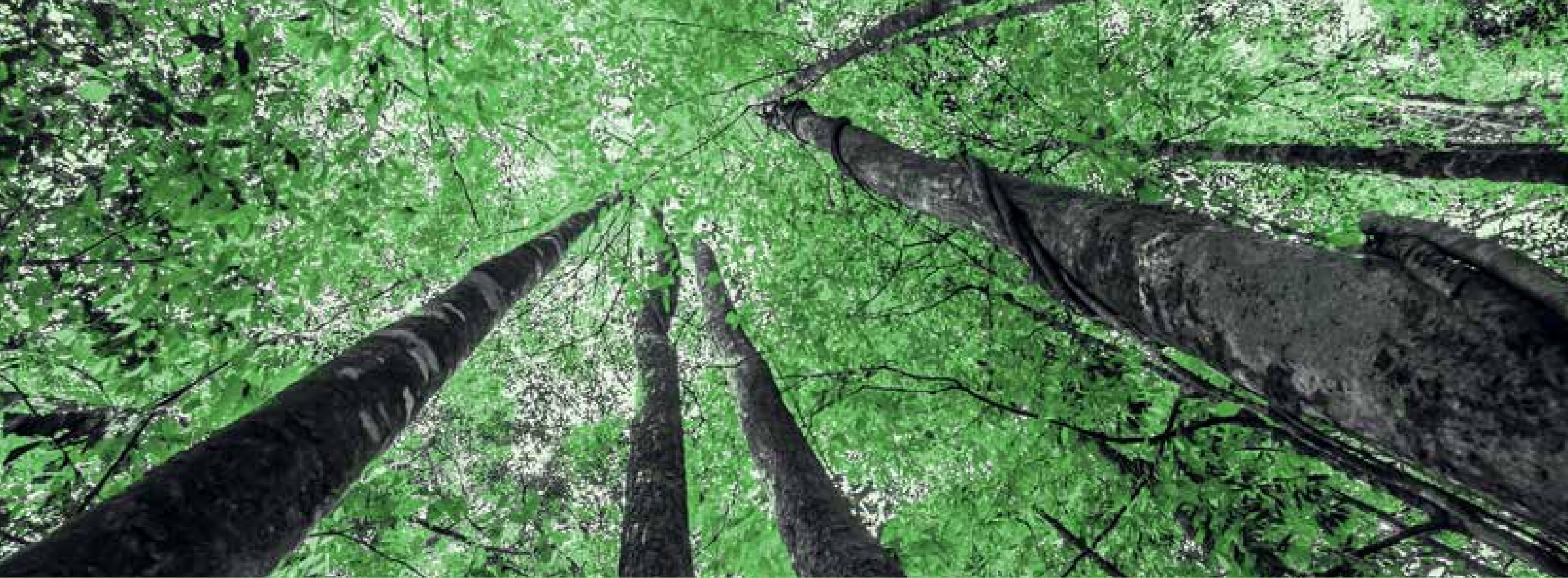

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The International Comparative Legal Guide to:

Environment & Climate Change Law 2015

12th Edition

A practical cross-border insight into environment and climate change law

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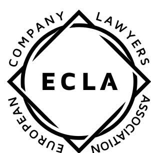

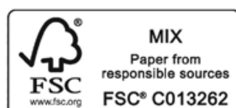

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Puerto Rico

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1 Environmental Policy and its Enforcement

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

The Constitution of Puerto Rico ("PR") establishes that the government's environmental public policy shall be the most effective conservation of its natural resources, as well as their utmost development and utilisation for the general benefit of the community. This mandate is implemented through a series of executive orders, statutes, regulations and municipal ordinances, including the Environmental Policy Act of 2004 ("Environmental Policy Act"), intended to protect the environment and human health.

As a result of its historic and political relationship with the United States ("US"), particularly in terms of environmental laws, the PR generally replicated the federal environmental legal framework. Puerto Rico has specialised agencies focused on pollution control and natural resource management. These include the Environmental Quality Board ("EQB"), the Department of Natural and Environmental Resources ("DNER") and the Solid Waste Authority ("SWA"), the Aqueduct and Sewer Authority ("PRASA") and the Department of Health ("DOH").

