

Environment

in 27 jurisdictions worldwide

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Peru

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Legislation

1 Main environmental regulations

What are the main statutes and regulations relating to the environment?

Five of the main laws relating to the environment control and protection are the 1997 Natural Resources Sustainable Use Act, the 2005 Environmental General Act, the 2009 Water Act, the 1997 Health Act, and the 2000 Solid Waste Act. These laws, among others, follow the provisions of the Peruvian Constitution, which recognises the right of every person to enjoy a clean environment. This constitutional right also comes with remedies that allow each citizen to seek environmental protection measures.

The Environmental General Act (Law 28611 of 15 October 2005), which provides the environmental legal framework in Peru, establishes a comprehensive regulatory structure and contains general rules and principles of environmental policy that shall be considered as minimum standards for all activities. Based on the Environmental General Act, each ministry enacts environmental regulations applicable to activities under its jurisdiction (such as mining, oil and gas, manufacturing industries and fisheries). Following national environmental policy, the regional and local governments (municipalities) also regulate the activities developed within their jurisdiction.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

No. Other mechanisms, as the National System for Environmental Impact Assessment, may partially satisfy some needs left unattended by the lack of a system of integrated control of pollution. However, all industries within Peruvian territory shall comply with the environmental quality standard (EQS) and industry based maximum permissible level (MPL). The EQSs refer to the levels of concentration of physical, chemical and biological elements in the air, water and soil, that do not constitute a significant risk to human health or to the environment. The MPLs are measures of concentrations of physical, chemical and biological elements in the air, water and soil that characterise a discharge or emission to the environment. Both of them ensure that the 'carrying capacity' of ecosystems is not exceeded. According to the National Regulations for the Approval of EQSs and MPLs, lack of environmental standards allows the government agencies to use foreign standards. The brand new Ministry of the Environment is now leading the process of EQS and MPL approval.

3 Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

There is a general prohibition on soil pollution in the 1997 Health Act. However, unlike water, there is no specific law applicable to soil pollution, and no EQS and no MPL have been established yet.

However, non-binding industry-based guidelines for soil protection have been published by the government. Such is the case with the Guidelines for Soil Remediation in Oil Refining, which includes soil evaluation and clean up criteria.

4 Regulation of waste

What types of waste are regulated and how?

According to the 2000 Solid Waste Act, waste is defined as any substance, product or by-product, in a solid or semi-solid state, that the generator is obliged to dispose of by mandate of the law or because of the risks that it represents to human health or to the environment. On the other hand, hazardous waste is defined as elements, substances, components or mixtures that represent a risk to human health, to the environment and to natural resources because of their corrosive, reactive, explosive, toxic and inflammable or biological-infectious characteristics.

Solid waste is classified into eight types. Some of them managed by the municipalities (such as domestic or commercial waste) and others managed by the industry itself (industry waste), including hazardous waste.

The generator of industry waste is considered liable for its adequate treatment and disposal. Therefore, the Solid Waste Act establishes that the generator shall implement a solid waste management plan, submit a waste management declaration each year, and hire a solid waste management service provider for waste treatment, storage, and final disposal. In the case of hazardous waste, the generator will also have to sign a manifest for each movement of hazardous waste.

5 Regulation of air emissions

What are the main features of the rules governing air emissions?

Unlike water discharge, Peruvian environmental law does not require permits for air emissions. Instead, it has established industry based MPL for emissions, as well as EQS for air. Primary standards of air quality consider the maximum concentration of sulphur dioxide, particulate matter, carbon monoxide, nitrogen dioxide, ozone, lead and hydrogen sulphide. The Directorate General for Environmental Health (DIGESA), within the Ministry of Health, is the agency in charge of the monitoring of air quality.

6 Climate change

Are there any specific provisions relating to climate change?

Peru has ratified the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, but is not an annex I country of UNFCCC; therefore it does not have an emissions reduction target. However, Peru participates in the carbon market created by the Kyoto Protocol through the clean development mechanism (CDM). The Peruvian designated national authority is the Ministry of Environment, which evaluates and approves each CDM project at

the national level. Peru is ranked among the top 10 places to invest in CDM projects, being an excellent opportunity for annex I countries to buy credits.

