



Environment

in 21 jurisdictions worldwide

Contributing editor: Carlos de Miguel

2014



Published by
Getting the Deal Through
in association with:

Atsumi & Sakai

Attorneys at Law Borenus Ltd

Bech-Bruun

Beveridge & Diamond, PC

Blum&Grob Attorneys at Law Ltd

Divjak, Topić & Bahtijarević Law Firm

Estudio Bec

Ganado Advocates

Grandway Law Offices

King & Spalding

Lexcorp Abogados

Makarim & Taira S

Philippi, Yarrázaval, Pulido & Brunner

Posse Herrera Ruiz

Quiroz Santroni – Abogados Consultores

Siqueira Castro – Advogados

Torys LLP

Travers Smith LLP

Uría Menéndez

Uría Menéndez – Proença de Carvalho

Wierciński, Kwieciński, Baehr sp. k.

Environment 2014

Contributing editor

Carlos de Miguel, Uría Menéndez

Publisher

Gideon Robertson

Business development managers

Alan Lee
George Ingledew
Dan White

Account manager

Megan Friedman

Trainee account managers

Cady Atkinson
Joseph Rush
Dominique Destrée
Emma Chowdhury

Media coordinator

Parween Bains

Administrative coordinator

Sophie Hickey

Trainee research coordinator

Robin Synnot

Marketing manager (subscriptions)

Rachel Nurse
subscriptions@gettingthedealthrough.com

Head of editorial production

Adam Myers

Production coordinator

Lydia Gerges

Senior production editor

Jonathan Cowie

Production editor

John Harris

Subeditor

Davet Hyland

Director

Callum Campbell

Managing director

Richard Davey

Environment 2014

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

© Law Business Research Ltd 2013
No photocopying: copyright licences
do not apply.

First published 2006

Eighth edition 2013

ISSN 1752-8798

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of November 2013, be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Argentina Horacio J Franco <i>Estudio Bec</i>	3
Brazil Simone Paschoal Nogueira, Adriana Coli Pedreira and Marina Vieira Freire <i>Siqueira Castro – Advogados</i>	11
Canada Michael Fortier <i>Torys LLP</i>	16
Chile Juan José Eyzaguirre and Mario Mozó <i>Philippi, Yrarrázaval, Pulido & Brunner</i>	23
China Wang Jihong, Shi Jie, Jiang Jie, Wu Anjing and Miao Juan <i>Grandway Law Offices</i>	29
Colombia Álvaro J Rodríguez and María C Visbal <i>Posse Herrera Ruiz</i>	35
Croatia Vanesa Vujanić, Tena Tomek and Petar Živković <i>Divjak, Topić & Bahtijarević Law Firm</i>	42
Denmark Håkun Djurhuus and Anne Sophie K Vilsbøll <i>Bech-Bruun</i>	48
Dominican Republic Romina Santroni and Jóribe Castillo <i>Quiroz Santroni – Abogados Consultores</i>	56
Finland Casper Herler and Marius af Schultén <i>Attorneys at Law Borenus Ltd</i>	62
Indonesia Alexandra Gerungan and Joseph Hendrik <i>Makarim & Taira S</i>	70
Japan Akiko Monden, Rieko Sasaki and Sachiko Sugawara <i>Atsumi & Sakai</i>	76
Malta Jotham Scerri-Diacono, Annalise Caruana and Lara Pace <i>Ganado Advocates</i>	83
Mexico Sergio B Bustamante and Jose Luis Rendon <i>Lexcorp Abogados</i>	95
Poland Siergiusz Urban <i>Wierciński, Kwieciński, Baehr sp.k.</i>	104
Portugal João Louro e Costa <i>Uría Menéndez – Proença de Carvalho</i>	110
Russia Iliia Rachkov <i>King & Spalding</i>	118
Spain Carlos de Miguel Perales and Jesús Andrés Sedano Lorenzo <i>Uría Menéndez</i>	125
Switzerland Stefan Wehrenberg and Annina Trüssel <i>Blum&Grob Attorneys at Law Ltd</i>	131
United Kingdom Douglas Bryden, Owen Lomas, Carl Boeuf and James Nierinck <i>Travers Smith LLP</i>	137
United States Donald J Patterson Jr and Holly Cannon <i>Beveridge & Diamond, PC</i>	147