- **EQB** has the largest jurisdiction. It administers a comprehensive permitting system that regulates a vast array of activities that may pollute/impact the environment (water, air, soil) and/or human health.
- **DNER** is focused primarily in protecting natural resources from the conservation and management perspective. It regulates activities including minerals, earth's crust materials, surface and groundwater and wildlife.
- **SWA**'s emphasis is on public policy concerning the management and disposal of solid waste, including the integral plans intended to ensure Puerto Rico has adequate solid waste management infrastructure.
- **PRASA** governs wastewater discharges and administers a pre-treatment programme under which it issues permits compliant with the federal Clean Water Act.
- **DOH**'s focal point is ensuring activities concerning surface or groundwater comply with the Safe Drinking Water Act ("SDWA").

Given PR's territorial status, a dual jurisdiction system permeates our legal framework. As a result, most regulated activities are also subject to compliance with federal statutes (e.g., Resource Conservation and Recovery Act ("RCRA"), Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the SDWA, the Clean Air Act ("CAA") and the Clean Water Act ("CWA")) and regulations and related jurisprudence. As part of the ordinary course of dealings, regulated entities also deal with the US Environmental Protection Agency ("EPA"), the US Army Corps of Engineers ("COE"), and the US Fish & Wildlife Service ("FWS"). In fact, some federal agencies delegate the administration of some of their programmes to local agencies or run a joint permit programme (e.g., EQB and EPA for Underground Storage Tanks and DNER and COE for certain CWA Section 404 permits).

Both the local and the federal agencies have enforcement mechanisms that include significant administrative fines, orders to do or cease and desist, shutdown of non-compliant facilities and suspension or cancellation of permits, all of which may be implemented through administrative, civil and/or criminal proceedings. Ordinarily, enforcement actions by one (either state or federal) do not preclude further action by the other.

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

Enforcement actions ordinarily follow after inspections, complaints and/or notices of deficiencies/violation. Usually, as a first option, agencies try to compel to compliance through notices of violation, depending on the severity of the non-compliance. The next most used mechanism is the issuance of a complaint via an administrative order in which the agency may use multiple enforcement mechanisms. For instance, the agency may order the violator to undertake or cease a certain action, assess fines, and/or undertake response or corrective/remedial action. The use of informal mechanisms such as the settlement of complaints is encouraged by most agencies (state and federal) in order to resolve matters in an expedited and cost-efficient manner while protecting the public interest. Although agencies have civil and criminal enforcement mechanisms available, enforcement actions at the administrative level are still predominantly used.

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

Further to statutory provisions and/or jurisprudence, interested persons have a right to access public records as part of their constitutional right to free speech. The government may refuse or restrict the access to certain public records provided there is a compelling government interest. Generally, agencies provide access to non-confidential documents and information submitted by regulated persons or entities.

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2 Environmental Permits

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

Unless otherwise exempt, activities that impact or could potentially impact the environment or human health require an environmental permit, licence or authorisation. The most common permits are those related to air emissions, discharges into regulated water bodies (surface and subsurface) and soils. There are permit programmes regulating: effluent discharges into water bodies; the generation, management, treatment, storage and disposal of non-hazardous and hazardous solid waste; underground injection activities; and surface and ground water extraction, among others. Various environmental regulatory agencies are in charge of issuing such permits and their enforcement.

The Permits Management Office ("OGPe" by its Spanish acronym) is the central government agency in charge of evaluating permits related to land use and/or construction work, including environmental-related permits commonly associated with construction activities. OGPe also evaluates the compliance of proposed actions with the environmental impact review process. Recently, the permitting regime underwent further modifications intended to facilitate and expedite the permitting process.

Many environmental permits may be transferred (or terminated and re-issued) with the pertinent government agency's written consent, pursuant to applicable statutes and regulations.

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?

