ENFORCEMENT OF ENVIRONMENTAL LAWS AND POLICIES DURING THE COVID-19 PANDEMIC IN THE AMERICAS

26 May 2020

RIELA (the Inter-American Network of Specialists in Environmental Legislation) is a network of independent law firms providing for the exchange of professional information about the local and regional practice and development of environmental law in the Americas, facilitating and disseminating communications among its members and improving the members’ abilities to serve the needs of their respective clients. Gowling WLG is a member of RIELA and Jennifer Danahy of the Gowling WLG Environmental Law group is on the Executive Committee of RIELA.

This article provides a brief summary of recent developments in the enforcement of environmental laws and policies in the Americas in consideration of the impacts of COVID-19 pandemic and is republished with permission from RIELA.

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The purpose of this publication is to provide a brief summary of recent developments in the enforcement of environmental laws and policies in the Americas in consideration of the impacts of COVID-19 pandemic.

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Although, it seems essential to take measures aimed at decreasing COVID-19's impact on the environment, mainly on the disposal of medical and domestic waste and residues that can be hazardous, in line with the United Nations Environment Programme's recommendations, to that effect, Bolivia has failed to issue any environmental specific rules to address the pandemic COVID-19.

Bolivian regulations on the pandemic are limited mainly to health, labor and social security, judicial and procedure, tax, commercial, banking, customs, education and economic measures in favor of Bolivians, however, lacking among these, environmental measures and policy.
b. New Developments

The quarantine has been extended until May 31, 2020. However, a "Conditioned and Dynamic" quarantine goes into effect as of May 11, based on the health risk conditions determined by the Ministry of Health and each individual municipality. For this purpose, according to the risk conditions in each department, city or municipality, the quarantine will have the following modalities:

- Quarantine under high risk health conditions: compels people to circulate once a week, according to the termination of their identity card from 5:00 a.m. until 12:00 p.m.; all circulation is prohibited on Saturday and Sunday.
- Quarantine under medium risk health conditions: allows a 6-hour work schedule; circulation is allowed from 5:00 a.m. to 5:00 p.m.
- Quarantine under moderate risk health conditions: allows an 8-hour work schedule; circulation is allowed from 5:00 a.m. to 7:00 p.m.; circulation can be carried out in vehicles, however, in a restricted manner, according to the license plate number.

Regardless of the quarantine health risk condition, some sectors are permitted to commence activities, including: the health system; Armed Forces; Bolivian Police; industrial and manufacturing sector; agricultural sector; mining sector; activities that provide supplies and raw materials, or that distribute and commercialize products; home delivery services; transportation services for public personnel; financial services, public attention services and collection entities; rendering of non-professional services or trades at the domiciles/companies of the users; services involving the supply of gasoline, gas, diesel and other fuels.

The following measures remain the same: air, land, river and lake borders are closed; suspension of national and international flights; temporary suspension of face-to-face classes at all levels and educational modalities; suspension of public, cultural, and sport events that generate crowds; compliance with the following mandatory rules and behavior habits for the prevention and containment of the Coronavirus (COVID-19), such as physical distancing of at least one and a half (1\(\frac{1}{2}\)) meters; use of face-masks; constant hand washing; and compliance with hygiene and biosafety protocols.

Within the food security policy framework on risk management and the national emergency plan for 2020, for disasters and/or emergency care, within the various territorial sectors and entities, Supreme Decree 4232 ("SD"), dated May 7, 2020, was passed in response to the spread of Coronavirus (COVID-19).
Pursuant to the SD, as an exceptional matter, the National Biosafety Committee has been authorized to set out fast track proceedings for the evaluation of corn, sugar cane, cotton, wheat and soy beans, which are genetically modified in their different events, and aimed at the internal supply and external trade. As per the actions and measures adopted by the neighboring countries in relation to food and agricultural products produced by genetically engineering techniques, the Ministry of Environment and Water, in coordination with the Ministry of Land and Rural Development, will carry out the appropriate testing.

Brazil

(Tabet Advogados)

a. General Overview

Pursuant to Legislative Decree No. 6, of March 20, 2020, at the request of the President of the Republic, the National Congress formally recognized the occurrence of a state of public calamity, effective until December 31, 2020, due to the public health emergency of international importance (pandemic) related to the new coronavirus (COVID-19). States and municipalities have taken similar steps.

In order to make the implementation of public policies in environmental matters compatible with the actions to deal with the pandemic in Brazil, the environmental agencies, at the federal, state and municipal levels, established a series of extraordinary administrative measures. Among these measures are the suspension of procedural deadlines, the suspension of face-to-face service to the public (with the availability of differentiated service channels) and the flexibility, on exceptional basis, of compliance with certain environmental obligations.

At the federal level, the deadline for delivering the Annual Report on Potentially Polluting Activities and Activities that Use Environmental Resources ("RAPP") was extended from March 31, 2020 to June 29, 2020, applicable to all companies subject to registration in the Federal Technical Register of Potentially Polluting Activities and Activities that Use Environmental Resources (list contained in Normative Instruction No. 6, issued by the Brazilian Institute of the Environment and Renewable Natural Resources ("IBAMA") on March 15, 2013, as amended). The deadline for submitting the Annual Tire Report (on the collection and environmentally appropriate disposal of waste tires, applicable to tire manufacturing and importing companies) and the Montreal Protocol Annual Report (for
individuals and companies that carry out activities with substances that affect the ozone layer) has also been postponed to June 29, 2020.

