

The International Comparative Legal Guide to:

# Environment Law 2008

A practical insight to cross-border Environment Law



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# Latvia

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## 1 Environmental Policy and its Enforcement

### 1.1 What is the basis of environmental policy in Latvia and which agencies/bodies administer and enforce environmental law?

The backbone of environmental policy in Latvia is set up by the **Environmental Protection Act** (*Vides aizsardzības likums*), which in general reflects the environmental protection approach adopted by the European Community. This legislative enactment provides following principles to be applied for the protection of environment either by legislators and executives in their decisions: sustainable development principle, “polluter pays” principle, precaution principle; prevention principle and assessment principle.

The main agencies and bodies supervised by the Ministry of Environment are the following:

- **State Environment Service** (*Valsts vides dienests*), which consists of eight regional **Environmental Boards** and the **Marine and Inland Waters Administration**. Those bodies perform environment control either in territory and waters of Latvia, which includes the grant of permits and licences for pollution emissions, waste management and activities with the chemicals.
- **Environment State Bureau** (*Vides parraudzības valsts birojs*), which performs the environmental impact assessment, environmental risk of industrial disasters assessment, as well activities in respect of pollution permits and management of packaging waste.
- **Radiation Safety Centre** (*Radiācijas drošības centrs*), which oversees the usage of radiation sources.
- **Latvian Environment, geology and meteorology agency** (*Latvijas Vides, ģeoloģijas un meteoroloģijas aģentūra*), which performs the monitoring and gathering of environmental and sustainable development data. This environmental body keeps as well the Register of the Greenhouse Gas Emission Units.
- **Latvian Environmental Protection Fund Administration** (*Latvijas vides aizsardzības fonda administrācija*), which performs the management of public money for the environmental projects.
- **State hazardous waste management agency (BAPA)** (*Bīstamo atkritumu parvaldības valsts aģentūra (BAPA)*), which performs the activities of nuclear waste.

Moreover the municipal authorities are entitled to enforce environmental law in certain scope in their territories (such as management of waste).

### 1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

In general the Latvian environmental authorities take an ex post, rather than an ex ante approach to the enforcement of environmental law.

### 1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

**Environmental Protection Act** (*Vides aizsardzības likums*) provides, that the public authorities are required to provide the environment-related information if so requested by the members of the public. The public is entitled to receive the information, if such is available. The applicant requesting environment-related information shall not have to justify to what purposes this information is necessary.

## 2 Environmental Permits

### 2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Environmental permits either for category A or B are required for the major or medium polluting activities performed by the business. A category A permit is required for major polluting facilities, which are specified in the list (Attachment No 1) of the **Pollution Act** (*likums Par piesarnojumu*). Category B permits are required for medium polluting facilities, which are specified by the governmental regulation. The pollution permits of category A and B are provided by the regional **Environmental Board** of the territory, where facility is located. The activities of minor polluting effects specified in the governmental regulations as C category polluting activities shall be notified to the regional **Environmental Board** at least 30 days prior of such activities take place. It is prohibited to spread the polluting activities between several facilities or installations in order to decrease the total capacity of the polluting activity. Greenhouse Gas Emission Permit shall be required for facilities and installations specified in the list (Attachment No 2) of the **Pollution Act**. The permits of collection, reloading, sorting and storages of waste are required by the **Waste Management Act** (*Atkritumu apsaimniekošanas likums*).

Environmental permits can be transferred from one person to another. In such case the regional **Environmental Board** specifies the change of operators in the permit without changes of the terms and conditions of such permit.

## 2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

All decisions of regional *Environmental Boards* either not to grant an environmental permit or in respect of the conditions contained in an environmental permit might be appealed to the *Environment State Bureau* (*Vides parraudzības valsts birojs*). Such appeal rights might be used by the operator of pollution installation within one month after such decision enters into force.