Switzerland

Stefan Wehrenberg and Annina Trüssel

Blum&Grob Attorneys at Law Ltd

Legislation

1 Main environmental regulations

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

Switzerland is a federal state made up of 26 cantons. There is a division of competence between the confederation and the individual states. The cantons have – according to article 3 of the Federal Constitution of the Swiss Confederation (Federal Constitution; SR 101) – full legislative competence in all matters that are not expressly assigned to the federation by the Constitution. According to article 74 of the Federal Constitution the federation shall legislate on the protection of the population and its natural environment against damage or nuisance. It shall ensure that such damage or nuisance is avoided. The cantons on the other hand shall be responsible for the implementation of the relevant federal regulations.

Environment regulation in Switzerland consists of a number of Swiss acts. The main laws regarding the environment are:

- Federal Constitution (SR 101);
- Environmental Protection Act (EPA; SR 814.01);
- Water Protection Act (WPA; SR 814.20);
- Forest Act (ForA; SR 921.0);
- Federal Act on the Protection of Nature and Cultural Heritage (NCHA; SR 451); and
- CO2 Act (SR 641.71).

The respective principles are further developed and implemented in different regulations and implementing decrees by the federation and by the cantons.

The most important act in respect of environmental protection is the Swiss Environmental Protection Act (EPA), which unites all the key areas of process and environmental protection engineering and includes enforcement tools. The EPA is not limited to pollution control. Its purpose according to article 1 EPA is ‘to protect people, animals and plants, their biological communities and habitats against harmful effects or nuisances and to preserve the natural foundations of life sustainably, in particular biological diversity and the fertility of the soil’. In addition, it should also promote ways of living more harmoniously with the rules of nature and natural cycles.

Finally, Switzerland pursues an active and successful international environmental policy. The Federal Office for the Environment is the lead agency and centre of expertise responsible for Switzerland’s international environmental policy.

Switzerland’s commitment to the protection and sustainable management of natural resources at the international level is mandated by the Constitution. This reflects the fact that, in many sectors, effective environmental protection can only be achieved through international cooperation. Protection and sustainable management of natural resources are fundamental requirements for a sustainable development, the achievement of the Millennium Development Goals and human welfare in general.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

In accordance with article 74 of the Swiss Constitution there is a constitutional obligation for the confederation and the cantons to legislate on the protection of the population and its natural environment against damage or nuisance. This legislation shall ensure that such damage or nuisance is avoided.

Environmental provisions on pollution prevention and control are – in addition to the EPA – spread over a significant number of laws and regulations.

For example, for the prevention of water pollution there is the Water Protection Act. Each area of environmental pollution prevention is regulated by different acts and ordinances supervised by the federation.

3 Soil pollution

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

The Swiss Environmental Protection Act and the Swiss Ordinance on the Pollution of Soil (SR 814.12) provide the legislative basis for the protection of soil in Switzerland. According to the ordinance the soil must be treated during cultivation or construction in a way that does not cause any lasting damage. Therefore the federal government and cantons have developed a series of instruments and precautionary measures in cooperation with the construction, agriculture and forestry sectors.

These precautionary measures are also a priority in the area of chemical soil protection. The implementation of a wide range of measures over the past 20 years has already resulted in a noticeable reduction in contaminant inputs, especially in the case of inorganic substances. Finally, the cantons are obliged in the context of spatial planning to protect crop rotation areas and to conserve defined minimum areas.

4 Regulation of waste

What types of waste are regulated and how?

The principles of waste regulation are statutorily regulated by article 30 et seq EPA. Waste is, as defined in article 7 paragraph 6, ‘any moveable material disposed of by its holder or the disposal of which is required in the public interest’. Disposal of waste includes its recovery or deposit in a landfill as well as the preliminary stages of collection, transport, storage and treatment. Treatment is any physical, chemical or biological modification of waste (article 7 paragraph 6bis).