Also at the federal level, IBAMA established temporary and exceptional guidelines for the fulfillment of environmental obligations associated with environmental licensing. According to these guidelines, environmental measures directly related to environmental quality standards, such as wastewater treatment, gaseous emissions and solid waste management, must be maintained. Operational safety and risk control of environmental accidents must also be guaranteed, as well as the prompt execution of emergency plans in the event of accidents. For obligations whose fulfillment is not operationally possible (especially those involving monitoring activities and field sampling), the responsible entity should act to mitigate the effects and duration of the non-compliance, identifying the obligation that has not been fulfilled and its motivation associated with the pandemic. Non-compliance must be adequately documented and reported to IBAMA as soon as possible. IBAMA will assess each specific case to determine whether, given the specific circumstances presented, the non-compliance in question will be subject to penalties or not.

Similar guidelines have been adopted by the majority of environmental agencies at the state and municipal levels, mainly in connection with the suspension of procedural deadlines. However, just a few of them established guidelines and criteria to delimit the environmental obligations whose compliance may have its enforcement eased due to the difficulties imposed by the pandemic.

b. New Developments

Although plans and protocols are being defined, both at the federal level and in some states and municipalities, for a possible gradual easing of the social distancing rules that were imposed due to the pandemic, because of the uncertainties related to the dynamics of the number of people infected with the virus and the capability of public and private health systems to meet the demand for patient care, there is still no definition of when such plans and protocols can be effectively implemented, or even if the rules of social distancing may become more severe. Consequently, for now, the extraordinary measures that have been adopted by environmental agencies in the enforcement of environmental legislation have had their terms successively extended and there is still no clear horizon for a possible return to a situation of normality.
In Canada, any company that runs a facility must ensure that it continues to run in compliance with all applicable environmental permits, licenses and approvals, except where the regulator has explicitly suspended environmental obligations.

In addition to ongoing operational limits, many companies are subject to multiple environmental reporting requirements. In some instances, failure to comply with these requirements may constitute an offence. These reporting obligations can include:

- reports required under an Environmental Compliance Approval, a permit, a license, or an administrative order;
- reporting in accordance with federal or provincial greenhouse gas reporting regulations;
- National Pollutant Release Inventory reporting; and
- reporting requirements in other environmental legislation that may apply on a case-by-case basis.

Various jurisdictions in Canada have taken differing approaches to compliance requirements at this time:

- As of the date of this article, no relief from reporting requirements has been provided by the Ministry of the Environment, Conservation and Parks (MECP) in Ontario through either order or guidance. The MECP is considering requests on a case-by-case basis through District Offices.
- In Alberta, a Ministerial Order was issued on March 31, 2020 that provides relief from all requirements to report pursuant to approvals, licenses or registrations under the Environmental Protection and Enhancement Act, Water Act and the Public Lands Act, except for drinking water facilities. This suspension will be in place until August 14, 2020 or until it is terminated. Similar orders were issued with respect to reporting deadlines under the Technology Innovation and Emissions Reduction Regulation, Renewable Fuels Standard Regulation, Coal Conservation Act, Oil and Gas Conservation Act and Oil Sands Conservation Act.
- Federally, correspondence from the Minister of Environment and Climate Change dated April 2, 2020 indicated that federal environmental laws would not be waived but that Environment and Climate Change Canada would exercise enforcement discretion to take into account any challenges faced by regulated parties due to the pandemic.
In British Columbia, guidance released by the Ministry of Environment and Climate Change Strategy advises authorization holders that authorization requirements under the Environmental Management Act remain in effect but that exemptions will be considered on a case-by-case basis.

Subject to an Emergency Order under subsection 7.0.2(4) of the Emergency Management and Civil Protection Act, effective March 24, 2020, all non-essential places of business were ordered to be closed in Ontario. Construction work and services that supported health and safety environmental rehabilitation projects and environmental management, monitoring and spill clean-up and response (including environmental consulting and environmental laboratories) were on the March 24 list of essential businesses and were permitted to remain open.

On April 3, 2020, the Government of Ontario released a reduced list of essential businesses. Businesses that deliver or support the delivery of services, including environmental rehabilitation, management and monitoring, and spill clean-up and response remain on the essential list.

Many litigation matters in Ontario are currently on pause and awaiting further guidance from the courts. On March 15, 2020, a Notice to the Profession was issued advising that only urgent civil, family and criminal matters in the Superior Court of Justice would be heard. An Updated Notice to the Profession was issued on April 2, 2020, which sets out an additional limited set of matters, beyond those identified as "urgent" which will be heard on a region-by-region basis. It is our understanding that non-urgent civil motions, for example, are being rescheduled to dates after August 2020. Proceedings in the Small Claims Court have also been temporarily suspended effective March 16, 2020. All Provincial Offences Act matters before the courts (including environmental prosecutions under provincial legislation) have been adjourned and will be rescheduled. Defendants can expect to receive a notice advising of the new date by mail.

In addition, an Emergency Order under s. 7.1(2) of the Emergency Management and Civil Protection Act has suspended the running of limitation periods in Ontario and has, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, suspended any period of time within which any step must be taken in any proceeding in Ontario established by a statute, regulation, rule, by-law or order of the Government of Ontario.

