary damages available?

Peruvian law regulates a special action in defence of environmental diffuse (collective) interest. Any citizen is legitimated to bring this kind of lawsuit, or to join it. However, an indemnity is not paid to the plaintiffs but to the local government of the affected area. An indemnity shall be used to remediate damage to the environment.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in Peru and how is the emissions trading market developing there?

Peru is a party to the Kyoto Protocol. As a developing country, no emissions-trading operates in the country, but projects related to clean development mechanisms - CDM - do. Some CDM projects have recently been implemented in the country with the participation of organisations from Spain and the Netherlands.

10 Asbestos

10.1 Is Peru likely to follow the experience of the US in terms of asbestos litigation?

Environmental litigation is at an incipient stage in Peru, and experience in this field is limited. At this point in time, there is not an objective criterion to anticipate what the trend in asbestos litigation will be.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

Asbestos is regulated as an industrial safety matter. The law establishes limits on asbestos in working areas. It is an obligation of the employer to keep asbestos below the legal limits.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in Peru?

Whilst it is possible to obtain insurance coverage in the Peruvian market for damages deriving from environmental accidents (indemnity to third parties), to the best of our knowledge there is no coverage for environmental reclamation or restoration. .

11.2 What is the environmental insurance claims experience in Peru?

Whilst a few important and well-publicised cases of environmental incidents have occurred, the insurance coverage was not disclosed. There is not much experience today on this matter.



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Established in 1937, Estudio Ferrero Abogados is among the most prestigious law firms in Peru. It provides legal services to local and international companies in all areas of law relevant to business entities. Our areas of practice and expertise cover a wide variety of matters including corporate, mergers and acquisitions, foreign investment, tax and customs, banking, finance and capital markets, competition, antitrust, intellectual property, trademarks, mining, energy, the environment and natural resources, labour, immigration, social security, litigation and dispute resolution, insurance, aviation and telecommunications.