Environmental agencies follow the administrative appeal procedure established in their enabling acts and regulations, as well as the provisions of the PR Uniform Administrative Procedures Act. Any person or entity affected by the agency's decision not to grant an environmental permit or the conditions imposed in a permit, has the right to challenge that decision through the agency's adjudicative proceedings and subsequently through the applicable judicial review mechanisms.

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

Environmental audits are undertaken more commonly as a result of company policies, lender practices or particular transaction-driven necessities.

With respect to environmental impact assessments, the Environmental Policy Act generally requires government agencies, municipalities, and public government corporations to undertake a written and detailed environmental assessment ("EA") or environmental impact statement ("EIS") before any action that significantly affects the environment. Certain activities may be covered by the Categorical Exclusions established pursuant to the applicable regulation.

Certain statutes and/or regulations require the preparation of an EIS for specific projects such as: construction of landfills; major stationary sources of air pollution; and excavation, removal or dredging within the coastal zone and the hydrographic basins of rivers. OGPe is the agency that determines whether a proposed action complies with the required environmental review process.

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

Pursuant to the corresponding statutory authority, regulators can impose administrative, civil and criminal fines or penalties. These may range from $200 to $25,000 (US$) per violation, per day. Significant contumacy fines may also be applicable. Agencies also have the power to revoke or suspend permits and issue orders to do or to cease or desist, and shutdown facilities in connection with the violation of a permit. Intentional permit violations may be subject to criminal sanctions and penalties, including jail time.

3 Waste

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

The EQB regulates and enforces the generation, management, treatment, storage and disposal of non-hazardous and hazardous solid waste. Under the applicable regulation, solid waste is defined as food, waste, silt or discarded material, including hazardous waste. There are specific exceptions such as: (1) domestic liquid waste or mixtures, and waste that goes through a sewer system to a government-owned treatment facility; (2) industrial liquid waste subject to compliance with the CWA; and (3) liquid waste used for irrigation. Hazardous solid waste is defined as any discarded material that has not been excluded by the hazardous waste definition.

Medical waste, used oil, discarded tires, debris from asbestos and lead-based paint abatement actions, among others, may be subject to other/additional regulatory provisions. Activities related to hazardous solid waste are also subject to compliance with applicable RCRA requirements.

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?

Depending on the type and/or amount of waste, a generator (producer) of non-hazardous solid waste or hazardous solid waste may be required to obtain a permit for treatment, storage and/or disposal. The extent of time a waste generator would be allowed to store and/or dispose of waste *in situ* may vary depending on the volume, type of waste, disposal destination and the regulated activity.

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)?

Generators of hazardous substances and waste materials could be subject to future liability under the regulatory and responsibility schemes of RCRA and CERCLA and local statutes/regulations.

Separately, under Article 1802 of the PR Civil Code, a person who by an act or omission causes damage to another through fault or negligence shall be obliged to repair the damage. This Article has

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been applied by local courts to personal injury or property damage caused by environmental violations. Furthermore, the PR Penal Code establishes punishable conduct regarding the environment, including environmental contamination, poisoning of public waters, and havoc caused by an environmental catastrophe that may endanger the public.

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

Under local hazardous waste regulation and the federal counterpart ("RCRA"), generators have obligations from cradle to grave (from generation to final disposal). These include certain manifest, tracking and reporting obligations that help ensure that regulated waste properly moves from its generation point to a compliant final disposal facility. Specific requirements may vary depending on the type of waste (hazardous, special, electronic, and other) and volume, among other things. Under these regulatory schemes there may be instances where a generator is obligated to take back its waste.

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?

Refer, for example, to questions 1.2, 2.4 and 3.3.

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

Potentially, yes. Refer to question 3.3. Generally a person/entity that operates within permit limits is not liable for environmental damage. Broad liability statutes like CERCLA, however, impose strict liability on generators, owners or operators, arrangers and certain transporters, ensuring clean-up efforts, as well as damages for injury to, destruction of, or loss of, natural resources. The Environmental Policy Act and RCRA also potentially impose liability to regulated persons or entities.

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?

