

CHILE 2019 - THE OUTSTANDING ENVIRONMENTAL ISSUES

I. Background.

During the year 2019, the development of legislative projects around the due care of the environment had a thriving escalation, not only in Chile, it has had a worldwide impact, due to the urgency that exists to stop the global environmental crisis.

In this context, in our country there was a variety of initiatives, which shall be analyzed hereafter.

Notwithstanding the **current social upheavals**, there are **important** environmental issues being discussed in the public forum (*i.e.* Congress, newspaper, academia, etc.), which –determined this year 2019– it is relevant to bear in mind, projecting to 2020.

II. Law Draft that Penalizes Crimes against the Environment.

As a brief contextualization on the Bill, it should be noted that it began from a series of Bulletins dating from year 2014, all entered in order to legislate on crimes against the environment. The foregoing is not trivial in circumstances that neither the Chilean Criminal Code, nor Law 19,300 on General Bases of the Environment, conceive to date, a criminal figure to sanction wrongdoings against the environment (considering the environment as the protected legal good).

As a matter of fact, last January, the current government sent Message No. 339-366 to the Chilean Senate, consisting of a project that "*seeks to penalize behaviors that seriously undermine the environment.*"

Furthermore, on May 13th, 2019, the Senate gathered such Message, together with the most relevant Bulletins on the matter, and initiated the First Constitutional Procedure on the Draft Law Bulletin with a consolidated text, which sanctions crimes against the environment. In this sense, the Project consists of:

- **Creation of crimes** to sanction behaviors that generally violate the environment;
- Define concepts such as "*serious environmental damage*", in order to objectively sanction such behavior;
- **Responsibility of the administrators:** The Law Draft, extends to the configuration and execution of the crime **within** the scope of a **business organization**, puts at the forefront of imputation to *managers, officers, board members and administrators*; and,
- **Modifies the Criminal Code** and other legal bodies, in relation to such crimes against the environment.

As of today, the current processing status of the Bill is located in the “First Constitutional Procedure.” In that sense, the Bill is being treated and discussed in the Senate, without major developments.

Once this stage is completed and approved, the Project shall pass to a "Second Constitutional Procedure", where it will be discussed in the Chamber of Deputies.

If political agreements were reached and voting in favor of the Project in each Chamber, the latter would proceed to the “Veto and Observations of the President of the Republic” stage. After this process, said Project would be promulgated and published in the Official Gazette, where it would have the force of law from that date –unless otherwise provided –.

III. Law 20.920: Establishes Framework for Waste Management, Extended Producer Responsibility and Recycling Promotion (commonly referred to as the "*Recycling Act*").

Law 20920, which "Establishes Framework for Waste Management, Extended Producer Responsibility and Promotion of Recycling" (hereinafter for this section II, the "Recycling Act"). The year 2016 came into full force, but, as we shall explain hereunder, there are still pending issues.

This Recycling Act is created with the objective of “*reducing the generation of waste and promoting its reuse, recycling and other recovery, through the establishment of the extended responsibility of the producer and other waste management instruments, in order to protect the health of people and the environment.*”¹.

It is under this Recycling Act, that **extended responsibility** is applied upon the **producer of the following products**²:

- a) Lubricating oils;
- b) Electrical and electronic devices;
- c) Batteries;
- d) Packages and Packaging; and
- e) Tires;

The extended responsibility of the producer in each case, would be regulated through Supreme Decrees issued by the Ministry of Environment, which, in turn, give content to the goals and other obligations of each of these priority products.

However, these Supreme Decrees are still pending drafting and publication in the Official Gazette. Up until today, and according to Article Second Transitory of Law 20.920, the

¹ Article Number 1, Law 20920, “Establishes Framework for Waste Management, Extended Producer Responsibility and Recycling Promotion”.

² Article Number 10, Law 20920, “Establishes Framework for Waste Management, Extended Producer Responsibility and Recycling Promotion”.

Ministry of the Environment may only require information from the priority producers (through the Registry of Emissions and Transfers of Pollutants).³

To date, there is only one regulation that establishes the procedure for preparing Supreme Decrees⁴, and the drafting of the Supreme Decrees that would establish the collection goals and other obligations associated with the following, has already started: *(i)* lubricating oils; *(ii)* single-use returnable beverage containers; and *(iii)* tires. The latter is slightly more advanced than the others are, since as of October 4, 2018, its preliminary draft was already issued.

IV. Restructuration of the Environmental Impact Assessment Service.

On June 19th of the present year, the Executive submitted to the Chamber of Deputies a Bill that aims to modernize the Environmental Assessment System (hereinafter, the “SEIA” for its acronym in Spanish). The initiative corresponds to Bulletin No. 12.714.

This submission comes to replace an earlier proposal that dates from the month of July during 2018, and that despite being pending in the Environment Commission, had not had major movements since last March.

