Environmental law and practice in Chile: overview

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ENVIRONMENTAL REGULATORY FRAMEWORK

1. What are the key pieces of environmental legislation and the regulatory authorities?

The Constitution
Article 19(8) of the Chilean Constitution provides that:

- Citizens have the right to live in a pollution-free environment.
- The state, through legislation, must protect this right and ensure the conservation of nature.

Environmental legislation
The main regulatory framework is set out in Law 19,300 (Environmental Law). This law aims to:

- Bring together fragmented and sector-specific regulations into a single legislative framework.
- Create a single environmental liability system (see Questions 13 and 14).
- Introduce a number of procedures for assessing environmental impact. The most important of these is the Environmental Impact Assessment System (SEIA) (see below, Regulatory authorities and Questions 4 and 5).

The Environmental Law was amended by Law 20,417, which was published in the Official Gazette on 26 January 2010. Law 20,417 introduced:

- An Environmental Superintendence (see below, Regulatory authorities).
- Substantial changes, for example:
  - enhancing the role of the local community and involving it more in environmental screenings (see Question 23);
  - new strategic environmental assessment;
  - alternative and faster proceedings;
  - bigger fines and innovative sanctions to encourage compliance (see Question 5, Permits and regulator); and
  - the creation of an integrated system of conservation and protected areas.

Finally, the Law 20,600, which was published in the Official Gazette on 28 June 2012, established the new Environmental Courts.

Regulatory authorities
The Environmental Law provides that if a project is subject to the SEIA (see Question 4, it will require either an:

- Environmental Impact Statement (DIA).
- Environmental Impact Study (EIA).

See Questions 4 and 5.

For projects or activities that are not subject to the SEIA, the relevant sector-specific state entity is in charge of both enforcing environmental legislation and imposing penalties.

Under Law 20,417, CONAMA was abolished and the following regulatory authorities introduced:

- The Ministry of the Environment. This replaces CONAMA from a political point of view. It co-operates with the President of the Republic in:
  - designing and applying environmental policy, plans and programmes;
  - protecting and conserving biological diversity, renewable natural resources and water sources.
- Environmental policy and regulations will aim at sustainable development.

- The Environmental Evaluation Service (SEA). This replaces CONAMA from a technical point of view and it:
  - administers the SEA and interprets the relevant environmental qualification resolution (Resolución de Calificación Ambiental) (RCA), which is the name for the Chilean environmental permit (see Question 5, Permits and regulator);
  - promotes and facilitates public participation within project evaluation processes.

- The Environmental Superintendence (Superintendence). This takes over CONAMA’s regulatory role in compliance control and enforcement, and is responsible for executing, organising and co-ordinating compliance among all RCAs and other types of environmental permits.

CONAMA was in force until October 2010 when the Ministry of the Environment and the Environmental Evaluation Service became operational. Regarding the Superintendence, its operation depended on the establishment of the Second Environmental Court, created by Law 20,600, which started on 28 December 2012.

The new statute for the SEA, was published in the Official Gazette on 12 August 2013. However it was not enforceable until 24 December 2013. This statute includes Law 20,417’s amendments and replaces Executive Decree 95/2001 that contained the rules that applied to the SEA.

The sector-specific authorities that existed under the old system (such as the General Water Board and the Superintendence of Sanitary Services) are only partially affected and retain most of their authority to supervise and control matters outside the Environmental Superintendence’s jurisdiction (see Question 2), and outside the SEIA.
Law 20,600, which was published in the Official Gazette on 28 June 2012, established the new Environmental Courts. There are three in the country, located in the cities of Antofagasta, Santiago and Valdivia. Currently, only the Environmental Courts of Santiago and Valdivia are functioning because the Environmental Court of Antofagasta is still in the Judge’s selection process. Currently, the Second Environmental Court has its jurisdiction.

Each court has three judges, two of whom must be lawyers and the third must be a well-known environmental scientist. The three courts are not part of the ordinary judicial system. However, parties can challenge the environmental courts’ decisions to the respective Court of Appeals or the Supreme Court (see Question 2 and 30).

**REGULATORY ENFORCEMENT**

2. To what extent are environmental requirements enforced by regulators?

Projects are subject to stringent standards and rules. Under the new legislation, the Superintendency supervises compliance with the rules and conditions under which the EIA or DIA was approved or accepted.

The Superintendency currently acts in coordination with other sector-specific state entities, by ordering them to execute specific inspections on its behalf, or receive information that is considered environmentally relevant.

The state sector-specific entities who were in charge of environmental enforcement retained their jurisdiction and surveillance powers in all matters and instruments that are outside of the Superintendency’s jurisdiction.

Law 20,600 created the environmental courts (see Question 1), which have jurisdiction in all matters relating to environmental damages as defined in Law 19,300. These courts are competent to hear cases regarding decisions made by the Superintendency. The procedure is oral and only contains the essential elements of the standard written version of civil Chilean procedures. In addition, certain rulings regarding environmental damage may be appealed to the Courts of Appeal or the Supreme Court.

**ENVIRONMENTAL NGOS**

3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active?