Furthermore, the cantons draw up a waste management plan. In particular, they establish their requirements for waste disposal facilities, avoid over-capacity and decide on the sites for the waste disposal facilities.

Finally, Switzerland has a well-developed network of waste management facilities. Virtually every region possesses the infrastructure required in order to dispose of its own wastes. This helps to minimise transport costs and vehicle emissions. In this connection Switzerland regulates different waste treatment processes for the following topics: municipal solid waste incineration, land filling, recycling and incineration in cement works.

5 Regulation of air emissions

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

The EPA obliges the federal authorities and cantons to protect human beings, fauna and flora from air pollutants that are harmful or cause nuisance. The corresponding precautionary principle is that emissions must be limited as far as operationally and technologically feasible and economically viable.

Furthermore, the precautionary principle applies, according to which the generator of the emissions must bear the costs arising from their limitation.

Since the creation of the Ordinance on Air Pollution Control (SR 814.318.142.1) federal authorities, cantons and communities have established a large number of measures to counteract air pollution. There are strict emission rules for combustion installations, motor vehicles, industrial facilities and quality standards for heating and motor fuels. Moreover, the measures introduced include the mileage-related heavy vehicle tax and the incentive tax on volatile organic compounds.

Finally, the Federal Council revised its Air Pollution Control Strategy in September 2009 by creating options for the introduction of financial incentives for the cleanest vehicles and machines. In addition, the limit values for emissions from stationary sources like combustion installations, industry and agriculture must be reassessed.

Against this background Switzerland aims to support the introduction of ambitious emission limit values based on best available techniques at international level. The success of measures implemented in agriculture for the reduction of ammonia levels is monitored in cooperation with the cantons.

6 Climate change

Are there any specific provisions relating to climate change?

Switzerland ratified the United Nations Framework Convention on Climate Change of 9 May 1992 and the Kyoto Protocol to the United Nations Framework Convention on Climate Change of 11 December 1997.

To reduce the influence of human activity on the climate, the emission of greenhouse gases must be reduced. Switzerland's total greenhouse gas emissions as defined by Kyoto Protocol have remained more or less constant since 1990. In 2010 the federal authorities and cantons launched a new programme concerning buildings, which replaced that carried out by the Climate Cent Foundation, a voluntary initiative of the Swiss companies. In this context a maximum of 200 million Swiss francs per year of the income from the CO₂ tax on heating fuel is being made available for the implementation of CO₂-reduction measures in buildings. An additional 80 million to 100 million Swiss francs is to be added annually by the cantons.

The Swiss government also places a high priority on adaptation to climate change and developed a national adaptation strategy by the end of 2011. The legal framework for Switzerland's climate policy from 2013 to 2020, the revised CO₂ Act and the associated CO₂ Ordinance of the Federal Council entered into force on 1 January 2013. They substantiate the design of the individual policy instruments and set out the goals and measures from 2013 to 2020. The main objective of the strategy is to coordinate adaptation to climate change throughout Switzerland, avoid duplication, exploit synergies and optimise the use of available resources.

With the comprehensive revision of the CO₂ Act Switzerland has set an ambitious target, particularly the reduction of domestic greenhouse gas emissions by 2020 by at least 20 per cent in comparison with 1990. To achieve this goal, a reduction in greenhouse gas emissions of 10.5 million tonnes by 2020 is required.

Switzerland failed to meet its target for CO₂ reductions in 2012. The CO₂ levy will therefore be raised from 36 to 60 Swiss francs per tonne in 2014. The mechanism to increase the CO₂ levy is based on the CO₂ Act and should help to achieve statutory CO₂ emission targets and to wean Switzerland off its dependence on fossil fuels.

7 Protection of fresh water and seawater

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

According to article 76 of the Federal Constitution the confederation ensures within the scope of its powers the economic use and the protection of water resources and provides protection against the harmful effects of water. The confederation lays down principles on the conservation and exploitation of water resources, the use of water for the production of energy and for cooling purposes, as well as on other measures affecting the water cycle. It shall legislate on water protection, on ensuring appropriate residual flow, on hydraulic engineering and the safety of dams, and on measures that influence precipitation. The cantons shall manage their water resources. They may levy charges for the use of water, subject to the limits imposed by federal legislation.

