

Environment

in 27 jurisdictions worldwide

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Switzerland

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Legislation

1 Main environmental regulations

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

Based on article 74ff of the Swiss Federal Constitution, the Swiss Parliament has enacted a wide range of federal statutes to protect natural resources. The main statutes are:

- the Federal Environmental Protection Act of 1983;
- the Federal Water Protection Act of 1991;
- the Federal Nature and Landscape Protection Act of 1966;
- the Federal Forests Act of 1991;
- the Federal Land and Planning Act of 1979; and
- the Federal Agriculture Act of 1991.

The federal government enacts the complementing ordinances.

The implementation of the federal statutes is for the most part the duty of the cantons, under the supervision of the federal authorities. The cantons enact the appropriate legislation.

EU environmental regulations do not directly apply in Switzerland, as the country is not a member of the EU. However, Switzerland maintains extensive cooperative relations with the EU including with regard to the harmonisation of environmental legislation. Furthermore, it is a party to numerous international environmental conventions (see question 32).

Federal civil law also contains rules that are applicable to the abatement of nuisances such as water or air pollution (ie, articles 679 and 684 of the Swiss Civil Code regarding liability of landowners).

Various federal statutes, such as the Environmental Protection Act and the Water Protection Act, provide for criminal sanctions (fines or imprisonment) for deliberate or negligent infringement of specific duties enumerated by said statutes. Individuals and in some cases legal entities can be sanctioned.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

There is no system of integrated pollution control as such in Switzerland. The cantons shall take the necessary measures to achieve the objectives set forth in the federal statutes.

Numerous industrial activities having a potential impact on the environment require specific authorisations under the Environmental Protection Act of 1983 or other federal statutes and their ordinances. Furthermore, any construction or infrastructure project must comply with the land and spatial requirements as well as with all relevant environmental regulations. The planning authorities shall also integrate the requirements of environmental regulations into the zoning and planning instruments. Pollution prevention and pollution control request a coordination between various regulatory and compliance authorities as well as between the Swiss Confederation and the cantons.

3 Soil pollution

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

The Environmental Protection Act of 1983 contains provisions that are aimed at preserving soil fertility on a long-term basis (articles 33 to 35). The Ordinance on Soil Pollution of 1998 implements said statutory provisions. Both sets of rules provide for comprehensive qualitative and quantitative protection as well as remediation of soil contamination.

The 1983 Act also defines specific rules regarding the remediation of contaminated areas such as industrial areas, landfills and accident sites (articles 32c to 32e). These rules are implemented and completed by the Ordinance on Contaminated Sites of 1998. They apply to all existing contaminated sites, either closed down or still in operation, regardless of when the contamination occurred.

Swiss law makes a basic distinction between polluted site and contaminated site. A site is deemed polluted if there is a likelihood, based on the past activities on that site, that the soil is polluted by waste or other substances. Should the polluted site actually or potentially cause harmful effects or nuisances to the environment and the water, it is contaminated and must be remedied. The levels of contamination that trigger remediation or surveillance are set forth in the relevant Ordinances or are determined by the authorities.

The competent cantonal or federal authorities shall ensure that contaminated sites are remedied should they actually or potentially cause harmful effects or nuisances to the environment. The cantons identify and list the polluted and contaminated sites in official registers.

Persons liable for clean-up and costs thereof

As a rule, the current operator or holder of the site is the party responsible for undertaking the investigation and the remedial measures that are ordered by the competent authority (article 20 of the Ordinance on Contaminated Sites 1998), as it shall ensure that the site complies with environmental regulations. The obligation to carry out the clean up according to article 20 of the 1998 Ordinance must be distinguished from the obligation to bear the costs thereof, which is governed by article 32d of the 1983 Act.

According to the latter provision, which was amended in 2006, all polluters shall share the costs of the clean-up proportionally to their responsibility for the pollution. Primarily, the 'polluter by behaviour' shall pay. This is the person who directly caused the contamination of the site or did not prevent it when he or she had a duty to do so. The polluter by situation, who is the person who legally or actually controls the site and the installations, usually has to bear at least a small proportion of the costs, even if he does not have a direct relation with the cause of the contamination. He may be fully exempted from carrying any costs if he can prove that he could not have had knowledge of the contamination even though he applied the necessary diligence.

