

Environmental legislation in effect and in the pipeline

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This update summarises key amendments to Swiss environmental laws which either came into effect in 2016 or which came or will come into effect in 2017.

National and international movement of waste

On July 1 2016 a few technical adjustments to the Ordinance on Movements of Waste⁽¹⁾ came into force. In particular, the obligation to use consignment notes was extended to certain non-hazardous waste that is subject to regulatory control, as specified on the list of waste of the Federal Department of the Environment, Transport, Energy and Communications.

On July 1 2017 the electronic transmission of reports about cross-border movements of waste will be introduced. Pursuant to the new rules, an electronic consignment note must be registered in the database of the Federal Office for the Environment at least three working days before exporting waste. Also, a copy of the import or export permit must be available when crossing the border.

Under both the current and new rules:

- the import of waste must be declared to the customs authorities and a signed consignment note must be available when crossing the border;
- the export of waste must be declared to the customs authorities and a signed consignment note must be available when crossing the border; and
- the retention obligation for consignment notes and disposal confirmations lasts for five years.

Non-ionising radiation

The Ordinance on the Protection against Non-ionising Radiation⁽²⁾ defines maximum emission values for certain installations such as high-voltage lines, catenaries, mobile communications antennae and broadcasting transmitters. In order to prevent possible hazards that are scientifically proven, the concerned installations must comply with the relevant limit values.

The ordinance distinguishes between old and new facilities. Old facilities were built or are in operation based on a permit that became legally effective before February 1 2000. All other facilities are considered to be new. In the case of certain types of installation (ie, high-voltage lines and catenaries), different limit values applied to old and new facilities.

On July 1 2016 a revision of the ordinance came into force in order to reduce the differences between the limit values for old and new facilities.

AUTHORS

[Anne-C Imhoff](#)



[Michael Lips](#)



The background of the revision involves two Federal Supreme Court judgments⁽³⁾ with the following key statements:

- As a long-term goal, old facilities must comply with the same requirements as new facilities.
- After a major change to an old facility, that facility should meet the stricter limit values that apply to new facilities.
- Exceptions remain possible after changes to old facilities, but only in particular cases and if all reasonable measures have been taken.
- The replacement of two parallel lines is a major change. Therefore, after the replacement of the second line, the facility must meet the stricter limit values.

Since the revision, the ordinance reflects these requirements. As a consequence, the operators of the facilities concerned must take additional technical measures when altering old facilities, which is likely to involve additional costs.

Forest protection

On January 1 2017 certain amendments to the Federal Act on Forests⁽⁴⁾ and the Ordinance on Forests⁽⁵⁾ came into force. The amendments provide the basis to implement the National Forest Policy defined by the Federal Council.

The following goals of the National Forest Policy have required amendments to the law and the ordinance:

- protection of forests against harmful organisms;
- preparation of forests for the challenges of climate change;
- promotion of use and sales of sustainably produced wood; and
- improvement of the performance of forest economy.

In particular, the new rules entitle authorities to:

- apply protective measures against harmful organisms outside protection forests;
- introduce reporting obligations; and
- prohibit certain plants, organisms or products.

Also, the legal basis of financial subsidies has been broadened to further promote the sustainable management, use and exploitation of forests.

Particular attention should be paid to a new provision on the 'polluter pays' principle that was added to the law. Accordingly, the costs of protecting forests against immediate threats and the costs of determining and removing impairments to forests are allocated to the person responsible. According to the law, the 'polluter pays' principle applies only if the person responsible acted culpably or culpably omitted required actions.

Water protection

In order to give the cantonal authorities more flexibility with regard to the use of aquatic areas, certain amendments to the Water Protection Ordinance⁽⁶⁾ became effective on May 1 2017.

In particular, the new provisions slightly loosened the requirements to issue building permits in aquatic areas. So far, authorities could authorise exceptions for installations that meet zoning requirements only in densely built-up areas, provided that there are no overriding interests to the contrary.⁽⁷⁾

Pursuant to the new rules, in order to close gaps between buildings also outside densely built-up areas, authorities may under certain conditions (ie, if zoning requirements are met and if there are no overriding interests to the contrary) authorise such exceptions. According to the revised ordinance, this applies only to individual and not overbuilt plots that are situated within a row of several overbuilt plots.