Directors and officers of corporations may incur in liability, personal or corporate, depending on the circumstances. This liability is borne principally from federal environmental statutes and has been enforced/confirmed by federal courts (in and outside PR). Corporate officer liability may be predicated on corporate wrongdoing, knowingly approving a wrongful act (or omission), or even failure to prevent/correct a wrongful conduct. Liability may include civil or criminal penalties (fines and/or imprisonment). Depending on the local or federal environmental statute involved, liability may require varying degrees of knowledge or intent.

Environmental pollution insurance is commercially available. Yet, such policies ordinarily cover personal liability if the director or officer did not take part in gross negligence, wilful or criminal conduct. Indemnity protection can be negotiated between private parties, but this generally does not preclude government enforcement action.

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 a share sale, the object of the sale is the interest or participation in a legal or corporate entity (as in a merger or consolidation scenario), that ordinarily remains intact. Liabilities in this scenario are typically assumed by the acquiring entity.

In a sale or transfer of corporate assets, liabilities normally are not transferred unless: (i) the purchaser expressly or impliedly agrees to assume those liabilities; (ii) the transaction amounts to a *de facto* merger or consolidation; (iii) the purchaser is merely the continuation of the seller; or (iv) the transaction is a fraud designed to avoid liability.

There may be liability scenarios outside these traditional concepts depending on the underlying facts and substance of a transaction, beyond the legal form of the sale.

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

In PR, environmental statutes do not establish provisions regarding lender liability for environmental wrongdoing and/or remediation costs. Additionally, under local civil law a lender may potentially be liable for personal injury or damage property under certain circumstances. At the federal level, CERCLA and RCRA provide certain protections to lenders provided lenders do not engage in activities that are not covered by such exclusions.

5 Contaminated Land

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

The EQB and DNER regulate soil and groundwater use, quality, conservation and management. Both agencies may impose administrative, civil and criminal liability for contamination of soil and groundwater when a person or entity uses or extracts these natural resources without obtaining a permit or in violation of the applicable statutes and regulations. Ordinarily, they try to prosecute the person who caused the contamination. Similarly to the EPA, the EQB can undertake corrective/remedial actions and subsequently recover costs from responsible parties.

Additionally, regulated activities are subject to the liability provisions of CERCLA, RCRA, CWA and the SDWA regarding contamination of soil and groundwater. Such statutes allow the EPA and PR to impose civil and criminal liability to polluters that violate water quality standards, compliance requirements and other violations to applicable statutes and regulations.

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

Under the PR Civil Code, local courts can impose joint and several liability in property damage or personal injury claims. As a result, any liable person or entity may seek contributions from other liable parties that contributed to the damage caused by the contamination. CERCLA imposes strict liability for clean-up costs on Potentially Responsible Parties ("PRPs") which include current and past owners and operators, arrangers and transporters. US courts have

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held that the liability under CERCLA is joint and several. A PRP who is found jointly and severally liable is left with the remedy of seeking contributions from other PRPs.

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?

Generally, yes. At the local and federal level, agencies ordinarily reserve jurisdiction to modify or supersede agreements if unknown and unforeseen conditions arise after completion of the remedial action. Even though a third party can challenge agreements, the courts ordinarily give deference to the agency's determination based on the agency's expertise on the subject matter and presumption of correctness of its procedures.

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?

Under local contract law, a seller generally responds for any hidden or latent defect discovered after the purchase of land. This applies even if the seller did not know the land was contaminated. If contamination is discovered after the purchase, the purchaser may seek contribution from the seller through a private civil action.

Any current or past owner that caused, in whole or in part, contamination of land is considered a PRP under CERCLA and RCRA and is potentially liable for any contamination even after selling or transferring ownership. As in the response to question 4.4, a polluter can transfer risk of contaminated land to a purchaser, depending on whether the sale is an asset sale or a share sale. Also, CERCLA specifically provides some protection for *bona fide* prospective purchasers of contaminated land by exempting them from liability provided that they do not impede a response action. However, the EPA may impose a statutory lien on a property for the increase in the fair market value of that property attributable to the EPA's clean-up efforts.