## 2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

There might be instances, such as when the Environmental Impact Assessment (EIA) is required in order to obtain the environmental permit, as provided for by the *Environmental Impact Assessment Act* (*likums Par ietekmes uz vidi novērtējumu*). In general those are the occasions, when:

- the pollution activities are included in the list (Annex No 1) of the *Environmental Impact Assessment Act*;
- so required by the international agreements; or
- if environmental authority requires so on the base of:
  - results of Initial Assessment (such list (Annex No 2) of the *Environmental Impact Assessment Act* provides the instances, when such Initial Assessments are mandatory); or
  - several intended polluting activities have an impact on one territory taking into account the joint and reciprocal impact of the intended activities.

## 2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Environmental authorities have enforcement powers to stop the operation of polluting facility or installation if either conditions of the environmental permits are violated or respective environmental permits are not obtained at all. In case there are violations of conditions of the environmental permit, in order to stop the polluting operation, the environmental authority at first shall warn the operator about such violations and provide term from 3 days to 3 months to bring to an end such violations. If the violations are not brought to an end in this term, the authority takes the decision to stop the said polluting operation. If the pollution is generated without a respective environmental permit, the environmental authority makes the decision to stop the operation without warning. The decision enters into force immediately and shall be executed without delay. The decision to stop the operation may be appealed to the *Environment State Bureau* (*Vides parraudzības valsts birojs*) and afterwards to the court, however, this does not stop the execution of such decision.

## 3 Waste

### 3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

The concept 'waste' is defined by the *Waste Management Act* (*Atkritumu apsaimniekošanas likums*) as 'any object or substance, which the possessor thereof disposes of, or intends to or is forced to dispose of, and which conforms to the categories specified in the waste classification'.

The two main categories of the waste are considered by the Waste

Management Act to whom different duties and controls apply:

- *hazardous waste* - which has characteristics, which make it hazardous to humans and environment; the characteristics and further classification of hazardous waste is provided by the *Regulations No 985 of 30.11.2004.*; the specific regulation of hazardous waste is provided by the *Waste Management Act* and *Regulations No 319 of 23.07.2002.* and *Regulations No 371 of 08.07.2003.*; and
- *municipal waste* - is any other waste except the hazardous waste; has specific regulation provided by the Waste Management Act;

The certain other waste categories involving additional duties or controls are:

- *electrical and electronic equipment waste* - has specific regulation provided by the *Waste Management Act* and *Regulations No 923 of 09.11.2004.*;
- *end of life vehicles waste* - has specific regulation provided by the *End of Life Vehicles Management Act* (*Nolietotu transportlīdzekļu apsaimniekošanas likums*) and *Regulations No 243 of 06.04.2004.*;
- *asbestos waste* - has specific regulation provided by Regulations No 332 of 25.04.2006.;
- *nuclear waste* - has specific regulation provided by the Regulations No 129 of 19.03.2002. and Regulations No 157 of 16.04.2002.; and
- *waste from ships* - has specific regulation provided by the Regulations No 129 of 19.03.2002. and Regulations No 445 of 08.10.2002.

### 3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

Permission shall be obtained from the regional *Environmental Boards* in order to store the waste on the site where it was produced. The order to obtain such permission is provided by the *Regulations No 413 of 23.05.2006.* Such waste storing permission is not required, if the producer of waste has the Environmental Permit of category A or B and the conditions of waste storage are provided there.

### 3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

Producers of waste do not retain any residual liability in respect of the waste, if they transferred such waste to another person for disposal or treatment off-site.

### 3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Obligations regarding the take-back and recovery of the waste might arise from the collection systems in respect to the *waste of electrical and electronic equipment* and *end of life vehicles* based on the *Directive 2002/96/EC* and *Directive 2000/53/EC* imposed in the legal system of Latvia.



## 4 Liabilities

- 4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Criminal liability of up to 20 years' imprisonment can arise by applying the *Criminal Code (Krimināllikums)*; and administrative liability of imposing fines up to LVL 10,000.00 (approx. EUR14,230.00) by applying the *Administrative Penal Code (Administratīvo pārkāpumu kodekss)*. Civil liability can arise to compensate the damages to the persons or state. The strict liability might arise by violations of environmental laws in civil cases by applying liability rules of the *Civil Code (Civillikums)* and *Environmental Protection Act (Vides aizsardzības likums)*. In strict liability cases, the defendant's fault is considered as already proved, and the plaintiff has no burden in respect to this; in such cases the defendant may defend himself by proving that the damage was caused by *force majeure*, or by the plaintiff's own intent or major negligence.

