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Latest environmental legislation in effect and in pipeline – 2023 overview

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This article summarises key amendments to Swiss environmental laws which came into effect in recent months or will come into effect in the near future.

Air pollution control

The Federal Council has introduced changes to the Ordinance on Air Pollution Control (OAPC) with effect from 1 January 2023,⁽¹⁾ enabling cantons to set less far-reaching emission limits in exceptional cases and under strict conditions.

Because of the war in Ukraine and the resulting uncertainty in the supply of gas and electricity, there is a risk of difficulties in the supply of chemicals used by industry to purify exhaust gases. This applies particularly to wood-fired power plants, waste incineration plants and cement plants, which require chemicals such as ammonia or urea to reduce emissions of harmful nitrogen oxides. If such chemicals are not available due to supply difficulties, plants risk exceeding the applicable emission limits. In such cases, cantonal authorities would have to decide on a temporary shutdown of the plants. To prevent a shutdown, the OAPC has been amended to allow cantonal authorities to increase the emission limit values for a limited period of time. However, other options, such as a reduced operation of the plant, must first be considered.

Particleboards and fibreboards

With effect from 1 January 2023, the rules contained in the OAPC to produce particleboard have been updated to reflect the current state of technology. In addition, new limit values have been introduced to produce fibreboard.

Further, the ban on the use of waste wood in furnaces for the direct drying of wood chips has been lifted. As a result, the Ordinance on the Avoidance and the Disposal of Waste (ADWO)⁽²⁾ now includes the pollutant limit values for waste wood used for material and thermal recycling, allowing the quality of waste wood to be monitored.

Heat pumps

To meet the climate change targets, it is essential to switch to climate-friendly heating systems. Heat pumps are a key technology in this context that can significantly reduce fossil fuel consumption compared to oil or gas heating systems. Heat pump installations have increased significantly in recent years.

The noise emitted by heat pumps falls within the scope of the Environmental Protection Act (EPA),⁽³⁾ which means that the precautionary principle applies. Accordingly, noise emissions must be limited at their source as far as it is technically and operationally possible and economically viable. As the specific meaning of this regulation has given rise to increasing debate, the precautionary principle for heat pumps must be specified in the Noise Abatement Ordinance (NAO)⁽⁴⁾ and enforcement should be standardised in the cantons. The amendments are scheduled to come into force on 1 November 2023.

The amendment requires the cost-benefit ratio to be specified for new heat pumps. This will clarify up to what point additional precautionary measures are still proportionate. It is stipulated that the additional measures are only proportionate if an emission reduction of at least three decibels can be achieved with a maximum of 1% of the investment costs. Additionally, in the case of variable output systems, such measures are only indicated if the system runs at more than 65% of its capacity at a temperature above 2°C.

These regulations will only apply to air-to-water heat pumps that are used for room heating or heating drinking water. Heat pumps for private swimming pools, for example, or ground source heat pumps, which normally do not emit noise to the outside, are excluded. Cooling systems do not fall within the scope of application of the amended rules either.

Protection against non-ionising radiation

An amendment of the Ordinance on Protection against Non-ionising Radiation, regarding the use of data from base stations for mobile communication, will enter into force on 1 November 2023.⁽⁵⁾

Prohibited substances

By means of a motion, the Federal Council was instructed to amend Annex 1.17 of the Chemical Risk Reduction Ordinance (ORRChem).

⁽⁶⁾ The amendment intends to allow the temporary re-use of banned substances that are necessary for the manufacture of chemicals and medicinal products. This re-use is subject to the condition that the re-use takes place exclusively in a closed system without emissions into the environment and where no humans are exposed to the concerned substances. To apply an exemption of temporary further use, the competent authority must be informed and proof must be provided that the precondition of the closed system is fulfilled.

In addition, a provision has been implemented whereby an exception may be made from the restrictions within Annex 1.17 of the ORRChem for the maintenance of aircrafts of the Swiss Air Force. These regulations entered into force on 1 April 2023.

CMR-substances

Annex 1.10 of the ORRChem governing substances that are carcinogenic, mutagenic or toxic to reproduction (CMR-substances) was aligned to the developments in the European Union as of 1 July 2023. Consequently, further substances or substance groups were added to Annex 1.10 of the ORRChem. The concerned substances may no longer be supplied to the general public after the expiry of the transitional period on 1 December 2023. According to a rough estimate, the Federal Office for Public Health (FOPH) assumes that around 200-300 public products are affected.