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

Under the Environmental Policy Act, only injunctive relief (no monetary damages) is typically available to address aesthetic harms to public assets. The EQB is authorised, however, to bring a civil action for damages in any local or federal court to recover the total value of the damages inflicted on the natural resources (e.g., wildlife, air, water, groundwater and biota) for any violation to the Environmental Policy Act. Furthermore, local civil law allows the government to bring a public nuisance suit against any person that causes aesthetic harm to a lake, river, bay, stream channel, navigable basin or other 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.?

The EQB is authorised to conduct research, studies, inspections, site visits and analyses, as well as require documents to verify compliance with the provisions of the Environmental Policy Act and applicable regulations. These actions may be carried out by its employees or by any of its consultants and contractors, or by other employees or programmes of any agencies, departments, municipalities, corporations or public instrumentalities, pursuant to current interagency agreements with the EQB. The SWA, DNER, PRASA, DOH are also authorised to conduct investigations, inspections of documents and site visits to verify compliance with their statutes and regulations. Federal agencies are also empowered to undertake such investigative actions. These administrative powers can be enforced through local or federal courts as well.

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?

Pursuant to the Environmental Policy Act and its implementing regulation, any person who gains direct or indirect knowledge of an environmental emergency situation that poses a threat or an imminent risk of endangering human health and safety or the environment shall immediately notify the EQB. Also, the EQB may require the owner or operator of a source subject to an environmental permit, to notify the presence of a pollutant discovered on site.

Ordinarily, a regulated entity does not have to disclose the presence of pollution to third parties. Depending on the risk to human health/the environment, a disclosure could be required.

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

Please refer to question 7.1. Depending on the contamination source, the EQB may order the responsible party to investigate the magnitude and extent of the contamination and take remediation action.

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?

Under Puerto Rico contract law, a seller must disclose any such findings and may even make the relevant representations and warranties. A seller that knowingly does not disclose defects in the land and falsely assures purchaser of the land's pristine condition may incur in contractual violations including fraud. The same principles apply in the context of merger and/or takeover transactions. Additionally, refer to the response under question 5.4.

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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?

Yes, it is possible to use an environmental indemnity to limit exposure. Environmental indemnity agreements between contracting parties limit the exposure of actual or potential environment-related liabilities. However, these agreements do not prevent government agencies from commencing enforcement actions against a responsible party. Therefore, making a payment to another person under an indemnity only discharges the indemnifier's contractual liability under the environmental indemnity agreement.

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

No Puerto Rico environmental statute specifically addresses the transfer of environmental liabilities to an off balance sheet entity. Under Puerto Rico law, a company is generally allowed to assign and transfer its liabilities to another entity. However, under certain theories of law such as corporate successorship and piercing of the corporate veil, liability may be imposed on the transferor of the environmental liabilities.

No Puerto Rico statute specifically addresses the liability of a company that dissolves in order to escape environmental liability. Under the Puerto Rico General Corporations Act (which is based on the Delaware General Corporations Law), a company that is dissolved continues as a body corporate for the term of three years after the date of the dissolution or for such longer period that a court of law may determine for purposes of prosecuting and defending suits, by or against them and to enable them to settle and close the business, dispose of property, discharge liabilities and distribute the remaining assets to the shareholders. If an action, suit or proceeding begins prior or within the three-year period, said action will not be abated due to the dissolution of the company and the company will continue as a body corporate for a period beyond the three-year term until any judgment, order or decree is fully executed. A shareholder will not be liable for claims against a dissolved company that has distributed its remaining assets in an amount in excess of such shareholder *pro rata* share of the claim or the amount distributed to the shareholder, whichever is less.

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?

There is no Puerto Rico environmental statute that specifically imposes liability on a shareholder for breaches of environmental law and/or pollution caused by the company. Generally, shareholders (including parent companies with respect to their subsidiaries/affiliates) are not personally liable for the debts and liabilities of a company (e.g. liabilities due to breaches of environmental law and/or pollution) solely on the basis of their ownership of stock, but may be held liable if the requirements for piercing the corporate veil are satisfied. In order to pierce the corporate veil, a plaintiff must show that: (i) the subsidiary/affiliate is an alter ego of the shareholder/parent; and/or (ii) upholding a company's separate legal personality amounts to justifying fraud and promoting injustice, helps in the avoidance of statutory obligations, or defeats public policy.