The canton or Confederation shall bear the part of the costs of a polluter who is unknown or insolvent.

The person liable to proceed with the clean up (usually the current operator) or any person interested in the remediation procedure may request the cantonal authority to issue a decision allocating the investigation and remediation costs according to article 32d of the 1983 Act.

An amendment to the 1983 Act has introduced a new provision (article 32bbis) regarding the allocation of waste disposal costs of a site that is polluted but not contaminated. The property owner may claim two-thirds of the additional costs for the disposal of the polluted waste in the course of a building project, provided the previous owner did not grant a reduction of the purchase price; the clean-up is a condition for the construction of the new building; and the property was bought between 1 July 1972 and 1 July 1997.

4 Regulation of waste

What types of waste are regulated and how?

Article 7 paragraph 6 of the 1983 Act describes waste as any moveable material disposed of by its owner or the disposal of which is required in the public interest. The 1983 Act provides further for a basic distinction between special or hazardous waste and ordinary waste such as household waste. Further categories of waste may also be found in the Technical Ordinance on Waste of 1990, the Ordinance of the Transport of Waste of 2005 and its implementing Ordinance that contains a list of waste subject to said regulation. Special or hazardous waste presents a hazard to the environment and cannot be disposed of without special control.

As a general rule set forth in article 30 of the 1983 Act, production of waste should be avoided wherever possible, recycling must be promoted and waste must be disposed of in an environmentally compatible way, if possible within Switzerland. Exportation of waste is regulated mainly by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and the Ordinance on the Transport of Waste. The duty to dispose of waste lies with the cantons for domestic waste, waste from the maintenance of public roads and from public water treatment as well as waste generated by an unknown or insolvent person. Any other types of waste must be disposed of by its holder. Financing of waste management is governed by the polluter-pays principle.

Pursuant to article 30e section 1 of the 1983 Act, it is forbidden to permanently store waste somewhere else than in a controlled landfill that is subject to various constructive and operative conditions and licences.

5 Regulation of air emissions

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

As a general rule set forth by the 1983 Act, air emissions have to be limited at their respective source using state-of-the-art technology, provided the costs thereof are not excessive (prevention principle).

Air emissions are further regulated by the Federal Ordinance on Air Pollution Control of 1985. Existing, as well as new facilities and moveables shall comply with the emission limitations standards set forth in said Ordinance.

Air pollution is evaluated using the threshold limits defined in the 1985 Ordinance. If the pollution causes excessive emissions of the main contaminants (such as ozone, PM10, NO₂ and SO₂) the competent authorities shall order and implement stricter abatement measures at the sources of those contaminants. At this stage, the protection of humans and the environment outweighs economic considerations.

6 Climate change

Are there any specific provisions relating to climate change?

Switzerland is a party to the Kyoto Protocol. Switzerland committed to reduce the greenhouse gas emissions between 2008 and 2012 by 8

per cent from 1990 levels. In Switzerland, carbon dioxide (CO₂) is by far the most important of the six greenhouse gases. Based on the UN Framework Convention on Climate Change the target of Switzerland amounts to 48.25 million tonnes of CO₂ equivalent emissions.

The legal framework for the implementation of the Kyoto Protocol is set in the CO₂ Act of 1999, the CO₂ Ordinance of 2007 and the Ordinance on the Crediting of Emissions Reductions achieved abroad of 2005. Originally, Switzerland primarily focused on voluntary measures to reduce CO₂. As the voluntary measures did not suffice, a CO₂ tax on all fossil, energetically used combustibles, such as heating oil, natural gas and charcoal was introduced in 2008, excluding petrol and diesel (see question 12). The CO₂ Act prescribes that emissions from the consumption of fossil fuels must be reduced by 10 per cent by 2010. To achieve this goal, a climate cent levied on motor vehicle fuels was introduced in 2005 and a CO₂ tax on heating fuels came into force on 1 January 2008. The CO₂ Act in conjunction with the CO₂ Ordinance allows for an exemption of the CO₂ tax if the emitter commits himself to a quantitative limitation of emissions until 2010. The exemption is directed primarily to large and energy-intensive corporations. Purchasing foreign emission certificates can be taken into consideration to offset emission. The conditions for the recognition of foreign emission certificates in Switzerland and the procedure are set forth in the 2005 Ordinance.