- 4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

By violating the environmental law and notwithstanding that the polluting activity is operated within environmental permit limits, an operator might be liable for environmental damage.

- 4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

The executives of corporations as well as the corporation itself might get insurance of civil liability. What concerns criminal and administrative liability is that the directors and officers are not able to get insurance or rely on other indemnity protection for their environmental wrongdoings. As a general rule the violating persons rather than corporation will be liable for violations provided by the *Criminal Code (Krimināllikums)*, however there can be a possibility that the directors and officers do not have administrative liability, as the fine for such violation is provided by the *Administrative Penal Code (Administratīvo pārkāpumu kodekss)* for the company only.

- 4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

In case of shares purchase, all historical environmental liabilities are transferred. In case of asset purchase, if otherwise not agreed by the purchase agreement, the historical environmental liabilities are not transferred.

- 4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

If a lender is neither the operator of polluting facility nor owner of polluted land, he is not liable for environmental wrongdoing and/or remediation costs.

## 5 Contaminated Land

- 5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

In general the operator of the facility, who contaminated the land, is liable for the remediation of such land. The owner is not liable for any historical contamination, except if he had decisive influence on the operator of the facility which created pollution.

- 5.2 How is liability allocated where more than one person is responsible for the contamination?

The liability of several polluters is allocated depending on the harm caused to the environment by each person. Quantity and type of emissions, as well as the time of polluting activity, shall be considered for the allocation of liabilities in such case.

- 5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

The *Pollution Act (likums Par piesārņojumu)* provides procedures that the programme of environmental remediation shall be prepared by the performer of such remediation according to the remediation tasks set by the regional *Environmental Board*. Such programmes shall be accepted by the Environmental Authority. As far as it is concerned the programme is on track and in accordance as are the tasks provided by the Authority. It is unlikely that the regional *Environmental Board* will return and require additional operations to be performed.

- 5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

A new owner has a private right of action to seek contribution from a previous owner of contaminated land when that owner caused contamination. That also applies to cases when the previous owner of the land was unaware of the contamination. The *Pollution Act (likums Par piesārņojumu)* provides mandatory obligation to the previous owner to inform the new owner about contamination or potential contamination of the transferred property or land nearby. The parties are entitled to transfer the full risk of contaminated land liability to the new owner by the agreement.

- 5.5 Does the government have authority to obtain from a polluter monetary damages for aesthetic harms to public assets, e.g., rivers?

The government has no authority to obtain monetary damages from a polluter for aesthetic harm to public assets.

## 6 Powers of Regulators

- 6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

*Environmental Protection Act* (*Vides aizsardzības likums*) provides the environmental authorities with the following powers:

- to prohibit performance violating the environmental law, which negatively affect the environment and endangers human life and health;
- to order the provision of information, free of charge, required for environmental control, which includes the provision of documents;
- to conduct site inspection, if this is required for the control of environmental law, when performing the scheduled inspections or there is justified suspicion in respect to the violations of the environmental law; that includes without disturbance to enter or drive in the site and perform inspection of territory, installation or any other object;
- to take test samples and perform control measurements;
- to take decisions by applying the environmental law;
- to apply the environmental penalties and fines provided by the *Administrative Penal Code* (*Administratīvo pārkāpumu kodekss*);
- to stop ships and other vessels and order to go to the port or coast;
- to stop vehicles situated outside of roads in the coastal zone of Baltic Sea and the Gulf of Riga or protected nature area; and to eliminate and stop such violation; and
- to perform any other activity provided by the environmental law.

## 7 Reporting / Disclosure Obligations

- 7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

The *Pollution Act* (*likums Par piesārņojumu*) provides mandatory obligation to disclose either to the respective regional *Environmental Board* or municipality about pollution or potential pollution on a site. In case such pollution has potential to harm humans or the environment, the regional *Environmental Board* shall announce this to the affected third parties.