The confederation, in consultation with the cantons concerned, shall decide on the access to international water resources and the charges for them. In general fresh water and seawater are in public ownership.

The protection of surface and ground waters are regulated by the Water Protection Act (WPA) and further ordinances. The WPA contains provisions on water quality and water-flow regimes, as well as a provision of adequate space for surface waters. In early 2011 amendments to the WPA, the Hydraulic Act (SR 721.100), the Engineering Act (SR 730.0) and the Act on Agriculture Land Rights (SR 211.412.11) entered into force.

With the remediation of watercourses their natural functions are to be restored and the benefits they provide to the society enhanced. Furthermore, the major negative impacts of hydropower generation on the environment are to be mitigated.

8 Protection of natural spaces and landscapes

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

The protection of natural and cultural heritage is the responsibility of the cantons. This has been done in different ways: the protection of nature is often contained in legislation dealing with land-use planning and construction, in the laws on environment or in special acts dealing with surveys, parks and protected habitats.

In the fulfilment of its duties, the confederation takes account of concerns for the protection of natural and cultural heritage. It protects the countryside and places of natural or cultural interests; it preserves such places intact if required to do so in the public interest. The Federal Protection of Nature and Landscape Act draws a distinction between sites that are 'of national importance' and those that are of 'cantonal importance'.

Moors and wetlands of special beauty and national importance are preserved. No buildings may be built on them and no changes may be made to the land, except for the construction of facilities that serve the protection of the moors or wetlands.

Private rights may be affected as the confederation may support efforts made for the protection of natural and cultural heritage and acquires or preserves properties of national importance by contract or through compulsory purchase.

9 Protection of flora and fauna species

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

The Federal Constitution and mainly the Federal Act on Nature and Cultural Heritage Protection (NCHA) oblige Switzerland to preserve the biological diversity of its domestic flora and fauna and their natural living environment. Approximately 36 per cent of the domestic animal, plant and fungus species in Switzerland are considered threatened. The legislation aims at preserving biotopes large enough to prevent extinction of domestic animal and plant species.

In order to measure and track the condition of flora and fauna there are several means. Red lists identify the degree of the threat for various animal, plant and fungus species. Moreover, Biodiversity Monitoring Switzerland (BDM) observes the condition and development of biodiversity in Switzerland. It implements one of the duties of the Rio Convention according to which the member states are committed to studying and monitoring biodiversity in their country and to taking measures in the case of loss.

By-laws rule in detail the flora and fauna deserving protection on a federal level. As a consequence, there exists a list of living environment deserving protection, a list of protected plants, a list of protected animals and a list providing which species are to be protected on a cantonal (instead of a federal) level.

10 Noise, odours and vibrations

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

The implementing authorities are on the cantonal level. Planning measures are generally taken by cantons. They have to take into account noise-related conditions and set 'degrees of sensitivity'.

Noise and vibrations are subject to the general provisions of the EPA. They are subject to the system of limitation that aims, first, to prevent nuisances and then to reduce them, whenever the effect on the environment is harmful despite prevention measures. This two-level intervention system is basic for air pollution and noise. But the EPA contains additional provisions increasing the prevention of noise through planning measures and dealing with unavoidable noise through construction measures intended to protect existing or future buildings.

The implementing decree of the overall system related to noise, in particular the Ordinance on Noise Protection (SR 814.41), sets the noise levels referred to in the EPA. Various limits to noise are defined:

Degree of sensitivity	Value of planning		Value of emission limit		Alarm value	
	day	night	day	night	day	night
I recuperation	50	40	55	45	65	60
II habitation	55	45	60	50	70	65
III habitation/business	60	50	65	55	70	65
IV industry	65	55	70	60	75	70

11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

Actual environmental damage (eg, the killing of wildlife) must be compensated only if a statute specifically orders it. Thus, environmental damage today is to be compensated only within the scope of the Federal Act on Genetic Engineering and when particularly dangerous factories or facilities and pathogenic organisms are concerned, but not when the environmental damage is caused by other incidents (eg, otherwise damaged product or a car accident).