7 Protection of fresh water and seawater

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

Swiss legislation primarily deals with inland water. The Water Protection Act of 1991, supplemented by ordinances, is a framework Act that applies to all public and private surface and groundwater. Water protection provisions may further be found in the Federal Fishing Act of 1991.

The Water Protection Act of 1991 provides for a general prohibition to discharge or drain, either directly or indirectly, any substance that might prove noxious in respect to water. Polluted waste water must be treated prior to being discharged into the sewage system. Furthermore, the Water Protection Act of 1991 regulates the water supply for human consumption and for other uses. Water used for human consumption may only come from specific territories defined by the competent cantonal authorities. The Water Protection Act of 1991 also protects the waters quantitatively. A permit is required to extract water.

8 Protection of natural spaces

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

The Federal Nature and Landscape Protection Act of 1966 protects the characteristic aspects of landscapes and built-up areas as well as historical sites and monuments. It is supplemented by several decrees defining protected areas (eg, moorlands, alluvial areas and marshlands). A large part of the 1966 Act is implemented and completed by cantonal law.

The 1966 Act provides for implementing instruments such as subsidies, contracts, inventories, surveys and prohibitions.

9 Protection of flora and fauna

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

Protection of flora and fauna is primarily governed by the Federal Nature and Landscape Protection Act of 1966. The most important instruments of the protection are surveys; protection of areas; and contractual instruments.

The federal government decides which sites are of national importance and will therefore be surveyed. The protection granted by the survey is not absolute. It ensures that the site is protected as much as

possible and that, whenever a project connected with a Federal task may affect one of these sites, said project may only be implemented if it is justified by important and outweighing public interests. Affected habitats must be reinstated or replaced. Sites of mere cantonal importance may only be listed as protected sites pursuant to the respective cantonal law if that law provides for such protection. Endangered fauna species are listed in the implementing ordinance to the Federal Nature and Landscape Protection Act of 1966. Prosecution of offences connected with the prohibition to gather or destroy plants and to alter vegetation rests with the cantons.

In the near future, parks of national importance will be created to permit the conservation of large-scale natural habitats, as well as regional nature parks and nature discovery parks.

10 Noise, odours and vibrations

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

Noise and vibrations are subject to the systems of limitation and reduction set forth by the 1983 Act. As for air pollution, noise emissions and vibrations have to be limited at their respective source using state-of-the-art technology provided the costs thereof are not excessive (articles 1, 2 and 11 of the 1983 Act).

Furthermore, noise is governed primarily by the 1983 Act and by the Ordinance on Noise Protection of 1986. The Ordinance on Noise Protection provides, among other rules, for three different noise limit values (planning level, emission limit level and alarm level) that vary according to the level of sensitivity assigned to the specific area, the source of the noise (traffic, industry, etc) and the period under consideration (night or day). Should the noise exceed these thresholds, the competent authority shall order the implementation of stricter noise abatement measures or remediation. However, it may under specific conditions ease these requirements. This option is widely used in practice for public facilities and infrastructures. Appropriate spatial planning is requested both by the 1983 Act and the Noise Protection Ordinance.

Vibrations and structure-borne noise are also governed by the 1983 Act but have not yet been regulated in an ordinance.

Odours fall within the definition of atmospheric nuisance and are governed by the respective provisions of the 1983 Act and the Ordinance on Air Pollution Control.

11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

Pollution can cause damage to health, property and natural resources. A person injured by a pollution may seek pecuniary compensation for the injury sustained according to tort law. The relevant provisions are set forth in article 59a of the 1983 Act (strict liability imposed on installations that present a special hazard to the environment), article 59abis of the 1983 Act (liability for pathogenic organisms) as well as article 41 of the Swiss Code of Obligations (the general rule regarding civil liability originating from tort), article 58 of the Swiss Code of Obligations (liability of the owner for construction or maintenance defects) and articles 679 and 684 of the Swiss Civil Code (liability of landowners). Furthermore, strict liability provisions are enacted in special statutes, such as the Nuclear Civil Liability Act of 1983.