After ILO Convention no. 169 was given legal status, NGO and pressure group participation and involvement has severely increased. The Government has made several efforts to regulate this convention, most recently with Decree No. 40/2012 (New Statute for the SEIA). This came into force in December 2013, when a project creates a social impact on those communities. However, to date the empowerment of citizen participation in Law 20,417 has altered and eventually undermined the environmental authorities’ ability to maintain a technical and objective assessment of the projects they evaluate, turning it into a political one (see Question 24, Public registers).

**ENVIRONMENTAL PERMITS**

4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

Projects and activities for which the law presumes they will have an environmental effect (Article 10, Environmental Law 19,300 and Article 3, New Statute for the SEIA Executive, Decree No. 40/2012) are assessed by the corresponding environmental authority. If the activity or project is approved, the RCA will not only contain the environmental permit for the activity itself, but also the environmental permit for all the specific parts and activities that project has by its corresponding RCA.

However, concerning some of the parts or activities involved, a specific sectoral permit will be required, but only for technical purposes, allowing the corresponding sector-specific authority to verify that the analysed work will comply with the requirements approved by the RCA.

This is called the single window system, as the owner obtains all the environmental approvals a particular project needs in one single document (that is, the RCA).

Under the new statute for the SEIA (see Question 1), there are two kinds of sectoral permit:

- Permits with only environmental content. The favourable RCA authorises all sectoral authorities to grant these permits if the requirements and conditions of that RCA are met.
- Permits with both environmental and non-environmental content. The favourable RCA will verify compliance with the environmental requirements. The sectoral authorities will grant the permits if the non-environmental requirements are met, without imposing any additional requirements or conditions not considered within the RCA.

5. What is the framework for the integrated permitting regime?

**Permits and regulator**

One approval permit is given. However, depending on the nature of the project or activity, it will be obtained through either an Environmental Impact Declaration (DIA) or an Environmental Impact Study(EIA).

In addition, the Environmental Law and its regulations envisage a series of very diverse, sector-specific environmental permits (Articles 107 to 160, New Statute for the SEIA) that, before they are granted by the sectoral authority, must be submitted, processed and obtained within the main environmental procedure, whether it is through a DIA or an EIA.

The most important elements to be submitted along with the DIA and EIA, are the following:

- A DIA, which is a sworn statement, must include:
  - a project or activity description;
  - an indication of the legal framework applicable to the project;
  - an indication of permits that will be required.
- The owner must justify that the project or project modification does not, or will not, produce any of the impacts outlined in Article 11 of the Environmental Law (see Question 1).

- An EIA, which involves a more complex and detailed procedure for a project or project modification that falls under Article 11 of the Environmental Law, must provide, among other things:
  - a baseline development analysis to be provided by the owner of the project, describing the condition of approved projects in the same area that already have an RCA (that is, their emissions, impacts, and so on), even if they are not operating (see below);
  - an analysis of the environmental impact of the project or project modification, determining whether it produces any of
the impacts outlined in Article 11 of the Environmental Law (see Question 10);
- mitigation and compensation measures, which vary according to the nature of the project;
- an indication of the legal framework applicable to each of the works and activities included in the project.

At the end of the SEIA process an RCA will do one of the following:
- Approve the project.
- Approve the project, subject to the fulfilment of certain conditions or demands.
- Reject it.

**Length of permit**

The RCA's approval of a project lasts for five years. If the permit holder does not begin the project, the permit will expire.

**Restrictions on transfer**

Environmental permits are freely transferable, provided the relevant environmental authority (see Question 1, Regulatory authorities) is properly notified of the transfer.

**Penalties**

Any breaches that are within the Superintendence's jurisdiction can be sanctioned by one or more of the following, depending on whether the breach is categorised as minor, major or severe:
- A written reprimand.
- A fine, ranging from one to 10,000 annual tax units (about US$972 to US$9.7million).
- Temporary or permanent shut down.
- Revocation of the RCA.

For projects or activities not subject to the SEIA (see Questions 1 and 4), each sector-specific body with competent jurisdiction (see box, The regulatory authorities) can impose:
- Discretionary fines, subject to the limits set out in the relevant legislation.
- The following penalties:
  - withdrawal of permits;
  - closure of a project or cessation of an activity;
  - punitive damages.

**WATER POLLUTION**

6. **What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?**

**Permits and regulator**

There is no single regulatory regime and no single authority covering water pollution.

In the same way, there is not only one system in place for permits or other authorisations to deal with discharges or emissions into water sources.

Water pollution is regulated through various pieces of legislation that deal with emission or quality standards, while regulation focuses on meeting them.

The institutions responsible for water pollution control are the:
- **Superintendence of Sanitary Services.** This is responsible for creating the standards in its area of competence, fixing the rates for drinking water and sewerage service provided by the sanitary companies, as well as issuing concessions for the provision of sanitary services.
- **General Water Board.** This regulates the quality and quantity of water that may or not receive discharges from other sources.
- **General Directorate of the Maritime Territory and Merchant Navy.** This specifically manages marine resources.
- **Ministry of Health.** This is responsible for preventing any pollution that could pose or actually produce negative effects resulting from it, from reaching the general public (see box, The regulatory authorities).
- **Superintendence.** This is responsible for the supervision of compliance with industrial water discharges regulations (see box, The regulatory authorities).