Whoever wilfully or negligently damages the environment is obliged to provide compensation (liability in tort). A strict liability penalises the owner of a factory or a stationary or moving facility

if a special danger with regards to bodies of water emanates from such.

In addition to the liability under private law the duty of a disrupter, established in public law, has to be taken into account. Such law provides for the removal of damage done respectively for compensation for costs of public execution by substitution.

The Swiss Federal Supreme Court has supported environmental damages in the amount up to which the local community is faced with costs for the removal of the environmental detriment. According to the jurisdiction, commercialisation, that is disparaging damage, is also to be compensated, provided, however, that such damage is substantiated (eg, by proving that, as a result, fewer fishing licences are issued).

Apart from that, certain acts of environmental damage are criminally prosecuted (eg, contamination of bodies of water or potable water; putting into circulation a substance harmful to the environment).

12 Environmental taxes

Is there any type of environmental tax?

In Switzerland taxes on certain products have been raised to protect the environment. The goal is to guide the behaviour of the people to use products that are less harmful to the environment. This particularly concerns the following taxes:

- performance-related heavy vehicle fee;
- petroleum tax;
- vehicle tax; and
- CO2 fee.

Hazardous activities and substances

13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

The handling and use of 'hazardous products' and 'hazardous substances' are called hazardous activities. The handling or use of such substances and products is only allowed if either an appropriate licence was submitted or the activity is supervised by a person with such a licence. To receive such a licence a specific test has to be taken. In particular the use and handling of chemical substances are subject to strict rules.

14 Regulation of hazardous products and substances

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

Products and substances are defined as 'hazardous products' and 'hazardous substances' if they have the potential to harm humans or nature. Such products and substances are only marketable if various safety precautions are taken.

Industrial accidents

15 Industrial accidents

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

Major accidents can arise through the operation of facilities with chemical and biological hazard potentials and in the transportation of hazardous substances. The Major Accidents Ordinance (SR 814.012) obliges the owner of facilities to take all appropriate measures to reduce the risk of an accident. To these belong measures that reduce the hazard potential, prevent major accidents and limit their impacts. In accordance with the EPA the responsibility for the implementation of preventive safety measures lies with the owners of the facilities.

Personal responsibility means that the necessary measures must be taken without their implementation being ordered by the authorities. Furthermore, the cantonal and federal authorities monitor the compliance by facilities with the requirements of the Major Accidents Ordinance through a control and assessment procedure.

Finally, the variety of the facilities and the need to be prepared for rare events and consequences requires intensive inter-cantonal and international cooperation.

Environmental aspects in transactions

16 Environmental aspects in M&A transactions

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

Environmental aspects in merger and acquisitions are particularly relevant in the context of due diligence. An important issue in M&A transactions is pollution of the environment caused by business operations of the target company. Environmental questions detected in the due diligence process may be a reason to decide between an asset deal or a share deal.

In the course of the due diligence the contracting parties should check the environmental requirements, such as dangerous substances and waste storage, licences and authorisations. Moreover, attention should be paid to whether future operations of the target may be limited by protective areas (eg, protected natural spaces).

In this context it is highly recommended to undertake legal and environmental due diligence. Furthermore, it is absolutely essential to use conditions precedent and warranties and contractual liabilities in the contracts.

17 Environmental aspects in other transactions

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

The environmental aspects to consider in mergers and acquisitions also apply to a wide variety of transactions. The issues relating to other types of transaction are similar to those relating to share deals and asset deals.

If real estate or similar assets are part of the contract, due diligence of soil pollution and planning issues will be of particular interest. In transactions regarding financial projects, corporate restructuring and bankruptcy proceedings, environmental due diligence will be similar to that in M&A transactions.

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

The regulations of the environmental impact assessment are spread over a significant number of laws and regulations. The most important acts in respect of environmental assessment are the EPA and the Ordinance on the environmental impact assessment (SR 814.011). In accordance with article 10a, paragraph 2 of the EPA the requirement of an environmental impact assessment applies to installations that could cause substantial pollution to environmental areas to the extent that it is probable that compliance with regulations on environmental protection can only be ensured through measures specific to the project or site.