Whatever the legal cause of action may be, three further requirements must be fulfilled to establish liability, namely damages suffered by the injured person; unlawful act by the tortfeasor; and a causal link between the unlawful act of the tortfeasor and the damages suffered by the injured person. Under these conditions, the injured plaintiff may obtain compensation for all the damages sustained, including in some instances for pure economic losses.

Pure environmental damage, which is not defined by law, is not compensated under civil law. It is usually understood as the damage to components of nature that are not subject to property rights or to

the sovereign powers of the cantons (such as damage to air, flora and fauna or destruction of wildlife). No compensation will be awarded, except where a specific legal provision provides otherwise (for example article 15 of the Federal Fishing Act of 1991). Switzerland has also signed, but not yet ratified, the International Convention on Civil Liability for Damages Resulting from Activities Dangerous for the Environment of June 21 1993. That Convention provides for compensation of pure environmental damages.

Environmental damage may be compensated or remedied to some extent based on public law (article 59 of the 1983 Act).

12 Environmental taxes

Is there any type of environmental tax?

The Environmental Protection Act of 1983 sets forth that the import and use of volatile organic compounds (VOC) shall be taxed (article 35a). Per ton of VOC, Swiss authorities raise a levy of 3 Swiss francs; the yearly taxes amount to approximately 130 million Swiss francs. Furthermore, heating oil, diesel and fuel are also taxed by the Swiss authorities (see question 6).

These taxes should reduce the consumption of VOC, heating oil, natural gas and charcoal, which are detrimental to the environment. The taxes shall be refunded to the residents of Switzerland by reducing the premium of the mandatory health insurance.

Since 1 January 2008 Switzerland has introduced a tax on CO₂ to meet its Kyoto objectives. Each individual and business shall pay the tax based on their CO₂ emissions. The tax applies to all imported fossil fuels, amounting to around three centimes on each litre of heating oil and 2.5 centimes on a cubic metre of gas. The tax will be increased in stages in 2009 and 2010 if emission levels do not decrease to reach satisfactory levels. The annual proceeds of the CO₂ tax will be redistributed to families and the economy through the above-mentioned benefit system.

Hazardous activities and substances

13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Rules governing hazardous activities are found in various federal laws and ordinances, notably, inter alia, in the 1983 Act, the Water Protection Act of 1991, the Federal Chemicals Act of 2000, the Federal Act on Explosive Substances of 1977 and their respective implementing ordinances. Various hazardous activities require a licence, such as the set-up and operation of landfills, the use of hazardous substances, the disposal of waste or the transportation of hazardous or special waste, etc. As a rule, the Swiss cantons are responsible for the respective licence.

14 Regulation of hazardous products and substances

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

Regulation of hazardous products and substances is partly based on the principle of self-control by manufacturers and importers. This principle is complemented with specific obligations relating to consumer protection and rules applying to substances having special features or that are used in quantities and in circumstances justifying particular care. Furthermore, the Federal Product Liability Act applies to dangerous products and substances that qualify as a product in the sense of that Act.

There is no single definition of 'hazardous product' or 'hazardous substance'. In principle, each Act, either federal or cantonal, may provide for a specific definition with a view to the respective purpose of such act or ordinance.

Procedures for marketing a hazardous product or substance depend on the nature of the product or substance. The Federal

Chemicals Act provides for a registration and authorisation procedure with respect to new substances. Specific authorisation requirements are applicable for pharmaceutical products.

Industrial accidents

15 Industrial accidents

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

Provided that no special legal regulations apply, article 10 of the 1983 Act regulates the prevention of industrial accidents. Thus, facilities and communication corridors (roads, railways) that are likely to cause serious damages in the event of a major accident are subject to the special requirements of article 10 of the 1983 Act as well as of article 2 of the Ordinance on Protection of Major Accidents of 1991. Major accidents are extraordinary events that occur in facilities and communications corridors and may have serious impacts outside the facility premises or beyond the corridor.