There is no 'cap-and-trade' system in force in Peru, and this is not one of the aims of the Ministry of the Environment at present.

7 Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

EQS for fresh water and seawater have been established based on the type of use of the water body, and all discharges to water bodies (sea, rivers, lakes, wetlands, etc) require a prior treatment-and-discharge authorisation from the National Water Authority (ANA), a new agency created in 2008.

There are no property rights over water. Water use rights are granted through authorisations issued by ANA, and the criteria for granting water rights consider the interest of the public.

8 Protection of natural spaces

What are the main features of the rules protecting natural spaces?

Natural spaces are classified as follows: productive forests; forests for future use; forests in protected lands; forests in native and indigenous communities; local forests; dry forests from the coast; forests on land that is private property; and protected natural areas (PNA). Depending on the type of forest or area, the agencies grant different permits for different uses.

Access to natural resources within the PNA, which are considered national heritage, is limited, depending on the category of each PNA. Therefore, PNA are classified as areas for 'indirect use' and areas for 'direct use'. The former are established for preservation purposes, as well as for scientific and recreational purposes. The areas for 'direct use' allow exploitation of natural resources, as long as these activities are in accordance with the objectives of the creation of the corresponding PNA.

Certain wetlands are also protected, since Peru is signatory to the RAMSAR Convention, which promotes the conservation and wise use of wetlands. Peru contributes with 13 RAMSAR wetlands, most of them also declared PNAs.

9 Protection of flora and fauna

What are the main features of the rules protecting flora and fauna species?

Since 1975 Peru has been part of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The national authority for CITES is the Ministry of Agriculture and the South American Camelidae National Council (CONACS) for the wild South American camelidae in particular. Peru is also signatory to the Convention on Biological Diversity and has been part of the Cartagena Protocol since 2004.

At the national level, Peru has enacted the Forest and Wildlife Act which regulates the protection of species and habitats imposing different measures, such as forbidding hunting or establishing hunting calendars, and banning commercialisation of certain species. Ministry of Agriculture classifies wild fauna and flora, depending on the degree of threat and on their commercial or non-commercial purposes, providing different permits to manage those species.

The Conservation and Sustainable Use of Biological Diversity Act promotes the conservation of ecosystems, species and genetic diversity, and encourage the transfer of technology.

10 Noise, odours and vibrations

What are the main features of the rules governing noises, odours and vibrations?

The Peruvian Civil Code forbids that any smoke, noise, vibration or similar nuisances exceed mutual tolerance between neighbours. And, according to the Environmental General Act, the ministries are in charge of regulating noise and vibrations within industry locations. However, municipalities are responsible for regulating outdoor noise. The Regulation for National Standards for Noise establishes noise levels based on the type of urban zones (residential, commercial or industrial zones).

In the case of odours, there are no specific regulations; the only attempt to regulate odours is the Regulation for Environmental Protection in Hydrocarbon Activities, which considers maximum permissible levels. In the same way, except for certain industries, vibrations have not been regulated.

11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

Yes. According to the Environmental General Act, an environmental damage is a material detriment to the environment or some of its components that generates current or potential negative effects. Regardless of the existence of an environmental damage (which triggers civil and criminal liability), in the case of the infringement of an environmental regulation, administrative liability applies.

Under the General Administrative Procedures Act, a five-year statute of limitation applies to administrative liability, term that starts at the moment the violation ends. Bearing in mind that environmental damage may be continuous, the five-year statute of limitation may extend indefinitely.

Given the nature of environmental damages and the impact that it may have on third parties, civil liability is covered through the Civil Code rules of non-contractual liability (a concept applicable to those cases where the action that caused the damage is not the result of an agreement or contract entered into between two or more parties). Non-contractual liability is regulated under two different approaches that are not clearly differentiated. However, they can be defined as follows: a liability based on malicious or negligent actions; and a 'strict liability', applicable to hazardous or dangerous assets and activities. A two-year statute of limitation applies to environmental actions under the Civil Code. The two-year term starts at the moment the damage is initially caused or when the affected party becomes aware of it. Considering that environmental damage may be continuous, the two-year term may be extended indefinitely.