The Federal Council designates the types of installation that are subject to an environmental impact assessment as listed in the annex of the Ordinance on the environmental impact assessment. The following types of installation are subject to environmental impact assessment: installation in connection with traffic, energy, hydraulic engineering and disposal as well as military installation, facilities in connection with sports and tourism and industrial installations.

19 Environmental assessment process

What are the main steps of the environmental assessment process?

The approval procedure is regulated in article 10b et seq of the EPA. The main steps of the environmental assessment process are as follows.

The applicant who wishes to plan, construct or modify an installation that is subject to an environmental impact assessment must submit an environmental impact report to the competent authority. This forms the basis for the environmental impact assessment.

The report contains all the information required to assess the project in accordance with the environmental protection regulations. It is drawn up in accordance with the guidelines issued by the environmental protection agencies and includes the following:

- the existing condition;
- the project, including proposed measures for the protection of the environment and in the event of disaster; and
- the foreseeable residual environmental impact.

In order to prepare for the report, a preliminary investigation is carried out. If the preliminary investigation conclusively ascertains the effects on the environment and the environmental protection measures required, the results of the preliminary investigation are to be reported.

The competent authority may request information or further clarification. It may call for expert reports. Before doing so, the authority must allow interested parties the opportunity to state their opinions.

The environmental protection agencies assess the preliminary investigation and the report and propose the measures required to the competent decision-making authority.

The competent authority must also consult the Federal Office for the Environment (the Federal Office) when the assessment concerns refineries, aluminium smelters, thermal power stations or large cooling towers. The Federal Council may extend the duty to consult to cover other installations.

Anyone may inspect the report and the results of the environmental impact assessment unless overriding public or private interests require secrecy. Trade and business secrets must be preserved in all cases.

Regulatory authorities

20 Regulatory authorities

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

As mentioned in question 1, there is a division of competence between the confederation and the individual cantons.

According to article 74 of the Federal Constitution the confederation legislates on the protection of the population and its natural environment against damage or nuisance. It ensures that such damage or nuisance is avoided. In general, the state authorities and municipal authorities are competent for executing environmental law at the federal level.

The Federal Office is the federal government's centre of environmental expertise and is part of the Federal Department of the Environment, Transport, Energy and Communication (DETEC). The Federal Office's four prime tasks are: knowing the facts regarding the environmental developments, preparing legislation, assisting with its implementation and representing Switzerland abroad.

At the cantonal level, the authorities are responsible for the implementation of the relevant regulations. Each canton has its own competent authority that is part of a department, for example of the Department of Construction or the Department for Environmental Protection. The cantons set up a specialist agency to consider environmental questions or designate existing public agencies to carry out this task. Finally, the communities implement the regulations at regional level.

21 Investigation

What are the typical steps in an investigation?

The kind of investigation carried out by the competent authority depends on the character of the breached environmental provisions. The control function includes prevention, current and follow-up measures.

Once the competent authority discovers an infringement of environment regulations it starts an investigation. Any person indicating an infringement of environmental regulations could also inform the competent authority.

Depending on the environmental topic the inspection is either the responsibility of the Federal Office of Environment or of the cantons. In most cases the inspections may be carried out by the competent authority at cantonal level. In accordance with article 43 of the EPA the enforcement authorities may also entrust public corporations or private entities with enforcement duties, and in particular with control and monitoring.

Inspections are especially conducted by the competent authority in industrial and commercial companies, in heating systems, in fuel depots or water supply facilities.

If any breach of a permit or an environmental law in general is discovered, the competent authority will issue prohibitions and orders requesting the operator to ensure that the involved company is operating in accordance with environmental legislation. In the worst-case scenario the authority can withdraw the required licence.

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

The regulatory powers of investigation are directed by the respective environmental regulations. In cases of breach of environmental law the authority can withdraw the required licences, indeed close down installations that are not operating in compliance with their corresponding permits.

Furthermore, the authority is allowed to make use of any direct enforcement. Finally, the authority has the competence to order that the work will be done by a substitute performance. The regulatory authority issues a decision, which can be challenged by the affected person.