Subject to this Order, the Environmental Review Tribunal (ERT) has issued guidance on its website, indicating that in-person hearings are being rescheduled and that front counter
services are closed. It has advised that in light of the Emergency Order, if parties (new or
current) to a matter before the Tribunal are not able to meet a timeline, the Tribunal will
grant extensions. However, the ERT is continuing to conduct teleconference or in writing
hearings, mediations and case conferences. This is not surprising in light of the ERT’s
normal practices, which include acceptance of electronic filing by case co-ordinators and
teleconference hearings.

Chile
(Carey)

The main environmental public agencies have issued a number of norms to face the
current health crisis.

The Superintendence of the Environment ("SOE"), the enforcement agency with authority
over environmental matters, issued general instructions addressed to carry out a
permanent monitoring of the status of projects or activities and of the compliance with
their applicable obligations in the context of the current health crisis. The SOE also
established that difficulties to comply with obligations set forth by environmental
instruments (such as testing and analysis) due to COVID-19's context may qualify as a
force majeure event by means of which the infringer's liability is exonerated.

The SOE also ordered the suspension of all sanctioning proceedings and of all
administrative terms for the fulfillment of measures, information requirements and any
other diligences ordered by the SOE.

With regards to the Environmental Assessment Service ("EAS"), it ordered the suspension
of all terms of all environmental impact assessment proceedings with citizen participation
processes and extended the term to submit addendas in environmental impact
assessment procedures. Also, both the SOE and the EAS enforced virtual channels for
online consultation and reception offices.

Finally, the Ministry of Environment extended the term for facilities that generate or
receive more than 12 tons of waste, and municipalities that collect waste, to submit their
annual report to the Wastes Declaration National System.

Due to the uncertainty of the current scenario, the development of these measures and
the inclusion of new ones have to be constantly monitored for updates.
Colombia

(Philippi, Prietocarrizosa Ferrero DU & Uría)

The Government issued the Decree No. 417 of 2020, by which Colombia declared an economic, social, and ecological emergency due to COVID-19. The state of emergency was extended by Decree No. 637 of 2020 for a period of thirty days. In accordance with the declaration, the Government also issued Decree No. 457 of 2020, Decree No. 531 of 2020 and Decree No. 636 of 2020, by which it imposed confinement measures until May 25. However, the activities related to fundamental rights and economic activities such as food production, health services, transport services, public services, financial services, construction activities, call centers, textiles production, manufacturing of chemistry supplies production, public infrastructure and the production of fuels and minerals are excluded from the confinement measures.

The Ministry of Health has issued the Resolution No. 666 de 2020, establishing the Protocol of Biosecurity applicable to all workers, companies and institutions which will develop their activities during the sanitary emergency. Additionally, the Ministry of Health has issued specific protocols for some economic sectors, such as transport infrastructure and construction. As far as environmental matters are concerned, those protocols contain provisions related to the waste management, specially face masks, gloves and wipes. However, none of these Protocols has an impact on the enforcement of environmental laws.

Environmental authorities have decided to suspend some administrative actions and the enforcement of certain environmental obligations due to the confinement measures around the country. In general, those proceedings related to environmental risks and environmental contingencies are excluded from the suspension of deadlines. Likewise, all deadlines within the scope of proceedings and obligations which require a technical visit to the project, collecting information on site or personal interaction are suspended.

In addition, the Environmental Ministry issued Decree No. 465 of 2020. The decree has focused on facilitating certain environmental proceedings to obtain a water permit for public utility companies and environmental licenses for hazardous waste treatment plants.

In conclusion, as of today, the provisions issued by national Government and environmental authorities have not led to a deregulation of the environmental legal framework. The current measures have established rules to address the permit holder's inability to fulfill those obligations that are impossible to fulfill during the confinement of the
population. Even though the controls and supervision of the environmental authorities have been heavily reduced due to the confinement, laws remain in force.

Costa Rica
(Interlex / Bufete Echeverría)

As in other countries, the environment has been benefited with this pandemic in Costa Rica. We can see a noticeable drop in pollution and nature is enjoying a little vacation from the humans. The biggest loser regarding the Environment with this crisis has been the National Park System, accustomed to a very large influx of resources from the sale of tickets to visitors. Due to current restrictions, the national parks are closed and risk becoming insolvent within the next 30 days.

With no resources, the Park System’s protection is at risk and, as the crisis deepens, illegal logging and hunting will return to them since there will be no resources to conduct surveillance. Poverty and ignorance are Nature’s worst enemy.

Dominican Republic
(Santroni Parsons)

As of the date of this report, the State of Emergency declared by the President of the Republic in March would remain until May 17.

Since the promulgation of Presidential Decree No. 134-20, dated March 19, 2020, the State of Emergency has been declared throughout the national territory, as a summary, the measures that have been taken are:

- Limitation to the freedoms of transit, association and assembly.
- Curfew in the entire national territory and the transit and movement of people from 5:00 p.m. to 6:00 a.m. is prohibited, except for companies whose economic activity and people whose profession was related to health services, people with a medical emergency, private security tasks, members of the media, and electricity distributors to deal with emergencies.
- Allowance to the circulation of vehicles for the transport and distribution of goods, supplies, and fuel (both urban and interurban), of energy and water, telecommunications and solid waste collection for exclusive emergency care, to people working in ports and
airports during the hours of curfew, as long as they carry an identification authorized by
the company and people who work in the food and pharmaceutical industry, trade and
medical supplies and lastly to funeral service vehicles exclusively when they are
working.