A project that produces industrial wastewater is likely to fall within the scope of all of these bodies.

**Prohibited activities**

The regulations focus mainly on the type of water source in which the discharges and emissions end up, for example:
- Underground water systems (Executive Decree 46/2002).
- Ocean water and continental surface water (Executive Decree 90/2000).
- Sewage systems (Executive Decree 609/1998).
- NCh 1333 de 1978, a standard that establishes water quality requirements for different uses.

In each case the legislation determines the maximum concentrations of pollutants allowed in discharges or emissions. Emissions must comply with certain quality standards if they are to be discharged.

There are two types of quality standards:
- Primary quality standards to protect the population's health. These are applied equally throughout the country.
- Secondary quality standards to protect natural or other resources, such as crops, ecosystems, species of flora and fauna, national monuments or sites of archaeological value. They are designed for specific locations.

There are secondary environmental quality standards for the protection and sustainable use of the Llanquihue, Maipo and Serrano rivers in Chile. Work is currently being carried out to develop other secondary environmental quality standards for the protection of several Chilean rivers. In addition, there are primary water quality standards in relation to recreational use of certain water resources.

**Clean-up/compensation**

There is no specific legal obligation for a polluter to clean up contaminated water or to pay compensation for water pollution. However, a polluter can be pursued through an environmental action or civil punishment. The polluter may be able to limit its liability through filing a restoration plan (see below, Penalties: Restoration plan).

**Penalties**

The following penalties can be imposed:
- **Environmental damage action.** Where the polluter has caused environmental damage attributable to its negligence:
  - it may be subject to a court action to repair that damage (Article 53, Environmental Law);
  - its liability is legally presumed if there has been a breach of quality and emission standards (Article 52, Environmental Law).
• The action can be brought by:
  - the state through the State Defence Council (Consejo de Defensa del Estado);
  - any person directly affected;
  - local government.
• The action must be submitted to the Environmental Courts (see Question 1, Regulatory authorities).
• Fines. Activities or projects within the SEIA that do not comply with conditions set out in the RCA relating to emissions can be subject to penalties by the Superintendence (see Question 5, Penalties).
• Restoration plan. Under Law 20,417, when the relevant provisions are fully effective, a polluter can file a restoration plan with the Superintendence and the Environmental Evaluation Service, as a means of avoiding an environmental damage action. If the Superintendence approves this plan, no action can be brought for environmental damage once the polluter executes the plan satisfactorily. The Superintendence will oversee compliance with the plan.

If a plan is not filed, an environmental damage action can be brought before the Environmental Courts of Law.

AIR POLLUTION

7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

Permits and regulator
In a similar way to water pollution (see Question 6), the regulatory framework for air pollution consists of various environmental legislation that deal with emission or quality standards. In addition, there is no particular system for permits or other authorisations to discharge emissions into the air.

The regulatory authorities responsible for controlling air pollution are the:
• Ministry of Environment.
• Ministry of Health.
• Ministry of Transport and Telecommunications.
• Superintendence.

Prohibited activities
The regulations control the emissions that can be produced by:
• Heavy-duty vehicles (Executive Decree 55/1994).
• Medium-duty vehicles (Executive Decree 54/1994).
• Light-duty vehicles (Executive Decree 211/1991).
• Incineration and co-incineration (Executive Decree 45/2007).
• Rules to avoid air pollutant emissions or of any nature (Executive Decree 144/2007).
• Obligation to declare some emissions (Executive Decree 138/2003).
• Urban planning and construction general ordinance (Executive Decree 47/1992).
• Conditions for freight (Executive Decree 75/1987).
• Pollutant emission standards applicable to fixed motor vehicles and procedures for control (Executive Decree 4/1994).

The regulatory framework for air pollution is governed by a primary quality standard on, principally:

• PM10 (Executive Decree 59/1998).
• PM2.5 (Executive Decree 12/2013).
• Carbon monoxide (Executive Decree 115/2003).
• Sulphur dioxide (Executive Decree 113/2003).
• Nitrogen dioxide (Executive Decree 114/2003).
• Ozone (Executive Decree 112/2003).

There are also quality standards for power plant emission standards.

Clean-up/compensation
In a similar way to water pollution, there is no specific legal obligation for a polluter to clean up contaminated air or to pay compensation for air pollution. However, a polluter can be pursued through an environmental action or civil punishment. The polluter may be able to limit its liability through filing a restoration plan (see below, Penalties: Restoration plan).

Penalties
The following penalties can be imposed:

• Environmental damage action. Where the polluter has caused environmental damage attributable to negligence:
  - it may be subject to a court action to repair the damage (Article 53, Environmental Law);
  - liability is legally presumed if there has been a breach of quality and emission standards (Article 52, Environmental Law).
• The action can be brought by:
  - the state through the State Defence Council (Consejo de Defensa del Estado);
  - any person directly affected;
  - local government.
• The action must be submitted to the Environmental Courts (see Question 1, Regulatory authorities).
• Fines. Activities or projects within the SEIA that do not comply with conditions set out in the RCA relating to air pollution can be subject to penalties by the Superintendence (see Question 5, Penalties).
• Restoration plan. Under Law 20,417, and when the relevant provisions are fully effective, a polluter can file a restoration plan with the Superintendence and the Environmental Evaluation Service, as a means of avoiding an environmental damage action. If the Superintendence approves this plan, no action can be brought for environmental damage once the polluter executes the plan satisfactorily. The Superintendence will oversee compliance with the plan.