Additionally, please refer to question 4.4.

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

In Puerto Rico there is no specific environmental "whistle-blower" protection measure. Under CERCLA, the Occupational Safety & Health Act ("OSHA") and the CAA, among others, there exists whistle-blower protection for a person or entity that reports environmental violations.

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

Class actions are available for pursuing environmental civil claims by persons that have suffered a personal injury, property damage or violations to the Environmental Policy Act, provided certain requirements are met by the group of plaintiffs. Citizen action suits are also available under local and federal environmental laws to address federal law violations. Punitive damages are generally not available unless expressly allowed by the relevant statute. Specifically, the Environmental Policy Act and the PR Penal Code environmental catastrophe provisions impose punitive damages for certain environmental violations.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

In PR, environmental statutes do not expressly exempt individuals or public interest groups from liability to pay costs when pursuing environmental litigation. Thus, contrary to the scenario under certain federal statutes, ordinarily litigation costs will be awarded to the party that prevails. Similarly, attorneys' fees shall be awarded to the prevailing party when the other party or their attorneys act recklessly or frivolously during litigation and is requested by the prevailing party.

9 Emissions Trading and Climate Change

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

The Renewable Energy Policy Act ("Act 82-2010") was enacted in 2010 and introduced the use of Renewable Energy Certificates ("RECs") as a mechanism to stimulate the production of renewable energy and reduce the effects of greenhouse gas emissions. This Act was also adopted in anticipation of the EPA's revisions of its Greenhouse Gas Reporting Programme, National Renewable Portfolio Standards and other carbon dioxide (CO_2) and greenhouse gases reduction and control systems. However, Puerto Rico has yet to develop an operational emission trading scheme to engage in the emissions trading market.

In 2013, Executive Order 2013-018 instructed the PR Energy Affairs Administration ("EAA"), DNER and EQB to develop a scientific study quantifying the amount of greenhouse gases generated in Puerto Rico within one year of the enactment of the Executive Order.

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9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

Since 2010, the EPA requires owners and operators of facilities that directly emit 25,000 metric tonnes or greater of CO2, to identify, calculate and report their greenhouse gas emissions. Locally, the EQB has not developed separate or additional monitoring and reporting requirements for the emission of greenhouse gases outside of mandatory air emission permit compliance requirements under the Clean Air Act and local air emissions regulation. The EPA is currently evaluating a proposed rule to amend new source greenhouse gas emission reporting requirements and confidentiality determinations for the reporting of the new and substantially revised data elements.

9.3 What is the overall policy approach to climate change regulation in Puerto Rico?

Act 82-2010 established a public policy designed to reduce environmental pollutants such as carbon dioxide and other gas emissions which cause the greenhouse effect, by diversifying energy sources and energy technology infrastructure away from fossil-based fuels (principally petroleum). In February 2013, Executive Order 2013-018 instructed the EAA, DNER and EQB to develop a scientific study quantifying the amount of greenhouse gases generated in Puerto Rico. The report is due February 2014. Based on this study, local government agencies will have to develop an integrated and sustainable strategy aimed at reducing and removing a significant amount of these pollutants.

10 Asbestos

10.1 Is Puerto Rico likely to follow the experience of the US in terms of asbestos litigation?

Due to the legal ties with the US, Puerto Rico has and continues to follow the experience of the US in asbestos litigation, though not as pronounced as in the mainland.

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

The EQB regulates the management, removal, transfer, demolition and transportation of asbestos-containing material. These requirements are applicable to private and public buildings or structures, including public schools. Prior to initiating any asbestos abatement activities, the responsible persons or entities must comply with certain requirements, including an Operation and Maintenance Plan ("O&M"), from the EQB in order to minimise the possibility of accidental disturbance of asbestos containing encapsulated materials. The referred work plan must include, among others, an Emission Source Permit, Solid Waste Generating Activity Permit and Asbestos Removal Permit. Additionally, the EQB requires an annual inspection of public buildings by a certified asbestos inspector which shall immediately notify the EQB of any asbestos found during inspection. Asbestos-regulated activity must also comply with the provisions of the National Emission Standards for Hazardous Air Pollution under the federal Clean Air Act.