Plant protection products

The Plant Protection Products Ordinance (PlantPPO) has been amended as of 1 January 2023.⁽⁷⁾ The amended PlantPPO prohibits the authorisation of plant protection products for private use if the products pose certain health risks, are toxic or very toxic to aquatic organisms or may endanger bees.

In this context, the ORRChem will be amended and a new Ordinance on the Register of Specialized Authorizations for the Use of Plant Protection Products will be introduced.⁽⁸⁾ According to the new regulations, plant protection products may only be purchased by professional users if they have a valid professional authorisation. To obtain a professional license, users will have to attend the prescribed courses and pass examinations.

The new Ordinance on the Register of Specialized Authorizations for the Use of Plant Protection Products and the related amendments to the ORRChem will come into force in 2026.

Pesticides

Amendments to the Waters Protection Ordinance (WPO) entered into force on 1 February 2023.⁽⁹⁾ The new provisions define when a license for a pesticide must be reviewed:

- firstly, when contamination has been detected in at least three cantons within one year;
- secondly, when the limits have been exceeded in at least two out of five consecutive years; and
- lastly, the contamination must be detected in at least 5% of drinking water monitoring sites or in 10% of surface water monitoring sites (ie, rivers and lakes).

Additionally, places where pesticide sprayers are filled or cleaned, and where highly concentrated plant protection products could be washed away, must now be inspected on a regular basis. The first inspection must occur before the end of 2026. Afterwards, inspections must be repeated every four years. Any found deficiencies must be rectified immediately. This is to ensure that no more plant protection products can enter water bodies from these sites.

VOC incentive tax

Volatile organic compounds (VOCs) are used as solvents in industry, commerce and private households and are found in various products such as paints, lacquers and cleaning agents. VOCs are also used in the production of chemicals and cosmetics. Because VOCs pollute the air and have adverse health effects, an incentive tax is being levied on VOCs to reduce the consumptions of products containing VOCs.

On 1 January 2023, amendments to the Ordinance on the Incentive Tax on Volatile Organic Compounds (OVOC) came into force.⁽¹⁰⁾ These amendments are intended to simplify the enforcement of the incentive tax while maintaining the current level of protection. In addition, the procedure was simplified for companies already reducing their VOC emissions with the best available technology, which are therefore exempt from the incentive tax.

Mandatory climate disclosures

Large Swiss companies of public interest will be required by law to report on non-financial matters and on climate issues (for further details please see "[Latest environmental legislation in effect and in pipeline – 2022 overview](#)"). Specifically public companies, banks and insurance companies with 500 or more employees and at least 20 million Swiss francs (approximately £17,800,200) in total assets or more than 40 million Swiss francs (approximately 35,600,000) in turnover are obliged to report.

To facilitate implementation, the Swiss Federal Council has adopted the Ordinance on mandatory climate disclosures for large companies.⁽¹¹⁾ The ordinance implements the "Recommendations of the Task Force on Climate-related Financial Disclosures". Public reporting involves disclosures not only on the financial risk that a company incurs due to climate-related activities, but also on the impact of the company's business activities on the climate. In addition, the company must describe the reduction targets it has set for its direct and indirect greenhouse gas emissions, as well as how it plans to implement them. The ordinance will enter into force on 1 January 2024.

For further information on this topic, please contact Michael Lips or Melanie von Rickenbach at Pestalozzi Attorneys at Law by telephone (+41 44 217 91 11), fax (+41 44 217 92 17) or email (michael.lips@pestalozzilaw.com or melanie.vonrickenbach@pestalozzilaw.com). The Pestalozzi Attorneys at Law website can be accessed at www.pestalozzilaw.com.

Endnotes

(1) Ordinance on Air Pollution Control, SR 814.318.142.1.

- (2) Ordinance on the Avoidance and the Disposal of Waste, SR 814.600.
- (3) Federal Act on the Protection of the Environment, SR 814.01.
- (4) Noise Abatement Ordinance, SR 814.41.
- (5) Ordinance on Protection against Non-ionising Radiation, SR 814.710.
- (6) Chemical Risk Reduction Ordinance, SR 814.81.
- (7) Plant Protection Products Ordinance, SR 916.161.
- (8) Ordinance on the Register of Specialised Authorisations for the Use of Plant Protection Products.
- (9) Waters Protection Ordinance, SR 814.201.
- (10) Ordinance on the Incentive Tax on Volatile Organic Compounds, SR 814.018.
- (11) Ordinance on mandatory climate disclosures for large companies.