- The FASE Program was created to financially assist employees suspended or canceled
due to the closure of the companies.
- Suspension of deadlines in administrative procedures of the central public
  administration, decentralized, autonomous and decentralized state agencies, which will
  end 3 business days after the lifting of the state of emergency.

Other and more recent measures taken are summarized as follows:

- Closure of all fresh and/or saltwater areas throughout the national territory, from April 3,
  2020, until other instructions are given for their reopening (Official Letter No. 027-20
  issued by the Civil Defense).
- Mandatory use of face masks in all workplaces and public spaces by all citizens
  nationwide, due to the state of emergency.
- Open establishments (banks, supermarkets and places that sell food and related
  goods) shall enable special cashiers for the elderly people.

As for the Ministry of Environment and Natural Resources and its provincial directorates in
the different provinces of the Dominican Republic, the measures taken to date are as
follows:

- Total suspension of administrative work in terms of common environmental procedures;
  personnel are available only in a case emergency, incident and/or environmental
  complaint executed by citizens and affecting public order.
- Provisional suspension of the cutting and transportation of wood from plantations and
  forest management plans throughout the national territory, due to the drought conditions
  in the country. The cutting and transportation of trees from Acacia plantations used for
  biomass for emergency production are excepted from this provision.

In another note, the Ministry of Industry and Commerce has issued an orientation guide to
reduce the risk of contagion by COVID-19 in companies.

Ecuador

(Pérez, Bustamante y Ponce, Abogados)
Due to COVID-19 pandemic, last March 17, 2020, the government of Ecuador declared a "national state of emergency", which included, among other measures, a quarantine period, the citizen's lockdown at their homes, the closing of most economic activities (except those considered as "strategical", such as: health services, food production, exploitation of natural resources, communications, air transportation for human reasons, among other few ones). Up to date, the lockdown is in force until the end of May.

Ecuador was one of the first South American countries affected by the COVID-19 virus due to the high number of Ecuadorian immigrants living in Spain that came back to Ecuador during January, February and part of March, to visit their relatives. Citizens are authorized to leave their homes only in case of health emergency or to go to supermarkets for grocery's shop.

There is currently a daily curfew in force from 02:00 p.m. to 05:00 a.m. of the next day. This measure is not applicable to persons and vehicles that hold a "safe passage" granted by the government.

In addition to the suspension of activities, Ecuador has been affected in its source of income due to the drastic reduction of oil prices, particularly of West Texas Intermediate (WTI) crude, which is used as the referent for the calculation of Ecuadorian crude oil. To make the economic situation worse, during March, the two Ecuadorian pipelines were affected by a landslide, suspending the crude oil production and transportation for more than one month. Currently, both crude oil production and transportation have been restored.

As of June 1st, the government will implement a "Traffic Lights" system in order to reduce the lockdown situation and to retake economic activities. Through the "Traffic Lights" system, the government has delegated each municipality the decision to reopen economic activities, transportation, business and citizens from lockdown, depending on the degree of the COVID-19 pandemic situation in each city, the hospitals capacity to confront the health situation and the citizens' behaviour.

If in a given city the pandemic continues to be critic, a "red traffic light" will be applied whereby the situation will continue as it currently is. If the pandemic is reduced and the city has an adequate health infrastructure to confront the sanitary situation, the city will move to a "yellow traffic light", where mobilization, flexibilization of citizens' lockdown and a gradual opening of business will be implemented.

Finally, if a given city situation demonstrates that the pandemic has been stopped or controlled, the city will go into a "green traffic light" status, whereby the economic
activities and mobilization will be retaken, lockdown canceled and the city will return to a "new" normality under strict sanitary measures.

As far as environmental aspects are concerned, the Ministry of Environment of Ecuador has not adopted direct measures within its authority regarding COVID-19 pandemic, but it is rendering an active support to the Ministry of Public Health and to the Ministry of Government, in the coordination and delivery of food supplies and health products (i.e. protectives masks, antibacterial gel, gloves etc.) to the most marginal population of the country.

Guatemala

(Qil +4 Abogados)

Through Government Decree 5-2020, issued by the President of the Republic, a state of Public Calamity was declared throughout the territory, for a period of 30 days and then this period was extended until the first week of May by Decree No. 7 -2020, as a consequence of the pronouncement of the World Health Organization of the coronavirus epidemic COVID-19. By virtue of this declaration, the President has issued various Presidential Provisions\(^1\) in order to respond to the urgent needs of the country.

Congress Decree No. 12-2020 (Emergency Law to Protect Guatemalans from the Effects Caused by the Coronavirus COVID-19) suspends administrative and legal terms in all types of administrative processes for a non-extendable period of three months (from April 1, 2020), including the Ministry of Environment and Natural Resources) and the court in Guatemalan territory.


The Ministry of Environment and Natural Resources, through Ministerial Agreement No. 153-2020, informs the suspension of the legal terms and deadlines in all administrative procedures managed by the Ministry of Environment and Natural Resources as of March 17, 2020 until the day after the end of the State of Public Calamity that caused this extreme measure. It is understood that all that work, industry, company, person or any other activity that has to renew an environmental license, present the surety bond, manage or present documentation related to compliance with environmental commitments assumed under the approval resolution of your project or activity, are suspended until the activity within the Ministry of Environment is resumed and logically, the labor operations that correspond to each one are reactivated.
However, on May 6, 2020, the Ministry of Environment and Natural Resources, announced through its webpage that it is ready to reopen its customer service windows for filing and renewal of licenses and environmental permits in CR, C and B2 (categorization assessments according to the impact of the project, work or industry), categories which represent almost 90% of the total managements of this type that are carried out daily. Likewise, those who need to process permits and licenses for CR C and B2 categories should write and e-mail to digarn@marn.gob.gt and apply for their turn, which will be assigned through a message by email.