If a plan is not filed, an environmental damage action can be brought before the Environmental Courts of Law.

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CLIMATE CHANGE, RENEWABLE ENERGY AND ENERGY EFFICIENCY

8. Are there any national targets or legal requirements for reducing greenhouse gas emissions, increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)? Is there a national strategy on climate change, renewable energy and/or energy efficiency?

At the Copenhagen Climate Change Conference in 2009, Chile adopted an obligation to reduce greenhouse gas emissions by 20% by the end of the decade.

Chilean legislation also states that power companies must have 5% of their grid coming from renewable sources of energy. This requirement will increase to 10% in 2024.

Finally, in 2006 Chile adopted the Climate Change National Strategy, which sets out the general policies to achieve the goals established in the United Nations Framework Convention on Climate Change, along with its protocols and agreements.

9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented?

Parties to UNFCCC/Kyoto Protocol
Chile ratified both the UNFCC and the Kyoto Protocol, in 1994 and 2002 respectively.

Implementation
The Environmental Law recognises emission trading schemes as an economic tool that could be useful to prevent pollution. Since 2003, Congress has been debating a draft bill on anti-pollution credits. This is intended to expedite anti-pollution projects that are otherwise financially unviable, and to add momentum to the use of better technologies and operational systems. The proposed system that the bill would introduce is based on the carbon credit trading system under the clean development mechanism (CDM) introduced in the Kyoto Protocol, which came into force in 2005.

The mechanism proposes that the largest sources of emissions should be able to choose between technology investments to improve the environmental impact of their emissions and purchasing credits generated by the reduction of emissions from other sources. The debate on this bill has reached a standstill in Congress, and the bill is not a priority on the legislative agenda. However, the Chilean government published the National Action Plan on Climate Change 2009-2012. It outlines a national action plan to:

- Adapt to the impacts of climate change.
- Mitigate greenhouse gas emissions.
- Build and promote capacities to address the issue.

10. What, if any, emissions/carbon trading schemes operate in your jurisdiction?

Private bodies in Chile have been using the CDM in the Kyoto Protocol itself. A considerable number of projects submitted to the Kyoto Protocol’s Executive Board have originated from Chile, enabling sources of emissions to fund their proposed reductions.

The Ministry of the Environment has been empowered to propose policies, plans, regulations and programmes on climate change.

ENVIRONMENTAL IMPACT ASSESSMENTS

11. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

Scope
The Environmental Law and its regulations set out a list of projects that must be submitted to the SEIA (see Question 4). It also allows for projects not included in this list to submit voluntarily.

The impacts contemplated by the legislation include the following:

- Risk to public health.
- Effects on the quantity and quality of renewable natural resources.
- Effects on human communities.
- Proximity to:
  - populated areas;
  - protected areas and resources;
  - conservation sites;
  - wetlands; or
  - glaciers.
- Alteration of the environmental value of the landscape.
- Alteration of monuments with anthropological, archaeological and historic value (Article 11, Environmental Law).

If a project generates one of the impacts above, an EIA must be presented. If a project does not generate one of these impacts, but the activity is listed in Article 10 of Law 19.300, a DIA must be filed (see Question 5, Permits and regulator).

Permits and regulator
To operate, projects must:

- Go through an SEIA process.
- Obtain a favourable RCA.
- Obtain the necessary sector-specific permits (see Question 4).

Penalties
The Superintendency is responsible for regulating projects subject to the SEIA (see box, The regulatory authorities). If there is a breach of the regulations or of a permit, the authority can impose a number of sanctions (see Question 5, Penalties).

WASTE

12. What is the regulatory regime for waste?

Permits and regulator
Specific permits are required for the generation, storage, transportation and final disposal of industrial and hazardous waste. Regarding domestic waste, specific permits are needed for storage and final disposal. Operators can store or dispose of waste on site provided they comply with certain legal requirements.

The Ministry of Health grants waste-related permits.

Specific regulations
The storage, treatment and elimination of industrial waste can be conducted either inside or outside the industrial site or workplace, provided the operator has first:

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Filed with the Ministry of Health a statement indicating the quantity and quality of the industrial waste produced, clearly differentiating between industrial and hazardous waste.

Obtained from the Ministry of Health a sanitary permit (autorización sanitaria), regardless of the quantity of waste produced under regulations governing basic sanitary and environmental conditions in the workplace (Executive Decree 594/2000).

The project must go through the SEIA process and obtain an RCA from the relevant environmental authority (the Environmental Evaluation Service) if it involves:

- The production, storage, transportation, elimination or reuse of a certain amount of toxic, explosive, radioactive, flammable, abrasive or reactive substances in certain defined quantities.

- The use of treatment or disposal facilities for hazardous waste (Article 10, Environmental Law and Article 3, Executive Decree 40/2013).