The facility operator has to take all necessary precautionary measures to protect human beings and the environment. For this purpose he has at first to take general safety measures, that are mentioned in article 3 of the Ordinance on Protection of Major Accidents. Article 3 of this Ordinance requires from operators of mentioned facilities to take all necessary state-of-the-art measures to reduce the potential risk, prevent major accidents and limit their impact. The operator of a facility, where a severe damage cannot be ruled out, has to comply with specific safety measures according to article 4 of the Ordinance. These measures mainly concern documentation and information obligations within the company, but also towards authorities and the general public. Compliance with the requirements of the Ordinance is an ongoing process for the operators of facilities.

The authorities monitor compliance with said requirements and assess the risk presented by each facility or communications corridors based on the information and reports established by the operator thereof. In view of the estimated scope of potential damages to the population and the environment should a major accident occur and the probability of occurrence, the authorities may order the operator to take additional security measures to maintain the risk at an acceptable level. Should this not be possible, they may impose additional operation or transportation related restrictions.

Furthermore, even though neither the 1983 Act nor the Ordinance on Prevention of Major Accidents entails rules to coordinate prevention of major accidents and land planning, it is increasingly recognised that the prevention of major accidents should be taken into account at the spatial planning stage and that the planning authorities shall take that risk into consideration when amending or establishing zoning plans. The relevant duty is anchored in the general rules on spatial planning. Indeed, article 3 of the Spatial Planning Act of 1979 provides that spatial planning shall contribute to the protection of residential areas from harmful and annoying influences.

Environmental aspects in transactions

16 Environmental aspects in M&A transactions

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

The environmental aspects to be considered in M&A transactions depend on the specific activities the target company is carrying out, respectively has carried out. In connection with M&A transactions it is becoming increasingly common to conduct environmental due diligence. Special attention should be paid to existing and past enforcement or compliance procedures, in particular in the field of air pollution, noise abatement, soil pollution and the remediation of contaminated sites, waste disposal and the prevention of major accidents. The purchaser shall carefully analyse the liabilities attached to past and present activities based both on public and private law.

Share deals

In a share deal, environmental liabilities remain with the target company and, therefore, the acquirer indirectly acquires such risks. The buyer (shareholder) may only become directly liable to the extent that the corporate veil is lifted, which can only occur in exceptional circumstances as an application of the abuse of rights theory. Share purchase agreements often provide for representations and warranties as well as for indemnification obligations with respect to environmental aspects.

Asset deals

As some environmental liabilities are tied to the facility or to the industrial site itself, environmental risks or liabilities may pass to the acquirer by way of asset deals. Furthermore, liabilities attached to past operation or activities may be transferred to the takeover company in case of a transfer of business, even though no liability claim is pending or known at the time of the transfer. Special attention shall be paid to possible contamination of soil and groundwater and disposal of waste. The buyer must ensure that the seller complied with environmental legal requirements relating to the assets in question. The buyer generally requests warranties and indemnification to cover such risks.

Usual representations and warranties

Representations and warranties usually relate to present and past compliance with environmental legal provisions, the possession of all necessary operating permits, the absence of claims, proceedings or investigations regarding environmental issues and compliance, and the fact that the seller duly disclosed all relevant environment-related facts. Standard reps and warranties clauses may not be adequate in view of the particularities of the transaction at hand and must be carefully worded to reflect the existing or potential environmental liabilities. It is also recommended for the parties to use the terminology of the relevant environmental statutes.

17 Environmental aspects in other transactions

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

Financing

The financing of a company exposed to environmental liabilities does not make the financing party liable per se, unless, however, that party is otherwise involved in the operational activities. Usually, the lender will not have direct or indirect possession of a company or a real property and therefore will not be considered as possessor under the 1983 Act. A lender may be liable under environmental law should he become the legal owner of a polluted site upon realisation of collaterals.

IPO

To the extent that the business of the company (or its subsidiaries) going public involves environmental risks, the offering prospectus shall contain statements regarding such environmental aspects of the company's (and its subsidiaries') business, the business's environmental regulation, required permits, compliance measures (eg, environmental management and audit systems) and consequences of possible violations. Furthermore, the offering prospectus may also point out specific risk factors pertaining to the business of the company (and its subsidiaries) and the potential environmental impacts.