The Ministry of Environment and Natural Resources (MARN) continues to endeavor substantial efforts to strengthen the institutional framework and exercise legal compliance with the vision of carrying out greater monitoring of environmental quality in water, soil, air, noise and other elements of the environment. In addition, the MARN will continue to support rural communities access to adequate environmental education and to provide to the entire country the "Practical Guide for the Management of Common Solid Residues and Wastes", which seeks that both the municipalities, companies and the population in general meet the recommendations for the management of materials, such as masks, gloves and toilet paper and thus avoid contamination and spread of the COVID-19 virus.

This guide is based on the national policy for the comprehensive management of solid waste and wastes (Governmental Agreement No. 281-2015) and the Guide for the graphic identification of common solid waste contained in Ministerial Agreement No. 6-2019.

The Council of Ministers of the Central American Environmental and Development Commission of the Central American Integration System (a body comprised by all the Environmental Ministers from Central America and the Dominican Republic) encouraged the promotion of the green agenda as an effort to promote the sustainability and mitigation of the environmental impact derived from the regional multisectoral investments developed in the economic recovery process taking place after the ending of the COVID-19 emergency. The Council of Ministers concluded that the biodiversity and the natural resources sustainable management represents an opportunity to mitigate the social and economic impact caused by the COVID-19 in terms to life assurance, food production and the employment generation, especially for the most vulnerable population of the region. Additionally, the Council of Ministers encouraged the international cooperation and its development partners to promote environmental-friendly employment programs, as a fundamental factor for the sustainable economic reactivation and as a reaction to de celerity and flexibility requirements of the countries of the region.
In parallel to the efforts implemented by the Ministries, the Congress of the Republic of Guatemala approved an increase of the general budget to finance and sign agreements to carry out activities and programs to reduce greenhouse gas emissions, in order to generate income from said activity. Such resources can be used to cover subsequent needs that persist due to the COVID-19 pandemic. With such provision, landowners who wish to make such agreements will also benefit not only from the remuneration, but also from the exemption of taxes for said transactions. The governing body for the payment of the beneficiaries (land owners) will be the Ministry of Finance and there will be a registry of said transactions, which will be in charge of the National Institute of Forests (INAB), Ministry of Environment and Natural Resources, CONAP and MAGA.

Guyana

(Hughes, Fields & Stoby)

On the 3rd of April 2020, the Minister of Public Health in Guyana issued Emergency Health Measures for a one-month period, which were gazetted on the 9th of April 2020. These measures were issued in an effort to address the Novel Corona Virus (COVID-19) pandemic in Guyana, and reduce the exposure of citizens. As a result, only essential services and services that support these essential services were allowed to operate during the hours of 6:00 a.m. to 6:00 p.m.

These measures were extended by publication in the Official Gazette on the 29th of April, 2020 until the 3rd of June, 2020, with additional services included as "essential services".

While most governmental agencies are still closed, many have re-opened but are operating on skeletal staff and reduced services. Although the Environmental Protection Agency has been re-opened, the suspension of all field activities, including site visits, inspections and complaint investigations is still in effect. Urgent applications for environmental authorizations and complaints are, however, being entertained and the Agency is encouraging these to be made through its website at http://www.epaguyana.org/epa/.

Mexico

(Santamarina y Steta, S.C.)
As part of the joint efforts for the containment of the spread of the COVID-19, the Ministry of Environment and Natural Resources ("SEMARNAT") has issued certain recommendations on good hygiene practices for the management of urban solid waste and protection of human health during the virus outbreak. By their nature, such recommendations are not mandatory.

Such recommendations establish that urban solid waste shall be divided into (i) ordinary waste: those generated at all kinds of facilities other than hospitals, where there are not infected patients; and (ii) COVID-19- waste: those generated at all kinds of facilities other than hospitals with presence of infected patients, including urban solid waste generated within airports and sea or land passenger terminals, which shall be managed according to the different security measures established in the referred recommendations, which include that all personnel involved in the collection of wastes shall be subject to testing in order to confirm or discard the presence of symptoms of COVID-19. These recommendations supplement the prevention and control measures issued by the Mexican Ministry of Health.

SEMARNAT established the suspension of legal terms applicable to administrative procedures before such Ministry and its decentralized bodies, derived from the public health situation generated by the Covid-19 outbreak. This does not imply the suspension of activities within SEMARNAT. In that sense, such authority may enable days and times, and appoint personnel that it may deem necessary for compliance with its legal obligations.

**Paraguay**

**(BKM/Berkemeyer)**

a. **General Overview**

Following the initial quarantine measures introduced by the national government on 11 March 2020 to contain the COVID-19 pandemic, the Ministry of the Environment and Sustainable Development closed all national wildlife parks under public management.

Taking advantage of the low level of industrial activity the Environment Ministry performed pollution controls taking water samples in some city streams that would normally carry high levels of effluents.

The Environment Ministry reminded the population about the regulations on solid waste
management and the requirement to separate recyclable and non-recyclable waste.