The Criminal Code also includes a chapter that specifically deals with environmental offences, which require not only a current or potential environmental damage, but also the violation of a regulation and a wilful conduct.

12 Environmental taxes

Is there any type of environmental tax?

The Peruvian tax regime does not include environmental taxes or tax incentives.

Hazardous activities and substances

13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

All projects that may pose a threat to the environment must obtain the approval of an environmental impact statement prior to the operation stage, including hazardous activities. For example, mining and oil and gas activities constitute hazardous activities and require the prior approval of their environmental Impact statement. However, besides obtaining an environmental certificate, companies will have

to comply with environmental and health and safety regulations that are specific to those activities.

The agencies that have the power to control hazardous activities are each Ministry on an industry based jurisdiction. For example: Ministry of Energy and Mines, Ministry of Agriculture, Ministry of Production (includes manufacturing Industries and fisheries), Ministry of Transport and Construction, among others.

14 Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

Except for transportation, there is no framework law governing hazardous substances and products. However, specific sets of regulations apply for radioactive materials, explosives, substances that may be used for the production cocaine, and agrochemicals. The Environmental General Act establishes that companies handling hazardous products or substances shall follow appropriate standards to prevent, control and mitigate any possible negative environmental impact.

The Act for the Land Transportation of Hazardous Materials and Waste, and its 2008 regulations, govern the transportation of hazardous products and substances.

Industrial accidents

15 Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

The 2005 Contingency Plans Act establishes that every company shall produce a contingency plan that must be approved by its corresponding ministry. These plans should be made according to the guidelines issued by the National Institute of Civil Defence to prevent and reduce the risk of emergencies, and decrease or minimise the damage, number of victims and losses that can occur as a consequence of natural or technological phenomena or industrial production. Likewise, the Ministry of Labour has enacted a regulation mandating that all economic activity shall produce their own individual rules on occupational health and safety.

Environmental aspects in transactions

16 Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

It varies depending on the industry related to the M&A transaction. Transactions over urban manufacturing industry sites may impose less risk than transactions over rural mining sites. However, groundwater issues and soil issues are the main environmental aspects to consider. A base line study is needed to allocate liability between the parties; however, enforcement agencies do not take into consideration those contractual obligations between the parties. Compliance with environmental regulations is needed, but also compliance with the commitments agreed on the environmental impact statement, if any.

17 Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

A representation and warranty stating that the goods are environmentally clean is needed for the benefit of the buyer. Nevertheless, the buyer should conduct its own due diligence to discover any environmental contingency that may affect the price initially agreed. If environmental liability is discovered, the seller shall be committed to clean up; if not, the buyer will acquire the liability which will be enforced by the corresponding environmental agencies. Question 16 is also applicable.

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

All industrial and commercial activities, as well as government projects, programmes and plans are subject to environmental assessments, through the Environmental Assessment National System, which is ruled by the Ministry of the Environment and executed by each ministry. The environmental assessments may end with the granting of the environmental certificate, which acts as a licence. However, once approved, the project proponent shall obtain all the other necessary environmental permits that may apply to its activities.

19 Environmental assessment process

What are the main steps of the environmental assessment process?

First, a summary of the activities and terms of reference shall be presented before the corresponding ministry for a preliminary evaluation to determine if such activities require an environmental declaration or a semi-detailed or detailed environmental impact assessment. The EIA shall be conducted by an independent consultant company registered before the corresponding ministry. A public consultation period is always included within the evaluation phase of an environmental impact assessment, and any third party may participate and provide comments. Considering all this input, the corresponding ministry shall issue the environmental certification. The environmental impact assessment includes a description of the activities that would be performed and its area of influence; the identification and classification of the environmental impact along the whole cycle of the project; the environmental management strategy including the management plan, a contingency plan, a compensation plan and an abandonment plan if required; as well as community participation plan.

Regulatory authorities

20 Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

The Ministry of the Environment is the national environmental agency, being responsible for the development of environmental regulations and an efficient compliance mechanism. However it is not empowered to prosecute or enforce the law. On the other hand, each ministry is the enforcing agency for its respective jurisdiction (industry based jurisdiction).