In addition, the operator in this case must:

- Obtain a sanitary permit from the Ministry of Health for the storage or disposal site.

- Comply with certain conditions in relation to waste storage, management and disposal (Executive Decree 148/2003).

In addition to obtaining the necessary permits (see above, Specific regulations), parties involved in the production, transportation and receipt of waste must comply with a follow-up and declaration system. In the case of industrial waste, these requirements only apply in the capital of Chile (Santiago de Chile, Metropolitan Region), but in the case of hazardous waste, they apply at national level.

For quantities exceeding 12 kilograms of acute toxic waste, and over 12 tonnes of other hazardous waste, a management plan must be submitted to the Ministry of Health.

On 10 September 2013, a Product Stewardship Bill was presented to the Senate. This was to help establish an important new function in the waste management chain in Chile, an economic instrument with mechanisms to increase the current waste recycling levels whilst reducing the amount of waste disposed in sanitary landfills.

**Operator criteria**

There are no specific criteria for operators, provided the necessary permits have been obtained and are being complied with, as well as the follow-up and declaration system. However, there are requirements related to the facilities, operation and closure of dump sites that are set out in the Basic Sanitary and Security in Dump Sites Regulation (Reglamento sobre Condiciones Sanitarias y de Seguridad Básicas en los Rellenos Sanitarios (D.S.189/2005)).

**Penalties**

If there is a breach of the regulations or a permit, the Ministry of Health can:

- Impose fines of up to US$80,000.

- In extreme cases, order the closure of the infringing plant or factory.

**Fines**

Activities or projects within the SEIA that do not comply with conditions set out in the RCA, relating to emissions, can be subject to penalties by the Superintendence (see Question 5, Penalties).

**ASBESTOS**

**13. What is the regulatory regime for asbestos?**

**Prohibited activities**

The production, import, distribution, sale and use of the following materials related to asbestos are prohibited:

- Crocidolite (blue asbestos) and any other material containing it.

- Materials containing any type of asbestos.

- Any product other than construction materials if it contains (Executive Decree 656/2000):
  - crisolite;
  - actinolite;
  - amosite;
  - antofilite;
  - tremolite;
  - any other type of asbestos or mixture containing asbestos.

However, there are no regulations for constructions with materials that may contain asbestos carried out before that date.

**Main obligations**

The storage of asbestos as a raw material is authorised, as long as:

- It is not contained in construction materials.

- On a semi-annual basis, the owner of the premises provides the Ministry of Health with details of:
  - the quantities of asbestos entering and leaving the premises;
  - who the suppliers of the asbestos are;
  - who the intended owner of the asbestos is.

- Storage of the asbestos will not cause an emission of asbestos fibres exceeding the permitted limit.

**Permits and regulator**

The manufacturer or importer of products of asbestos other than construction materials cannot market or sell those products without first submitting technical reports to the Ministry of Health indicating:

- The nature of the product.

- The type of asbestos to be used.

- The measures to protect the health of workers.

- Waste disposal methods and dust collection systems used.

- Why it is impossible to replace the asbestos with a different material.

The Ministry of Health issues a permit once these requirements are met and supervises the use of asbestos as part of its obligation to protect workers' health and safety at the workplace.

**Penalties**

The Ministry of Health can impose fines of up to US$80,000 for breaches of the regulations. In addition, it can order:

- Closure of the premises in which the breach is being committed.

- Withdrawal of the permit to use asbestos.

- Interruption of duties.
• Confiscation and denaturalisation of the products. Denaturalisation involves modifying the products so that they are not a risk to the public.

Fines can be doubled in the case of repeat offences.

CONTAMINATED LAND

14. What is the regulatory regime for contaminated land?

Regulator and legislation

There are no specific provisions regulating contaminated land and its clean-up. However, general fault-based rules of environmental damage apply. Anyone that causes environmental damage to land, or any other part of the environment, must repair the damage and compensate the owner (Articles 51 to 55, Environmental Law) (see Question 12). In addition, clean-up could arise as an RCA obligation of the project owner. In the case of a breach of a clean-up obligation, non-compliance with the RCA could arise and penalties could apply.

Decontamination plans are environmental management tools created with the purpose of recovering the primary and/or secondary levels indicated within the environmental quality standards of a saturated zone, whilst prevention plans are environmental management tools created with the purpose to avoid exceeding such levels.

Investigation and clean-up

As there is no specific legislation in place, no specific agency is responsible for the investigation and clean-up of contaminated land, or for imposing fines, despite the Superintendence’s surveillance powers. However, any person directly affected by environmental damage to their land, or the State Defence Council as state representative, can bring a claim against the polluter, following the terms and conditions set out in Paragraph 4 of Law 20,600.

Penalties

The Superintendence has been empowered by Law 20,417 to trace those responsible for the breach of environmental management tools, and impose penalties, such as monetary sanctions (see Question 5, Penalties). The State Defence Council or the affected person can also trace responsibility for environmental damage, requiring monetary sanctions or the restoration of any damage caused.