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 Puerto Rico?

Environmental risk insurance is offered in Puerto Rico by various insurance companies located in Puerto Rico and the US. The market generally supports coverage for all types of environmental hazards. The most common coverage is "Fixed Site", Contractors' and Transit Pollution Liability. Policies can provide coverage for pollution liability and the costs associated with remediation. The hardest coverage to place in this market is Pollution Liability and Remediation for pre-existing conditions. Most carriers require a Phase I & II Site Assessment prior to granting coverage.

Some of the available coverage includes:

1. Premises Pollution Legal Liability – a site pollution policy designed to include coverage for third party bodily injury, third party property damage and first/third party clean-up costs. Coverage includes:
   - 1st party clean-up cost;
   - 3rd party clean-up cost;
   - 3rd party bodily injury and property damage;
   - 3rd party Property Loss of use; and
   - Natural Resources Damages.

   Additional coverage available:
   - Biological Contaminants Coverage.
   - Business Interruption.
   - Transportation Coverage.
   - Non Owned Disposal Sites.
2. Contractors' Pollution Liability – designed to respond to claims against contractors for third party bodily injury, third party property damage and third party clean-up costs. Coverage includes:
   - 3rd party clean-up cost;
   - 3rd party bodily injury and property damage;
   - 3rd party Property Loss of use; and
   - Natural Resources Damages.

   Additional coverage available:
   - Transportation Coverage.
   - Professional Liability.
3. Storage Tank Pollution Liability – for third-party bodily injury and property damage claims resulting from storage tank incidents involving scheduled storage tanks. Corrective action costs resulting from storage tank incidents.

   Coverage includes:
   - 1st party clean-up cost;
   - 3rd party clean-up cost;
   - 3rd party bodily injury and property damage; and
   - Natural Resources Damages.

Some of the principal carriers available are: ACE Insurance Company; Liberty Mutual Insurance; AIG Insurance Company; and XL Insurance.

11.2 What is the environmental insurance claims experience in Puerto Rico?

The role of environmental insurance in Puerto Rico is growing. It is still a relatively new option and has opportunity for growth as

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consumers learn, policies evolve and prices change. Nevertheless, one of the principal claims experiences has centred around the commercial transportation industry, which is required under federal law to have environmental insurance protection against environmental incidents.

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 Puerto Rico.

In 2013, the Governor of Puerto Rico signed an executive order ordering the EAA (currently known as the Energy Public Policy Office), DNER and EQB to prepare a scientific study to quantify the amount of greenhouse gases ("GHGs") that are released to the atmosphere in Puerto Rico. As per a subsequent executive order extending the deadline for the completion of the study to September 30, 2014, the EAA submitted the study, which is pending the Governor's review and approval. In addition, the PR Climate Change Counsel ("PRCCC"), which was created to develop a comprehensive climate change vulnerability assessment report for Puerto Rico, has completed a report and anticipates that the final version of the report will be published this summer (2015).

In an effort to promote recycling initiatives, the PR Legislature is currently discussing a bill that furthers recycling. The House Bill, known as the "bottle bill", imposes a fee of five cents ($.05) to incentivise the recycling of containers (i.e., plastic, aluminium and glass) with capacity ranging from four to 128 ounces.

In 2014, the EQB adopted new regulations regarding water quality standards, light pollution and underground storage tanks. Essentially the new PR Water Quality Standards Regulation modified the previous water quality standards for: (1) inorganic substances, pesticides, non-pesticide organic substances and carbon tetrachloride, volatile and semi-volatile organic substances; and (2) specific use classifications of the waters of Puerto Rico. It also includes changes to the requirements for calibration and validation of mathematical models used to define mixing zones, and design flow requirements for waste load allocations.