23 Administrative decisions

What is the procedure for making administrative decisions?

The authorities are required to carry out administrative procedures appropriately and efficiently. Prior to the authority's decision, it must study the submitted documents. According to article 29 of the Swiss Constitution each party has the right to be heard.

Finally, parties who are legally affected by a decision of an authority have the right to appeal.

24 Sanctions and remedies

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

Article 60 et seq EPA regulates the sanctions that may be imposed in the context of a criminal proceeding. Any person who wilfully violates the regulations as listed in article 60 EPA shall be liable to a custodial sentence not exceeding three years or a monetary penalty. Furthermore, the EPA outlines in article 61 the liability in the case of contraventions to a fine not exceeding 20,000 Swiss francs. Moreover, the EPA regulates the consequences in the event of offences against the regulations on incentive taxes.

Additional sanctions and remedies are spread over a significant number of laws and regulations depending on the topic.

25 Appeal of regulators' decisions

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

Parties who are legally affected by a decision of an authority are generally entitled to appeal against decisions of the competent authority. Under certain conditions listed in article 55 EPA, environmental protection organisations have the right of appeal against rulings of the cantonal or federal authorities on the planning, construction or modification of installations for which an environmental impact assessment is required.

According to article 54 EPA appeal proceedings related to the EPA are governed by the general provisions on the administration of federal justice. The subject matter of the jurisdiction depends on the environmental topic. In general, there are two instances at cantonal level. The second instance usually renders the final administrative decision. If the appeal does not succeed, the appellant may file an action to the Federal Supreme Court of Switzerland. Decisions of a federal authority can generally be appealed to the Federal Administrative Court and after to the Federal Supreme Court.

Each action to the competent instance has to conclusively substantiate why the appealed decision is not in compliance with the corresponding regulation. At federal level, the grounds of appeal are limited to the infringement of the Constitution. The period for filing an appeal is in general 30 days after receiving the decision.

Judicial proceedings

26 Judicial proceedings

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

Action under civil liability is limited to the injured party, who must have suffered physical harm or economic loss. Environmental law does not contain many criminal offences subject to heavy penalties. However, they may play an important role in preventing environmental harm, when properly applied, insofar as most offences consist in creating specific dangers. The offender could therefore be prosecuted before actual harm was done to the environment. All decisions taken by cantonal bodies may be challenged either before the cantonal government or before an administrative court.

27 Powers of courts

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

There is a federal administration with services in charge of directly implementing some aspects of environmental law. Decisions taken by federal administrative bodies are subject to either hierarchical appeal or the Federal Supreme Court.

Cantons have their own administrative system. All decisions taken by cantonal bodies may be challenged either before the cantonal government or before an administrative court. For some particular problems, special committees of appeal are to be addressed in the first instance, while further appeal is to be made to the cantonal administrative court. In all cases, federal law makes it a duty for the cantons to provide for judicial review of administrative decisions. Government may in some cases be the superior administrative jurisdiction, but it will then be subject to appeal to the Federal Court, if applying federal law.

28 Civil claims

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

There are no special rules concerning the right to sue in environmental matters before civil courts. No special rule on damage caused to the environment has been enacted so far. Action under civil liability

Update and trends

The most important updates concerning environmental law trends and developments in Switzerland are as follows.

Switzerland has decided to cut greenhouse gas emissions by 20 per cent from 1990 levels by 2020. Every year, a third of the revenue generated by the CO2 tax (up to a maximum of 300 million Swiss francs) is spent on improving the energy efficiency of buildings, while the other two-thirds are redistributed to individuals and businesses. As Switzerland failed to meet its target for CO2 reductions in 2012, the CO2 levy will therefore be raised from 36 to 60 Swiss francs per tonne in 2014. Due to the levy increase in 2014 the building programme can profit by an estimated 260 million Swiss francs and an estimated 480 million Swiss francs can be redistributed to individuals and businesses. On the international stage, Switzerland is promoting integration with the European emissions trading system.

Furthermore Switzerland is calling for climate change adaptation in the developing world to be financed in ways that assign costs to emitters.