15. Who is liable for the clean-up of contaminated land? Can this be excluded?

Liable party

The polluter pays for the environmental damage caused by his actions. A polluter who has been found by an environmental court decision to have produced environmental damage is responsible for the restoration, reparation and clean-up of the polluted land.

The system on environmental damage is fault-based: parties are only responsible for their own acts or those of someone acting on their behalf.

Owner/occupier liability

An owner or occupier of contaminated land is only liable for his own negligence. He is not liable if he was diligent in avoiding damage to third parties or the environment.

Previous owner/occupier liability

Previous owners or occupiers can be liable for contamination they caused, provided an action is brought against them within five years from when the damage becomes apparent.

Limitation of liability

A party can limit its liability by avoiding the spread of environmental damage. Before acquiring an asset that might be contaminated, it is advisable to carry out due diligence. This will help determine what measures can be taken to avoid or limit the contamination, or stop it from spreading.

In addition, under Law 20,417 it is possible to avoid liability for an environmental damage action by filing a plan with the Superintendence (see Question 6, Penalties: Restoration plan).

16. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability?

Lender liability

Generally, lenders who finance industrial projects or activities, or the creditors of a person or company found liable for environmental wrongdoing, are not themselves liable. They can only be held liable for their own negligence in causing the damage or causing it to spread or worsen.

Minimising liability

It is advisable for lenders to carry out phase 1 and 2 of an environmental due diligence (see Question 27), in order to have full knowledge of the projects they are investing in or that they are acquiring as collateral.

17. Can an individual bring legal action against a polluter, owner or occupier?

Private individuals can bring an action against a polluter, owner or occupier for any environmental damage to their property or assets caused by fraud or negligence as stated in the terms and conditions of Paragraph 4 of Law 20,600. They can claim for the contaminated property to be cleaned up and for damages caused by the polluter’s wrongdoing (see Question 6, Penalties and Question 14). This claim has to be presented before the Environmental Courts (see Question 8) so they can declare the environmental damage and the level of restoration required. Monetary penalties can be pursued either through the Environmental or Civil courts.

HYDRAULIC FRACTURING

18. Is fracking being pursued or considered in your jurisdiction? If so, please describe the regulatory framework which applies to manage environmental risks.

Chile has no regulatory framework concerning fracking. However, if there is environmental damage as a result of fracking, the polluter can be pursued through an environmental action or civil punishment (see Question 6).

ENVIRONMENTAL LIABILITY AND ASSET/SUCCESS TRANSFERS

19. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

Asset sale

The law on environmental liability is fault-based (see Question 14). Therefore, environmental liability is not transferred on either an
asset sale or the sale of a company (share sale). A new owner would have to be negligent himself to be liable.

**Share sale**
See above, *Asset sale.*

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20. **In what circumstances can a seller retain environmental liability after an asset sale/a share sale?**

**Asset sale**
The seller always retains environmental liability corresponding to his period of ownership (see Question 15). Environmental liability is personal and not transferable in both an asset sale and a share sale.

**Share sale**
See above, *Asset sale.*

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21. **Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?**

**Asset sale**
There is no specific legal requirement for a seller to disclose environmental information in either an asset sale or a share sale. However, general rules provide that:

- Parties need to negotiate in good faith and provide appropriate information according to the nature of the transaction (Article 706, Civil Code) (for the type of information provided, see Question 21).

- If environmental damage occurs, and the seller knew that it was likely to occur but did not disclose this to the buyer, the seller can be held liable (Article 1857, Civil Code). This type of action is known as vicios redhibitorios.

**Share sale**
See above, *Asset sale.*

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22. **Is environmental due diligence common in an asset sale/a share sale?**

**Scope**
Environmental due diligence is common for transactions where, because of the nature of the target’s business, there is a risk of environmental liability arising (for example where there may have been a breach of environmental laws and permits pre-acquisition). Also, the buyer will want to know if there are issues that it must address to continue the business normally after the acquisition.

The areas on which due diligence information is normally required, in relation to the assets, business or company being sold, are:

- A description of the facilities and operating process.
- The production process and its impacts, consisting of:
  - the storage of raw materials, hazardous substances and liquid effluents;
  - the generation of solid, household, industrial and hazardous waste;
  - emissions into the air;
  - noise emissions.

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23. **Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale?**

**Asset sale**
Environmental warranties and indemnities are usually given in contracts for the sale of a business (whether through the sale of its assets or its shares) that by its nature is at risk of incurring environmental liability.

Representations and warranties concerning environmental matters are normally made in a framework agreement, which is usually one of the following:

- An agreement for the provision of services.
- A purchase and sale contract involving the transfer of:
  - a company and all of its shares and assets;
  - all of the assets of a company;
  - a business unit or line of business.

The representations and warranties are normally given in relation to:

- Compliance with applicable environmental laws.
- The absence of current or potential legal proceedings relating to the assets or the business to be acquired.
- Any decree, order or judgment still in effect requiring investigation by the regulatory authorities as to whether environmental damage has been repaired, or any hazardous substance cleaned up, at any property or facility currently or formerly owned or operated by the target business.
- Permits required for the operation of the business.

Indemnities normally protect the buyer from any loss, liability, claim, damage or expense (including reasonable legal fees and expenses) relating to environmental liabilities existing at the time of the sale.