Real estate transactions

The main issues in real estate transactions are the contamination of soil and of the building itself (eg, asbestos). As pointed out in question 3, the current operator or owner and the previous operator of a contaminated site might be held responsible for clean-up costs. From a buyer's perspective it is important to require sufficient

representations and warranties together with an indemnification from the seller.

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

Construction or planning projects for facility or transport infrastructure which may substantially impact the environment are subject to an environmental impact assessment (EIA). The environmental assessment is regulated by the 1983 Act (which was amended with respect thereto in 2006) as well as the Federal Ordinance on Environmental Assessments of 1988, which contains an exhaustive list of all projects that are subject to such an assessment. This list includes more than 70 facility types from various areas, such as traffic, energy, water engineering, waste management, military, sport, leisure and tourism, industrial operations and other facilities.

EIA ensures that all relevant environmental aspects of a particular project are considered at the earliest stage possible (project planning). EIA is part of the general authorisation to build or for the planning procedure that, as a rule, is governed by cantonal law. Major infrastructure projects are usually governed by federal statutes.

19 Environmental assessment process

What are the main steps of the environmental assessment process?

The applicant shall prepare an environmental report that must contain a description of the initial state of the environment as well as details of the project (including measures to protect the environment and prevent accidents), adverse effects that are likely to remain and measures that could reduce such adverse effects (as well as an indication of their cost).

Said report shall then be evaluated by the competent cantonal or federal authorities depending on the adverse effects or potential adverse effects at stake. The report and the evaluation thereof by the authorities shall be filed with the request for the approval of the project to allow a consultation of the documents by the public during a consultation period that may vary depending on the canton (usually for 30 days). Every person or entity that has a factual or legal interest at stake as well as certain environmental organisations may file observations or an opposition and become a party to the authorisation procedure.

The authority competent to authorise the project shall assess the environmental impact of the project based on the environmental reports, the recommendations and observations of the other authorities and the observations and objections filed. It may require all necessary additional measures or conditions to ensure compliance with the environmental regulation at large.

Regulatory authorities

20 Regulatory authorities

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

The Federal Department of Environment, Transport, Energy and Communication is primarily responsible for protecting the environment at the federal level.

The Federal Office for Environment prepares the Ordinances as well as directives, circulars and guides. The Federal Office for Environment might also grant licences in some limited cases, as other federal offices do (eg, the Federal Office for Energy, which licenses atomic power plants).

As the main implementing competences rest with the cantons, their respective administrative services are responsible for monitoring compliance, granting the necessary licences and enforcing federal and cantonal law.

21 Investigation

What are the typical steps in an investigation?

The authorities charged with enforcement of environmental regulations shall contact the concerned facility in writing and ask it to take position on the relevant non-compliance or remediation issues. They may also request further information and may take evidence. It is not uncommon for the compliance authorities to seek the cooperation of the concerned party. Under the Ordinance on Contaminated Sites, the enforcement authorities may conclude a contract with the person liable for the clean-up instead of issuing enforcement orders (article 23).

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

Administrative authorities are entitled to request all necessary information from the operators to carry out their duties and may also rely on the usual data and information compiled in the due course of monitoring compliance. They may issue injunctions and orders that may be challenged in legal proceedings within the administration as well as in court.

23 Administrative decisions

What is the procedure for making administrative decisions?

The procedures to issue administrative decisions are set forth in the respective cantonal or federal rules of procedures depending of the competent authority. Due process requirements set forth in the Federal Constitution (articles 29 and 30) are applicable. They state that every person has the right in legal or administrative proceedings to have the case treated equally and fairly and adjudicated within a reasonable period. The parties have the right to be heard, which includes the right to access the file, to request evidence and to make observations. Each party may challenge the decisions taken by administrative authorities as per the applicable rules of procedure.

24 Sanctions and remedies

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

Administrative authorities may issue all decisions, orders and injunctions within the scope of the relevant statute or ordinance. Non-compliance may result in an administrative penalty or enforcement by the authorities, at the costs of the defying party. Furthermore, most of the environmental statutes provide for criminal sanctions. Criminal offences relating to the environment are enforced by the ordinary criminal courts and their decisions might be appealed to superior courts.