- 7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

A person has no obligation to investigate land for contamination. This shall be done by the regional *Environmental Board*, and a person, in certain cases, shall disclose the pollution and compensate the expense of such investigation of land contamination.

- 7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

The *Pollution Act* (*likums Par piesārņojumu*) provides mandatory obligation of a seller to disclose all information regarding contamination or potential contamination of the transferred property and even contamination or potential contamination in the

surrounds of the said transferred property.

## 8 General

- 8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

In general the polluter is responsible for environment-related liabilities. The transfer of actual or potential environment-related liabilities from polluter to non-polluter is possible by contractual means whether payment for this is made or not - however, in such case the polluter remains liable anyway; the amount of such liabilities can be covered from the non-polluting party afterwards.

- 8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

Existing and potential liabilities shall be shown on a balance sheet. The dissolving or reorganisation of the company in order to escape the environmental liability is quite hard, as legal tools are provided to not avoid this, especially in case of bad faith.

- 8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

The *Commercial Code* (*Komerclikums*) provides, that the shareholder is not liable for the obligation of the company. Therefore neither the natural person holding shares nor the parent company can be held liable for breaches of environmental law.

- 8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

"Whistle-blowers", who report environmental violations during the course of employment, are protected by the *Labour Act* (*Darba likums*). In such cases the employers is prohibited from performing any negative effects on such employees. In case of a dispute, that will be the onus of the employers to prove, that the performance of the negative effects are not due to the employees report.

- 8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

Group actions are available in Latvia, but these are not the same as the US-style "class actions". Penal and exemplary damages are not available.

## 9 Emissions Trading and Climate Change

- 9.1 What emissions trading schemes are in operation in Latvia and how is the emissions trading market developing there?

The *EU Emissions Trading Scheme* is in operation in Latvia based

on the *EC Directive 2003/87/EC*. The emissions trade market is developing separate deals between the parties by agreeing the price and registering the transfer of emissions at the register kept by the *Latvian Environment, geology and meteorology agency (Latvijas Vides, ģeoloģijas un meteoroloģijas aģentūra)*.

## 10 Asbestos

### 10.1 Is Latvia likely to follow the experience of the US in terms of asbestos litigation?

Latvia is quite unlikely to follow the experience of the US in terms of asbestos litigation, as “class actions” and contingency fee arrangements are usually unused in practice and punitive damages are absent completely.

### 10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

The *Regulations No 332 of 29.04.2006*, provides duties for persons operating with asbestos and management of asbestos waste. In general, the permission shall be obtained, where the levels of asbestos emissions and conditions of operations are stipulated. Requirements of management of asbestos waste are to eliminate the appearance dust and fibres of the asbestos in the environment.

## 11 Environmental Insurance Liabilities

### 11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in Latvia?

For the moment there is no environmental insurance in Latvia. There are certain spheres, where the insurance of civil liability regarding to the damage to the environment is mandatory - as to

vehicles and hydro electrical power plants. However, in general voluntary insurance of civil liability in this respect is an exception rather than an ordinary practice.

### 11.2 What is the environmental insurance claims experience in Latvia?

For the moment there is no experience of environmental insurance claims in Latvia.

## 12 Updates

### 12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in Latvia.

There are two main trends in the Environmental Law of Latvia. The first one is in favour of business, but the second one has a negative effect. The first development is the legislation work to facilitate the administrative burden for the businesses. That is to lessen costs and ease the procedures for obtaining environmental permits/licences and for provision of the environmental reports. Recently the amendments to the *Environmental Impact Assessment Act (likums Par ietekmes uz vidi novērtējumu)* are being prepared by the Ministry of Environment in this respect. Secondly, the Ministry of Environment finds it very useful to increase the rates of natural resource tax to reduce some kinds of pollution. Recently the natural resource tax rate was increased for the packaging bags used in retail stores. That already has an effect that several retail chains stopped to provide the packaging bags for costumers free of charge. The Ministry of Environment states, that in case the effect will not be more satisfactory, the tax rates will be increased even more, or the legal ban will be established to prohibit retail businesses from providing packaging bags free of charge for their costumers.



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#### LAW FIRM GENCS VALTERS

TAX & LEGAL SERVICES

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