Thus, as with this project, the following is proposed:

- Improve the spaces for **citizen participation** in environmental matters, allowing this in all environmental assessment processes, regardless of whether they enter the SEIA via Environmental Impact Statement or Study⁵.
- Obligation to the Environmental Assessment Service (hereinafter, the “SEA”) to inform and support **communities**, *“through an offer of free programs and courses for the community, which aim to promote and facilitate citizen participation in the project evaluation”*.⁶
- Strengthening of Regional Commissions, which in turn acts as the final instance of **administrative decision**.
- More technical features for decisions, by means of the decrease of the political instance, moving away from the definition of the destiny of the projects.
- A **special clarification procedure** is established, so that those who propose projects may, before the same body that issued the act, clarify

³ Transitory Article Number 2, Law 20920, “Establishes Framework for Waste Management, Extended Producer Responsibility and Recycling Promotion”.

⁴ In summary, the procedure consists in starting with the issuance of a resolution that begins the elaboration procedure, to continue with the convening and formation of an expanded operational committee; with the opening of a period to receive technical, economic and social background that may be relevant to the proposed regulation; with the preparation of a general analysis of the economic and social impact (AGIES) and with the issuance of a preliminary draft of said decree, among other stages.

⁵ This would eliminate one of the last existing restrictions, in which only the Environmental Impact Declarations with environmental charges and that were accepted as such by the Environmental Assessment Service.

⁶ Source: Cámara de Diputados de Chile. https://www.camara.cl/prensa/noticias_detalle.aspx?prmId=137325

dark or unclear passages of the administrative act, provided they do not require a thorough review of the matter.

- Appeal by means of a direct claim before the Environmental Courts, which is entitled to **any third party interested** upon the issuance of an environmental qualification resolution.

Until the week of October 18th, 2019, the project was urgently needed for processing, but when the social outbreak occurred, it lost relevance and has not had any news beyond continuing as the First Constitutional Procedure in the Chamber of Deputies.

V. COP 25.

This year, the Twenty-fifth Meeting of the Conference of the Parties (hereinafter, "COP 25"), was intended to be held in our country, Chile. However, due to the social crisis that erupted in mid-October, on the 30th of the same Month, President Sebastián Piñera, decided to suspend its implementation in Chile, stating that *"This has been a very difficult decision, which causes us a lot of pain (...) but we have based the decision on a wise principle of common sense. When a father has problems he must privilege his family over other options, always a president must put his countrymen over others."*⁷.

Thus, as the day after the decision to suspend the event in Chile, Spain offered to hold the climate summit between December 2nd and December 13th of the present year, in the city of Madrid. It was carried out with the participation of 197 parties (196 nations, plus the European Union), with the aim of seeking and moving towards the implementation of agreements that would establish specific obligations of all Parties to combat climate change.

Due to the slowness with which the negotiations took place, this event had to be extended for two additional days, ending on December 15th, 2019.

The main objective that was expected to be achieved during the 25th version of the Climate Summit was to regulate Article 6 of the Paris Agreement reached during COP21 in that city. This Agreement created a carbon market to efficiently mitigate greenhouse gases emitted by countries.

However, after not reaching an agreement, Article 6 shall be discussed at COP26 to be held in Glasgow in 2020.

Thus, of the 196 parts that formed the summit, only 121 countries agreed to present greater strategies in 2020 to be carbon neutral by 2050. While the above is good news, none of the main polluting countries joined this agreement, including China, India, Brazil or the United States, which together produce more than 50% of CO2 emissions worldwide.

So, **what was agreed?** (i) The first commitment is that by **2020** countries to submit "**more ambitious**" **plans to reduce carbon emissions** in order to respond better to the climate emergency. The presentation of this commitment must be made in the 26th version of the

⁷ Source: América Economía. <https://www.americaeconomia.com/chile-anuncia-la-suspension-de-cumbres-de-la-apec-y-la-cop-25-que-se-iban-realizar-en-el-pais>

COP, which will be held next year in the city of Glasgow, Scotland; *(ii)* It is further recognized that any climate policy must be permanently updated based on the advances of science. Thus, it is said that scientific knowledge will be the "main axis" to focus the climate decisions of the countries; and *(iii)* The **ocean and land use** was a third key point of this consensus, recognizing the importance of maintaining its balance for the proper functioning of the climate system⁸.

In this sense, the United Nations General Secretary, Antonio Guterres, referred to the situation, being **disappointed with the results**: "*The international community lost an important opportunity to show greater ambition in mitigation, adaptation and financing to face the climate crisis.*"⁹

In conclusion, it is **fairly clear** that political issues will prevail in the 2020 Chilean agenda, and climate - environmental issues will have regrettably a secondary place. Nevertheless, politics will pass over the years, but the climate change is here to stay.

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⁸ Source: BBC. <https://www.bbc.com/mundo/noticias-internacional-50800493>

⁹ Source: Noticias de las Naciones Unidas. <https://news.un.org/es/story/2019/12/1466671>