25 Appeal of regulators' decisions

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

Any administrative decision may be appealed to a superior administrative instance or directly to courts, depending on the applicable procedural framework. Decisions based on federal law may also be brought to the Swiss Federal Supreme Court as the highest instance.

Typically, an appeal may be brought on the grounds of violation of both procedural and substantive law, for erroneous factual findings as well as for abuse of discretion or lack of opportunity.

Update and trends

The major challenges that Switzerland will face, like many other countries, concern climate change and the implementation of new measures to attain the goal set in the CO₂ Act and the Kyoto Protocol as well as the management of climate-change related natural hazards. Furthermore, efforts to preserve biodiversity must be intensified.

Judicial proceedings**26 Judicial proceedings**

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

Proceedings in environmental matters are usually submitted to administrative authorities and courts but may be brought to civil or criminal courts depending on the type of action and the matter raised.

27 Powers of courts

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

As a rule, the courts up to the Swiss Federal Supreme Court have full judicial power with regard to breach of substantive law. They review with full cognition the application of substantive law. They may also amend or complement the factual findings where necessary, while usually deferring to the findings and reports made by the specialised authorities, except where errors are manifest.

28 Civil claims

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

Breaches and infringements of environmental statutes do not constitute civil causes of action. Compliance and enforcement is a matter of public law. However, a civil claim (for compensation or abatement) may be possible if a negative effect caused by pollution falls within the scope of a specific civil cause of action pursuant to the Swiss Civil Code or the Swiss Code of Obligations. Furthermore, as mentioned in question 10, a civil claim for compensation may be filed against a facility should the pollution or nuisances resulting from its operation cause a damage.

29 Defences and indemnities

What defences or indemnities are available?

Article 59a of the 1983 Act provides for a strict liability of the operator of a facility that presents a hazard to the environment, should a

damage occur. The operator may only be released, totally or partially, in the case of force majeure or if the damage was caused by fault of a third party or by the injured person. If a damage is caused by several facilities or a concerted action, joint and several liability applies pursuant to article 50 and 51 of the Swiss Code of Obligations.

The usual statute of limitations applicable to tort claims applies (one year from the time the injured person received knowledge of damage and of the identity of the tortfeasor and 10 years from the date when the act causing the damage took place).

30 Directors' or officers' defences

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

Neither the EPA nor the WPA contains a specific provision on the Directors and officers' liability for administrative, civil or criminal offences. Therefore, the ordinary rules apply. As a rule, criminal sanctions apply to the individuals who committed the offence. However, both the 1983 Act and the Water Protection Act expressly refer to articles 6 and 7 of the Federal Act on Administrative Penal Law of 22 March 1974. According to said provisions, should the criminal (environmental) offence occur in a legal entity, then the officers may be sanctioned as if they were the perpetrator, provided they omitted to prevent the offence committed by the employee where they had a legal obligation to do so (article 6 DPA). Furthermore, should a fine up to 5,000 Swiss francs be the appropriate sanction, the corporation may be sanctioned instead of the individuals (article 7 DPA). These provisions pre-empt the general rules of the Swiss Penal Code.

Furthermore article 102 of the Swiss Penal Code applies to other environmental crime and infraction (ie, criminal offences that may be punished by imprisonment) that happen within a corporation, when the perpetrator cannot be identified due to a lack of organisation. In such a case, the corporation itself may be sanctioned with a fine up to 5 million Swiss francs.

31 Appeal process

What is the appeal process from trials?

At the cantonal level, the appeal process is governed by cantonal law, which can provide for one or two judicial instances. Most decisions issued by the last cantonal court that involve federal law may be appealed to the Swiss Federal Supreme Court. Appeal procedure and judicial power of the Swiss Federal Supreme Court vary according to the nature of the federal law that is involved (public law or civil law).

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International treaties and institutions

32 International treaties

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

Switzerland is a party to many international environmental treaties, such as the Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) and its amendments, the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Convention on Biological Diversity.

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

International law pre-empts national law and is binding both for the regulatory authorities and the courts. Furthermore, where necessary, international law is being implemented by federal statutes and federal ordinances.



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