The Regulation for the Control and Prevention of Light Pollution implements the environmental public policy with respect to the control and prevention of light pollution; sets up certain prohibitions/bans; and establishes general provisions for the control and prevention of light pollution in order to avoid excessive and unnecessary emissions of light into the night sky, as well as the intrusion of artificial light in unwanted properties and natural areas.

The new Underground Storage Tanks ("UST") Control Regulation updates the existing local UST minimum standards by adopting the requirements established in the US Energy Policy Act of 2005 that amended Subtitle I of the Solid Waste Disposal Act governing Underground Storage Tanks. Some of the most significant changes include: (i) UST operator training requirements; (ii) secondary containment requirements for new USTs; and (iii) a prohibition to deliver to, deposit into, or accept a regulated substance (e.g., fuels) into an UST at a facility that has been identified by the EPA or the EQB as ineligible for such activities. In particular, the product delivery prohibition ("red-tag") authorises the EQB to identify a tank or combination of tanks as ineligible for delivery, deposit or acceptance of product upon a finding of certain conditions including one of the following: (a) failure to install the required spill prevention, overfill protection, release detection or corrosion protection equipment; (b) failure to properly operate or maintain release detection equipment; or (c) failure to maintain financial responsibility. In order for an owner and operator of a red-tagged UST to have the EQB reclassify such tank, the owner/operator must provide a written statement to the EQB indicating that the deficiencies listed in the non-compliance notice were corrected. Furthermore, the EQB amended the Regulation for the Control of Atmospheric Pollution to include a Permit for GHGs and extend the issuance of Title V Permits for emission sources affected by GHGs as established by the EPA's Prevention of Significant Deterioration and Title V Greenhouse Gas Final Rule (40 CFR Parts 51, 52, 70 and 71).

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Mr. San Miguel joined **Ferraiuoli** as Capital Member in March 2011. He is Chair of the firm's Energy and Environmental Law Practice Groups. He is also a member of the Government and Legislative Affairs Practice Group.

Prior to joining **Ferraiuoli**, Mr. San Miguel was a partner in another major law firm in San Juan, specialising in environmental law and litigation, energy, land use matters and government/regulatory affairs. He represents businesses in all types of adversarial proceedings involving environmental issues, including administrative enforcement actions before the US Environmental Protection Agency, the Puerto Rico Environmental Quality Board, the Puerto Rico Department of Natural and Environmental Resources, and the Puerto Rico Aqueduct and Sewer Authority, among others. He also counsels clients on regulatory compliance matters including Environmental Impact Statement processes, under applicable federal and local environmental statutes and regulations.

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Ms. Lillian Mateo-Santos joined **Ferraiuoli** in 2011. She is a Senior Member. Prior to joining **Ferraiuoli**, Ms. Mateo-Santos was a partner at another major law firm in San Juan.

Ms. Mateo-Santos provides counselling to clients on environmental, energy, land use, and regulatory and government affairs matters under the federal and state legal frameworks. As part of her practice she represents clients before the US Environmental Protection Agency and the Puerto Rico Environmental Quality Board, the Department of Natural and Environmental Resources, the Solid Waste Authority, the Puerto Rico Planning Board, the Puerto Rico General Permits Office and Municipal Permits Offices.

Additionally, she provides counselling to clients on matters concerning the Environmental Impact Statement process, as well as permitting and land use matters for industrial, commercial and residential development projects. She was involved in the drafting process of Puerto Rico's new Permits Process Reform Act Bill, which became law on December 1, 2009, bringing significant changes to Puerto Rico's existing permitting processes.

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Ferraiuoli has received international recognition in the legal field by Chambers & Partners, a London-based legal directory firm that publishes, on an annual basis, the leading directories of the legal profession identifying the world's top lawyers and law firms. In its 2010-2014 Latin America and Global editions, Chambers ranked Ferraiuoli as a leader in both Corporate and Intellectual Property and several firm attorneys were named "Leaders in their Fields" by the publication. Ferraiuoli has further been honoured as one of Puerto Rico's outstanding firms by Chambers & Partners, as it was shortlisted as one of the candidates for Puerto Rico's Law Firm of the Year for the years 2011-2013.

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