Administrative measures included extending due dates for submitting audit reports for the maintenance of environmental licenses and extending summary procedure terms. Applications for environmental licenses may be submitted online only.

b. New Developments

Environmental violations reported in the press and social media prompted the environmental authority to introduce online reporting of violations and follow up notices in addition to on site inspections.

Based on reports that COVID-19 can be transmitted to wild animals, the environmental authority issued a protocol for public and private zoos to prevent infection of wildlife. The protocol applies also to owners of pets that are wild animals.

The Reopening Plan comprises the following phases:

- Phase 1 of the reopening plan began on May 4. Phase 1 allows manufacturing and construction at initial stage (earthworks and structure) to resume work. Public Works were not affected by quarantine measures at any time. Professional services may be provided with physical distancing if at the store or office or if performed at the client’s home. Certain parks opened for individual activity. Health and safety measures, the wearing of masks and physical distancing are obligatory.
- Phase 1 should end on May 21 unless outbreaks dictate otherwise, whether to continue restrictions or again impose strict stay at home orders. Each phase will be introduced under a government decree and following the advice of health authorities.
- The plan envisages four phases each lasting over two weeks, the last phase should be phased in sometime in July if all goes well. However, it is envisaged that activities such as sport events will only take place without attendance of spectators.

Peru

(CMS Grau)

a. General Overview

The Peruvian government declared a public health state emergency of 90 calendar days; while also issuing a stay-at-home order (Lockdown) on March 15, which is effective
starting Monday, March 16 and ends April 26.

The Lockdown determined that only essential economic activities could be carried out, such as production, transportation, distribution and marketing of food, the provision of public services, among others. Likewise, the corresponding ministries were empowered to include essential economic activities, provided they do not affect compliance with the Lockdown. Hydrocarbon and mining activities, as well as some related activities, have been considered essential, however, they operate to the bare minimum of their capacity.

Additionally, on March 15, the Peruvian government issued regulations with emergency legal rank in order to deal with the national emergency, which considered two types of policies that involve environmental issues: (i) The Ministry of Environment was empowered and granted financial resources as a means to collaborate with local governments (municipalities) and the National Health System in the process of managing municipal and bio-contaminated waste, in the face of future critical situations. (ii) An exceptional suspension regarding the calculation of terms (deadlines) set for administrative procedures was determined for 30 business days.

The physical closure of environmental government agencies, as well as the social mobilization restrictions imposed by the Lockdown, initially raised some doubts regarding the subsistence of certain environmental obligations, including, for examples, the presentation of environmental monitoring reports, as well as reporting environmental emergencies that may occur; or whether the terms of administrative sanctioning procedures or prescription of the sanctioning power had been suspended by the aforementioned rule.

The prevailing opinion now is that activities regarding the management of environmental impacts of the remaining essential economic activities must continue and, therefore, the obligation to comply with environmental management plans is in force, as applicable, as well as other obligations imposed by environmental law.

Environmental agencies have published explanatory statements in which they report the possibility of presenting information in virtual form, making the adhesion "whenever possible" or some equivalent formula, with which the obligation of presentation is relativized, but not that of executing actions considered in management plans and those imposed by environmental law.

b. New Developments

On May 11th, the Peruvian Government published the Legislative Decree No. 1500,
considering the restart of some activities included on Phase 1 and the continuance of the essential ones, which establishes the following:

- All permits and authorizations, including the environmental permits, shall be extended for 12 months, considering this extension as from the original expiration date. It is necessary to notice that such condition applies only to permits that are valid until December 31st, 2020.
- In relation to the performance of environmental monitoring, all the activities that are not essential or in Phase 1, will be exempted from performing the monitoring and of presenting the related environmental report. However, once the activity begins again, this exemption will cease.

Finally, pursuant to Ministerial Resolution No. 099-2020-MINAM, the Ministry of Environment published some recommendations concerning the managing of solid waste of COVID-19 produced by administrative offices (public and private), malls, marketplaces and homes. This law focuses on the appropriate destruction, storage and final disposal of solid waste such as facial masks and gloves, as well as the adequate disinfection of the containers of solid waste.

**United States**

**(Baker Botts LLP)**

a. **General Overview**

The United States Environmental Protection Agency ("EPA") has been responsive to challenges faced by the regulated community during the COVID-19 virus crisis. However, EPA has made it clear that it will continue to implement its mission to protect public health and the environment while also responding to various COVID-19 related issues. EPA generally is adopting a case-by-case approach to the use of enforcement discretion to non-compliances related to the COVID-19 crisis rather than issuing broad no action assurances. Obligations that pose a risk to public health or the environment are distinguished from routine recordkeeping and reporting requirements.

In the past month, EPA has issued interim guidance memoranda titled (1) "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program, March 26, 2020," which addresses broad enforcement discretion; (2) "Temporary Advisory for
National Pollutant Discharge Elimination System (NPDES) Reporting in Response to COVID-19 Pandemic, March 31, 2020," which addresses a permittee's ability to perform required monitoring, sampling, and reporting, and its ability to timely report to EPA; and (3) "Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19, April 10, 2020" which applies to decisions about new and ongoing cleanup activities at sites primarily governed by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund") and Resource Conservation and Recovery Act ("RCRA"). The EPA has also published a webpage titled "Frequent Questions About the Temporary COVID-19 Enforcement Policy" that contains answers to frequently asked questions about its March 26, 2020 COVID-19 enforcement policy, which is available at https://www.epa.gov/enforcement/frequent-questions-about-temporary-covid-19-enforcement-policy.