**Share sale**
See above, *Asset sale.*

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24. Are there usually limits on environmental warranties and indemnities?

There are usually no limits on environmental warranties and indemnities (other than the statute of limitations, which would limit any claims to five years from when the breach becomes apparent).

Parties who agree to limit their liabilities under a specific contract often expressly exclude environmental liability.

REPORTING AND AUDITING

25. Do regulators keep public registers of environmental information? What is the procedure for a third party to search these registers?

Public registers

Principles of transparency and full disclosure apply to all administrative procedures, including environmental procedures and permits. The Transparency Law was enacted in April 2009 (Law 20,285). Its main principle is that the administration’s acts should be public and that everyone should have the right to access information submitted to state authorities.

The Environmental Law provides that the Evaluation Commissions or the Executive Director of the Environmental Evaluation Service must establish mechanisms that allow the informed participation of the community in the screening process for an EIA or a DIA, if it is appropriate. This means that, in the case of the EIA, the applicant must publish a summary of the study in a local newspaper containing the project’s essential data. The public (whether directly affected by the project or not) can then review the project, and submit comments and observations to the relevant agency within 60 days of publication. The Environmental Evaluation Service must then consider these comments and observations. If it fails to do so, the party making the submission can file an appeal to a superior authority (the Executive Director, in the case of a DIA, or the Ministers’ Committee, in the case of the EIA).

Law 20,417 has introduced greater public transparency obligations. The applicant for an EIA or DIA must now transmit, by local radio broadcasts at its own expense:

- The EIA or DIA summary.
- The place where additional background information is available.
- The term for interested parties to file observations.

Third party procedures

For projects subject to an EIA procedure (see Questions 1 and 4) the owner can request the Environmental Evaluation Service to treat as confidential documents containing specific technical, financial and other information relevant to the project; provided this is done to protect either:

- Business and industrial confidentiality.
- Inventions or patentable procedures of the project or of an intended activity.

The Ministry of Environment oversees and administers a National Environmental Information System. In addition, the Superintendence administers a National Environmental Surveillance Information System. The latter is open to the public and includes:

- RCAs, including all related documents, such as:
- sector-specific permits arising from each RCA;
- related enforcement measures and their results;
- measurements, analyses and further data that project holders must provide under the RCA’s requirements.
- Penalty processes brought about concerning each activity, project and individual that is subject to supervision, along with their results.
- Administrative authorisations associated with activities that may have a significant effect on the environment, or a direct reference to the authority that currently possesses the authorisation.
- The list of public authorities in possession of environment-related information that must be publicly disclosed.
- Decrees issued by the Office of the General Controller (Controlaría General de la República) that refer to environmental matters.
- Any other decision or resolution of a general nature issued by any Chilean authority that relates to environmental affairs.

26. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

Environmental auditing

Chilean law does not require environmental audits for any type of project or activity. However, the Environmental Evaluation Service (see box, The regulatory authorities) has, with increasing frequency, been imposing the requirement of an audit as a condition for building and operating a project. In most cases, companies voluntarily commit to submit themselves to an auditor.

According to Law 20,417, in the case of DIAs, the holder can include, at its sole expense, the commitment of being subjected to an evaluation and certification process concerning compliance with the:

- Applicable environmental regulations.
- Conditions under which the project or activity must be carried out.

This commitment reduces the duration of the evaluation process.

Reporting requirements

The Exempt Resolution no. 574, 2012 issued by the Superintendence requires that the owner of a project with a favourable RCA (see Question 4) must provide the following to the Superintendence:

- All information regarding the RCA description (as an administrative act).
- The name and contact information of the owner or legal representative of the project.

In addition, Exempt Resolution No. 844, 2012 issued by the same administrative authority, requires that the owner of a project with a favourable RCA (see Question 4) must provide the Superintendence with information related to the compliance of environmental monitoring measures established in their respective RCA. Penalties for non-compliance are issued by the Superintendence.

Noncompliance of any of these resolutions is subject to penalties from the Superintendence.

The individuals responsible for companies, industries, projects and sources of emissions that are subject to enforcement proceedings:

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• Must provide all means necessary to carry out the enforcement proceedings.
• Cannot refuse to provide any requested information.

27. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

There is no general obligation for companies to report information about environmental incidents. However, projects evaluated under the SEIA (see Question 1) must report environmental incidents, including unforeseen impacts due to the development of the approved project or activity. In addition, any person can bring before the Superintendence, evidence of non-compliance with environmental management plans and environmental regulations.

The Superintendence may reduce fines if the party in breach appears before its office and submits a self-report (see Question 15, Limitation of liability).

In addition, Supreme Decree no. 148/2004 established that any emergency that takes place when transporting hazardous waste, must be informed to the authorities.

28. What access powers do environmental regulators have to access a company?

The sector-specific authorities play an active role in environmental matters, in technical areas such as industrial hygiene, soil conservation, human health, water quality preservation, air emission and air quality monitoring. This includes powers to require production of documents, taking of samples, conducting of site inspections and interviewing of employees. Most of these authorities have their own bye-laws and regulations, which allow them to impose severe sanctions on private industries, such as fines, injunctions and shutdowns.