21 Investigation

What are the typical steps in an investigation?

There is no uniform procedure for environmental investigation. However, each ministry manages its own environmental control system, and by means of this system there can be periodic on-site inspections, environmental audits, etc.

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

They can request all relevant information that is not protected by law (industrial secrets, for example), take samples, get access to the sites, interview company officials, impose corrective measures to stop the violation, among other actions that may be needed, even those that may need the support of the police.

Update and trends

The creation of the Ministry of the Environment in 2008 has triggered several modifications within the administration, including the granting of water rights, wastewater discharge permits, rights of access to biodiversity, among other matters. The approval of soil quality standards and industry-based maximum permissible levels are coming up. However, the strengthening of environmental enforcement and the changes to the environmental impact assessment process within the ministries are clearly hot topics right now.

23 Administrative decisions

What is the procedure for making administrative decisions?

Administrative decisions are ruled by the Administrative Procedures Act. The process may be initiated by the administration itself or by a third party. There is not a single administrative decision procedure common to all agencies. In decisions involving environmental matters, a public hearing shall be held to reach a valid decision.

24 Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

Sanctions can vary from coercive measures, such as warnings, fines and suspension of activities, to corrective measures, such as training courses to comply with environmental obligations; as well as compensatory measures and measures to mitigate environmental damage, among others. It is important to point out that to be enforceable, sanctions should be established by a law, not a regulation.

25 Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

There are two ways of challenging a decision within the administration: a reconsideration process, which would take place when there is new evidence for the decision; and an appeal process, which takes place when there is a new interpretation of the evidence or there are issues of law. The final decision of the administration may be challenged before the judiciary.

Judicial proceedings**26 Judicial proceedings**

Are environmental law proceedings in court civil, criminal or both?

Depending on the type of violation and the consequences of the damage, environmental law proceedings may be in both civil and criminal courts.

27 Powers of courts

What are the powers of courts in relation to infringements and breaches of environmental law?

Besides the coercive and corrective measures that the courts may impose (payments or imprisonment), and depending on the damage to the environment, the courts can order an injunctive measure to avoid more damage to the environment. These measures could be adopted in civil or criminal courts. For example, one of the injunctive measures could be the temporary or total closure of an industrial facility or the suspension of activities.

28 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

Yes, but an environmental damage should have occurred, regardless of its consequences. A complete different legal scenario exists for criminal and administrative liability.

29 Defences and indemnities

What defences or indemnities are available?

The Civil Procedure Code has established procedural defences that can be submitted. They include, among others: pending decision by the Administration; lack of standing; as well as the two-year statute of limitation for non-contractual civil liability.

30 Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

In environmental law, there is no specific regulation covering defences in the case of directors' and officers' liability. Besides the procedural defences outlined in the previous question, the only defences for civil and criminal liability of directors, managers, founders, shareholders, etc, of a company are included in the Corporations General Act.

31 Appeal process

What is the appeal process from trials?

An appeal may proceed against a court's decision when the defendant indicates the factual or legal errors in the resolution. The appeal will be presented to a superior court and it may suspend the effects of the decision, which means that the resolution of the inferior court will not take effect until the superior court issues its decision.

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International treaties and institutions

32 International treaties

Is your country a contracting state to any international environmental treaties, etc?

Peru has signed and ratified several international environmental treaties, binding itself to preserve and conserve the nation's environmental, natural and cultural heritage.

Some of the most relevant treaties are: the Convention on Biological Diversity; the UN Framework Convention on Climate Change; the Vienna Convention for the protection of the ozone layer and Montreal Protocol; the Convention for the Protection of Flora, Fauna and Natural Scenic Beauty in the American Countries; the Conven-

tion on International Trade in Endangered Species of Wild Fauna and Flora; the RAMSAR Convention on Wetlands; the Antarctic Treaty; the UNESCO Convention of Paris; the Basel Convention on the control of transborder movements of hazardous wastes and their deposit, among others.

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

According to the Peruvian Constitution, international treaties are incorporated into national legislation with legal status. The government signs the treaty, and the parliament ratifies it, incorporating it to the national legal system. However, there is not always an immediate and direct relationship between a treaty and regulatory policies.



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