EPA Administrator Andrew Wheeler has explained that these temporary policies are "designed to provide enforcement discretion under the current, extraordinary conditions, while ensuring facility operations continue to protect human health and the environment." EPA has also released a list of EPA-registered disinfectant products that have qualified for use against COVID-19. EPA's temporary enforcement discretion policies apply to civil violations during the COVID-19 outbreak. The policies do not provide leniency for intentional criminal violations of environmental laws.

Regulated entities are still expected to try to comply with all applicable requirements. If they cannot do so because it is not reasonably practicable due to reasons related to the COVID-19 emergency, entities must document the basis for their non-compliance. This documentation does not have to be in a particular format. The amount, level, and type of information needed to document a facility’s response to noncompliance will vary on a case-by-case basis. Decisions on what and how to document should reflect the particular facts and circumstances of the non-compliance incident. A facility should document, at a minimum: (a) how it acted responsibly under the circumstances in order to minimize the effects and duration of any noncompliance; (b) identify the specific nature and dates of the noncompliance; (c) identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity; and (d) its plan to return to compliance as soon as possible. The temporary policies do not call for routine reporting to the EPA of non-compliance; although, there may remain independent state or local notification requirements. An entity must still notify EPA if:

- Facility operations are impacted such that they create an acute risk or an imminent threat to human health or the environment, or
• A facility suffers from failure of air emission control or wastewater or waste treatment systems or other facility equipment that may result in exceedances of enforceable limitations on emissions to air or discharges to water, or land disposal, or other unauthorized releases.

In other words, regulated entities are not permitted to violate their permits or applicable regulations, but EPA will take a case-by-case review of such non-compliance and may not enforce those violations if there is enough justification related to the COVID-19 crisis for the non-compliance.

These policies and the discretionary enforcement guidance do not apply to violations that occurred before March 13, 2020. It is uncertain how long these temporary policies will remain in effect. EPA's policies and guidance apply to federal permits and regulations. States are issuing their own guidance and policies with respect their permits and regulations and the approaches taken vary by jurisdiction.

b. New Developments

The reopening of communities sheltering in place and business shut down in response to the COVID-19 is being directed primarily at the state and local government levels in the United States, with some regional coordination between states. Several states have begun a phased reopening process. The Trump Administration released guidance for a three-phased approach in its Guidelines for Opening Up America Again, available at [www.whitehouse.gov/openingamerica/](http://www.whitehouse.gov/openingamerica/). Although these guidelines identify gating criteria tied to a downward trajectory of COVID-19 cases that should be satisfied before a state begins a phased-reopening, the guidelines indicate these may need to be tailored to local circumstances. As of the date of this publication, it appears that states are not uniformly applying the gating criteria before commencing a phased-reopening.

Multiple federal and state agencies have released guidance and protocols to aid businesses in planning for and executing the reopening of their operations. In addition to general guidance, targeted guidance with specific recommendations for different types of settings have been issued. It is recommended that industry and location-specific plans be put in place that take into account site-specific considerations. Communications with employees and contractors and, as needed, training, are important elements of these plans. Generally, recommended practices include the following elements:

• Social distancing, which includes six feet of distance in a shared space;
• Prevention hygiene: Frequent hand washing with soap and water or, when not available,
alcohol-based hand sanitizer; wearing cloth face coverings/face masks; avoiding touching eyes, nose and mouth, staying home when sick;

- Health checks, including temperature checks;
- Procedures for workforce contact tracing in the event an employee tests positive for COVID-19;
- Improvements to building ventilation systems, if feasible;
- Minimization of non-essential business travel;
- Encouraging continued teleworking to the extent possible and feasible with a return to work in phases, if possible;
- Consideration of special accommodations for employees who are members of a vulnerable population; and
- Careful planning for cleaning and disinfecting work places.

The EPA and the Centers for Disease Prevention and Control issued "Guidance for Cleaning and Disinfecting" dated April 28, 2020, intended for public spaces, workplaces, businesses, schools, and homes. The guidance provides a general framework for and recommends development, implementation, and maintenance and revision of a cleaning and disinfecting plan. The guidance recommends evaluating and tailoring the plan to the specific location and that the plan be flexible so that it can be adjusted as circumstances change as well considering making long-term changes to practices and procedures to further reduce the risk of exposure. The EPA also has developed a list of disinfectant products shown to be effective against viruses that are harder to kill than viruses similar to COVID-19. The guidance advises that plans address considerations for the safety of persons who are conducting the cleaning and disinfecting activities, including training and use of appropriate personal protective equipment (PPE).

On the environmental regulatory front, companies should continue to communicate with regulatory authorities and maintain documentation of any non-compliance with or missed deadlines under regulations, order or permit requirements attributable to COVID-19 related circumstances.

**Uruguay**

**(Guyer & Regules)**

Before determining the impact of COVID-19 on the country's environmental policy, it should be clarified that despite the government's urging citizens to take special care, no
mandatory general quarantine has been imposed. This means that industrial and commercial activity is sustained, without prejudice to the reduction caused by the social distancing measures adopted.