Since the Superintendence is fully operational, companies that are subject to enforcement proceedings must co-operate as fully as possible with those proceedings and not refuse to provide any information requested (see Question 25, Reporting requirements). Superintendence employees have the power, within their inspection activities, to:

• Access land, establishments or the public or private premises in which the activities subjected to inspection are being carried out.
• Draft minutes and record testimonies of those present.
• In general, execute any other measure intended to certify the state and circumstances of the activity involved in the enforcement proceedings.

A refusal to comply with the Superintendence's requirements during the enforcement proceedings is considered a severe breach.

ENVIRONMENTAL INSURANCE

29. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?

Types of insurance and risk

Insurance covering civil liability for pollution damage is available but its provisions are not completely clear regarding exceptions and scope, rendering it useless when it concerns an environmental damage event.

Obtaining insurance

Environmental insurance generally covers environmental damage:

• Arising from pollution caused by an insured event, such as an emission, dumping, injection, deposit, discharge, leakage, spill or filtration by a polluting material.
• That becomes evident for the first time within 72 hours following the start of the insured event.

The Law 20,417 removed the article that established the possibility to provisionally operate a project without a RCA, if the EIA was filed with an environmental insurance policy.

ENVIRONMENTAL TAX

30. What are the main environmental taxes in your jurisdiction?

There were no environmental taxes until the tax reform of 2014. There were some duties that apply, for example, to the municipal collection of domestic waste but this is understood as payment for a service, rather than a tax. The last tax reform incorporated the gas emissions tax for new vehicles.

REFORM

31. What proposals are there for significant reform (changes) of environmental law in your jurisdiction?

Law 20,417 and 20,600 were the latest and most important development in Chile’s environmental legislation. However, there are some important regulations that have not yet come into force. This is because the Supreme Decrees that make them applicable in practice have not yet been issued. Examples of this are the:

• Strategic Environmental Assessment regulation.
• State Protected Wildlife Areas regulation.
THE REGULATORY AUTHORITIES

Ministry of the Environment

Main activities. This replaces CONAMA. It co-operates with the President of the Republic in:
- Designing and applying environmental policy, plans and programmes.
- Protecting and conserving biological diversity, renewable natural resources and water sources.

Environmental policy and regulations will aim at sustainable development.
Wwww.mma.gob.cl

Environmental Evaluation Service

Main activities. This service:
- Administers the SEIA and interprets the relevant environmental qualification resolution [Resolución de Calificación Ambiental] (RCA) (see Question 5, Permits and regulation).
- Promotes and facilitates public participation within project evaluation processes.
Wwww.sea.gob.cl

Superintendence of Environmental Affairs (Superintendence)

Main activities. This takes over CONAMA’s regulatory role in compliance control and enforcement, and is responsible for executing, organising and co-ordinating compliance with, among others, RCAs.
Wwww.sma.gob.cl

Ministry of Health (Ministerio de Salud)

Main activities. The Ministry of Health is responsible for:
- Preparing, controlling and assessing plans and programmes relating to health.
- Introducing general rules on technical, administrative and financial matters that agencies participating in the health system must follow to promote, protect and restore human health.
- Carrying out inspections to ensure compliance with health regulations.
- Providing permits for the generation, storage, transportation and elimination of industrial and hazardous waste (see Question 10).
- Ensuring that businesses have hygiene and safety measures to protect workers’ health.
Wwww.minsal.cl

General Water Board (Dirección General de Aguas)

Main activities. The General Water Board’s responsibilities are to:
- Plan for the development of water resources and make recommendations as to their better management.
- Assign rights of water use, and research and measure water resources.
- Co-ordinate public sector research programmes and partially publicly funded private initiatives.
- Supervise the use of public waters in their natural beds and avoid construction, modification or destruction of work without the consent of the board or any other competent authority.
- Supervise the work of local regulatory bodies.
Wwww.dga.cl

Superintendence of Sanitary Services (Superintendencia de Servicios Sanitarios)

Main activities. The Superintendence of Sanitary Services is responsible for:
- Helping to create the standards in its area of competence.
- Publishing information about the national sanitary sector.
- Fixing the rates for drinking water and sewerage services provided by the sanitary companies.
- Issuing concessions for the provision of sanitary services.
Wwww.siss.cl
**Online Resources**

**Description.** This is the official website for all legal documentation in Chile. It is developed and maintained by the library of the National Congress.

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**Recent transactions**  
- Approval and permitting of limestone mine (Barrick).  
- Approval and permitting of limestone transportation project (Barrick).  
- Permitting of Pascua Lama project and El Tofo Mine project.  
- Power Purchase Agreement Guacolda and Cerro Casale project.  
- Approval and permitting of Amendment of Zaldivar project.  
- Purchase of El Morro Mining Corporation.

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**Recent transactions**  
- Approval and permitting of the Cerro Casale project.  
- Judicial review of the Cerro Casale case before the Environmental Court.  
- Judicial review of the Pascua Lama case before the Environmental Court, Supreme Court, and Superintendence of Environment.  
- Judicial review of the Pampa Camarones mining project case before the Environmental Court.