Polluted sites

The Ordinance on the Remediation of Polluted Sites⁽⁸⁾ has been in force since 1998. Its purpose is to ensure that polluted sites are remediated if they cause harmful effects or nuisances, or if there is a real danger that such effects may arise.⁽⁹⁾

On May 1 2017 certain amendments to the ordinance became effective. These selective adjustments reflect 18 years of experience with the ordinance and concern the following main points:

- The requirements to clean up contaminated sites that endanger a groundwater well were defined more precisely by referring to specific concentration values of the relevant harmful substances.
- The obligation to monitor contaminated sites with harmful substances in the interstitial air was added to the ordinance. So far, the ordinance provided only for an obligation to clean up such sites under certain conditions, not a monitoring obligation.

Further, the application scope of the concentration values of two harmful substances (ammonium and nitrite) was limited to surface water bodies and the concentration value of vinyl chloride was increased. These adjustments were made based on the current scientific assessment of the concerned substances and consider the concentration values defined by the World Health Organisation and the US Environmental Protection Agency. A reduction of clean-up costs of approximately Sfr70 million to Sfr100 million is expected, since the clean-up of a few sites will no longer be legally required.

Chemicals

On May 1 2017 certain amendments to the Ordinance on the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Chemicals in International Trade⁽¹⁰⁾ became effective.

The member states of the underlying convention⁽¹¹⁾ are obliged to inform each other about restrictions of the use or transport of chemicals. Certain chemical substances are listed in the annexes of the convention. With regard to these substances, each member state must define whether it allows the import and, if so, it must define the import conditions. Delivering chemicals to a member state that are prohibited by that member state is not allowed.

The annexes to the ordinance contain the substances prohibited or restricted pursuant to the following regulations:

- the Chemical Risk Reduction Ordinance;⁽¹²⁾
- the Pesticide Ordinance;⁽¹³⁾ and
- the Ordinance on Biocidal Products.⁽¹⁴⁾

The amendments to the Ordinance on the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Chemicals in International Trade were necessary to meet the requirements of the convention, pursuant to which the ordinance must list all substances that are subject to domestic regulation.

The concerned amendments are expected to increase the costs of exporting certain chemicals, since several chemicals will be newly added to the relevant lists. Also, the obligation to use safety data sheets for the export of chemicals to states other than European Free Trade Association member states was introduced.

For further information on this topic please contact [Anne-C Imhoff](#) or [Michael Lips](#) at Pestalozzi Attorneys at Law by telephone (+41 44 217 91 11) or email (anne-c.imhoff@pestalozzilaw.com or michael.lips@pestalozzilaw.com). The Pestalozzi Attorneys at Law website can be accessed at www.pestalozzilaw.com.

Endnotes

(1) Ordinance on Movements of Waste, SR 814.610.

- (2) Ordinance on the Protection against Non-ionising Radiation, SR 814.710.
- (3) Federal Supreme Court, 1A.184/2003 and 1C_172/2011.
- (4) Federal Act on Forests, SR 921.0.
- (5) Ordinance on Forests, SR 921.01.
- (6) Water Protection Ordinance, SR 814.201.
- (7) For further details please see "[Recent jurisprudence on construction activities in aquatic areas](#)".
- (8) Ordinance on the Remediation of Polluted Sites, SR 814.680.
- (9) For further details please see:
- "[New provisions on clean-up of contaminated sites](#)";
 - "[Clean-up of polluted sites: relative and absolute time limitation](#)";
 - "[Federal Supreme Court confirms scope of 'polluter pays' principle](#)";
 - "[Polluted sites – federal Environmental Protection Act amended](#)";
 - "[Federal Supreme Court decision on subsidies to remediate polluted sites](#)"; and
 - "[Federal Supreme Court decision on 'polluter pays' principle and heirs' liability](#)".
- (10) Ordinance on the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Chemicals in International Trade, SR 814.82.
- (11) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, SR 0.916.21.
- (12) Ordinance on the Reduction of Risks relating to the Use of Certain Particularly Dangerous Substances, Preparations and Articles, SR 814.81.
- (13) Ordinance on the Placing on the Market of Pesticides, SR 916.161.
- (14) Ordinance on the Placing on the Market and Handling of Biocidal Products, SR 813.12.

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