As a result of the declared health emergency, the waste collection and recycling system has given priority to reducing the spread of infection, which has led to a reduction in the activity of manual recycling plants, which account for 5% of the waste treated nationally. On the other hand, the fact that the commercial and business circuits for the collection of recoverable waste have not stopped is a positive aspect. Likewise, as a result of the closing of borders with Brazil, the material arriving at recycling plants has increased. This situation is recognized as transitory to the extent that such material evaded the national system due to smuggling to the neighboring country.

With regard to the collection of household waste (a task carried out by Local Governments), the collection of special waste (furniture, household appliances, etc.) has been stopped. Also, in order to reduce the contact between the population and the workers of the waste classification system, the collection of recyclable material circuits has been temporarily suspended and the containers for the reception of these materials have been temporarily removed from large surfaces.

One of the issues related to household waste is the non-dissemination of COVID-19 contaminated waste. In this regard, the Municipality of Montevideo agreed with a representative organization of the Civil Society on a protocol to be applied to those wastes that may be infected in order to avoid the spread of the virus through the garbage. This implies the recommendation to use three plastic bags, prior to such wastes being thrown in the places arranged for any household waste. An increase in the use of disposable plastic bags has also been confirmed as they are more aseptic, despite their cost for acquisition and the disincentive to use them imposed by Law No. 19,655.

Recently, technicians from the National Directorate for the Environment carried out a series of inspections of hospital waste management companies in Uruguay, with the purpose to analyze national capabilities within the framework of the health emergency caused by COVID-19. The inspection showed that, today, Uruguay has the capability to adequately manage these wastes, with the procedures and treatment required for health and environmental care.

As for the control and prevention of industrial pollution, the Ministry of Housing, Land Management and Environment decided to postpone the date by which companies must comply with the annual Environmental Operating Reports that those companies established by the regulations must submit. This report must detail energy and fuel
consumption, chemical substances used in processes, effluent management and water use, solid waste management, air emissions control and environmental contingency management.

In view of the development of the health emergency caused by the COVID-19 pandemic in Uruguay, it was decided to close and suspend tourist activities in protected areas.

The Government of Montevideo has reported that, despite the reduction in activities, air quality has remained at good levels in terms of the concentration of particles in the air.

b. New Developments

With regard to current or future reopening measures, it should first be noted that no specific mention has been made concerning environmental issues. Secondly, as previously mentioned, in Uruguay, the government did not impose an obligatory quarantine, but exhorted the population to take special care, which was strictly observed by the population and which resulted in the temporary closure of many private businesses and public offices. In May, the reopening of these places began gradually, following the health measures recommended by the Ministry of Public Health and the departmental governments.

The Ministry of Health published a guide providing recommendations to public offices that can be used as reference for private sector. The guide includes as recommendations the training of workers in aspects related to the contingency plan prepared by each workplace and on information such as frequent symptoms, basic infection prevention measures such as social distancing, use of masks, hand washing, respiratory hygiene, ventilation, cleaning, disinfection of the premises, materials and devices for daily use, as well as organizational measures, prevention measures and personal hygiene and hygiene measures in the workplace.

Maldonado and Montevideo local governments provided rules in reference to bars and restaurants, which include minimum distance among tables and chairs, the mandatory use of mask by waiters and the prohibition of using bars, counters and similar for the permanence of the public. In case of breaching the rules, bars and restaurants can be sanctioned.

Venezuela
(Benson, Pérez Matos, Antakly & Watts)

a. **General Overview**

This worldwide pandemic has affected more than just our health, it has touched all areas of life. In addition to being forced to make changes to our health-related habits and the disruptions to our daily routines, despite the lack of statistics and figures we have also been observing noticeable changes in our environment. The fact is that the air is cleaner, temperatures have dropped by one or two degrees, bodies of water are clearer, and we are seeing animals in unaccustomed locations.

Bearing this in mind, we must take advantage of this experience to adopt not just health and economic measures, but environmental measures also. Nevertheless, insofar as we are aware, nothing is being done in this area.

The situation in which we now find ourselves as a result of the COVID-19 has led to a number of problems when it comes to administrative procedures involving environmental law. Administrative and ministry offices are closed to the public. Under these circumstances, and given the lack of access to information and administrative procedures, it is important to remember that Article 2 of the Administrative Procedures Act stipulates that the people have the right to address inquiries to the national public administration.

Furthermore, Article 51 of the Constitution of the Bolivarian Republic of Venezuela states that all citizens have the right to present or deliver petitions to any government authority or official concerning matters within their respective jurisdictions. Furthermore, it also stipulates the citizens' right to receive and, therefore, these agencies' obligation to provide a timely and appropriate response.

The question to be answered now is whether, in the case of environmental measures, we will take advantage of this opportunity to effectively cut back on emissions into the atmosphere. In addition to changing our health-related habits, will we be able to maintain the current level of discharges into bodies of water? Special rules and regulations governing the disposal of pathological and health-care waste provide that it must be cremated; will we be able to control the emissions this produces?

Although we are anxious to get back to our daily routines, currently on hold, we must not forget what clean air feels like, what crystal-clear waterways look like, how it feels to share our habitat with its original dwellers: the animals. Let’s make sure we take the measures needed to protect our environment.
b. **New Developments**

To date neither the environmental nor legislative authorities in Venezuela have issued any guidelines or regulations regarding compliance with environmental rules and regulations during this COVID-19 pandemic crisis. Nor, up to this time in early May, have we seen any announcements or prospects of a lifting, flexibilization or easing of quarantine measures.

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