Efficient technologies, processes and products need to be harnessed to minimise environmental impacts while simultaneously boosting competitiveness. Acting on behalf of the Swiss Federal Council, the Federal Office of Environment delivers the fundamentals for putting Swiss industry on a resource-conserving track.

With the numerous economic and ecological functions of the soil, it is vital to human wellbeing. Switzerland strives to ensure that all these functions continue to be performed in order that Switzerland always has enough soil to serve all essential uses in the future.

In addition, the reduction of natural hazards is important. Therefore safety infrastructure needs to be maintained over long periods of time and adapted to changing circumstances.

is therefore limited to the injured party, who must have suffered physical harm or economic loss.

29 Defences and indemnities

What defences or indemnities are available?

Liability rules and compensation for environmental damage are subject to the general rules contained in the Swiss Code of Obligations (SR 220), which provides a legal basis for all liabilities in torts. Whoever acts in breach of a legal duty or in violation of the law has to compensate the damage caused by the faulty act. This includes both fault and negligence.

The terms of limitation, which are very short under Swiss law, are a reason for the limited efficiency of general liability rules in cases of damage due to pollution. The ordinary term of limitation for torts is one year after full knowledge of the author and of the amount of the damage. But when damage is caused by a single event it is in any case 10 years after this event.

30 Directors' or officers' defences

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

If the damage is caused by the operation of a plant belonging to a company, the law provides for its liability under the rules dealing with liability of management under the agency rules or liability of the employer for the employee's behaviour.

31 Appeal process

What is the appeal process from trials?

See questions 25 and 26.

International treaties and institutions

32 International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

Switzerland is party to several bilateral and multilateral agreements and treaties regarding cooperation on environmental matters with neighbouring states and several other countries, such as the United Nations Framework Convention on Climate Change and the Kyoto Protocol to the United Nations Framework Convention on Climate Change. Furthermore, Switzerland is engaged in spatial planning and has concluded several treaties, such as the Convention on the Protection of the Alps, the Ramsar Convention on Wetlands of International Importance and the Convention on the Protection of the World Cultural and Natural Heritage. Switzerland is also a party to the Washington Convention on International Trade in Endangered Species. Moreover, Switzerland has concluded several treaties regarding water engineering, water management and the protection of waters. Also, energy efficiency, ecological balance and air pollution control are subjects covered by international treaties to which Switzerland is a party.

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

As environmental law is not a formal set of laws, it is still difficult to indicate what falls within the concept and what does not. There is also a variety of federal legislation, as well as cantonal and municipal regulations. In addition, each of the acts is supplemented by one or more implementing decrees. In general, international treaties prevail over Swiss regulations.

Blum & Grob

ATTORNEYS AT LAW

Stefan Wehrenberg
Annina Trüssel

s.wehrenberg@blumgrob.ch
a.truessel@blumgrob.ch

Neumühlequai 6
PO Box 3954
8021 Zurich
Switzerland

Tel: +41 58 320 00 00
Fax: +41 58 320 00 01
www.blumgrob.ch

GETTING THE DEAL THROUGH®

Annual volumes published on:

Acquisition Finance
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Arbitration
Asset Recovery
Banking Regulation
Cartel Regulation
Climate Regulation
Construction
Copyright
Corporate Governance
Corporate Immigration
Data Protection and Privacy
Dispute Resolution
Dominance
e-Commerce
Electricity Regulation
Enforcement of Foreign
Judgments
Environment
Foreign Investment Review
Franchise
Gas Regulation
Insurance & Reinsurance
Intellectual Property &
Antitrust
Labour & Employment
Licensing
Life Sciences
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Private Antitrust Litigation
Private Client
Private Equity
Product Liability
Product Recall
Project Finance
Public Procurement
Real Estate
Restructuring & Insolvency
Right of Publicity
Securities Finance
Shipbuilding
Shipping
Tax Controversy
Tax on Inbound Investment
Telecoms and Media
Trade & Customs
Trademarks
Vertical Agreements



**For more information or to
purchase books, please visit:**
www.GettingTheDealThrough.com



Strategic research partners of
the ABA International section



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



The Official Research Partner of
the International Bar Association