Country Profile: Chile

Editor's Note: This is the third in a series of articles summarizing various countries' government and SH&E legislative processes. It is intended to serve as a useful planning tool for SH&E professionals preparing to conduct business in the profiled country. The material contained has been provided courtesy of ENSR International. Requests for additional country information should be directed to Halley Moriyama at hmoriyama@ensr.com or (978) 589-3233.

Chile is located in southwestern Latin America. The country is bounded on the north by Peru, on the east by Bolivia and Argentina, and on the south and west by the Pacific Ocean (see map). Chile extends nearly 4,300 km (about 2,650 miles) in a north-south direction, with an average width of only 177 km (about 110 miles). This makes Chile the longest and narrowest country in the world.

The country may be divided into three distinct regions. The north, which has one of the driest deserts in the world, also contains the country’s largest mining and fisheries investments. The Central Valley, which has most of the population, is where the country’s main industrial and agricultural interests are situated. The south, which is largely characterized by fiords and glaciers, ends in the world’s most remote city, Punta Arenas, across the Strait of Magellan.

The country is divided into 13 regions, which include the capital, Santiago; 51 provinces; and 335 municipalities. The regions are: Tarapaga, Antofagasta, Atacama, Coquimbo, Valparaiso, Libertador General Bernardo O’Higgins, Maule, Bio-Bio, Araucania, Los Lagos, Aisen del General Carlos Ibañez del Campo, Magallanes y de la Antartica Chilena and Region Metropolitana.

Population
According to the Census of April 2002, the current population of Chile is roughly 15 million—or less than 20 inhabitants per square km. According to this same source, the population increased at an annual average rate of 1.2 percent between 1992 and 2002, one of the lowest growth rates in Latin America. The Chilean population is highly urbanized, with 86.7 percent of the population living in urban areas. About 40 percent of the population live in the metropolitan area of Santiago. The six largest cities are Santiago (4,655,800), Concepción (373,400), Viña del Mar (318,489), Antofagasta (293,800), Valparaíso (267,800) and Temuco (266,225).

Ethnically and religiously, the population of Chile is very homogenous and integrated. Around 75 percent of the population is Catholic. The official language is Spanish, but English is spoken fluently by the business community.

Government
Overview
Chile is a unitary democratic republic, which has been independent since the early 19th century and is governed by a constitution that was enacted in 1980. This constitution was approved after a plebiscite was conducted by the military government of that period, and was fully ratified upon the return of democracy in 1990.

The government is divided into three branches. According to the constitution, executive authority is vested in a president who is popularly elected every six years. The president heads the executive branch and appoints a cabinet to assist him in the performance of his duties. The current president, Ricardo Lagos, was elected in 2001 and will remain in office until 2006. His government represents a center-left coalition that includes the Christian-Democratic and socialist parties.

The legislative branch is represented by a bicameral National Congress, which is formed by the Senate and the Chamber of Deputies. It sits in the port of Valparaiso, about 100 miles from Santiago. It is composed of a Senate, which has 38 members elected by direct popular vote (two for each of the 19 senatorial circumscriptions). In addition, there are nine institutional members, which are appointed in accordance with a special procedure established in the constitution. All of these senators serve eight-year terms. Finally, former President Frei is a senator for life by the express mandate of the constitution. The Senate is partially renewed every four years. The Chamber of Deputies has 120 members, all of whom are elected by popular vote and serve four-year terms.

The power to resolve civil and criminal cases and enforce those resolutions rests with the judicial branch, which is headed by the Supreme Court. The members of that court and of the Courts of Appeals, which exist in every region, are appointed by the president of the republic from a list of five and three candidates, respectively. The Supreme Court prepares these lists. Judges in each regional courts of appeals are appointed by the president from a list of three candidates proposed by the respective courts of appeals. There
are also special courts for labor, military and juvenile cases and two institutional arbitration centers.

Environmental Authorities
The governmental institutions created by Law No. 19,300, the Environmental Framework Law, are based on the recognition of the legal and technical responsibilities of each ministerial sector and the need to coordinate their various environmental actions and policies. As such, there is no single, centralized environmental authority. At the national level, the principal environmental authorities are represented by the National Commission for the Environment, called the CONAMA, and by the various sectoral ministries, many of whom have environmental functions in addition to other areas of responsibilities.

CONAMA is a functionally decentralized public service, with its own legal personality and assets. It essentially serves as a coordinating body in the management of the government’s environmental policies, and operates under the supervision of the president of the republic.

Some responsibilities of CONAMA include:
- propose government environmental policy to the president of the republic;
- act as a body for consultation, analysis, communication and coordination on environmental matters;
- maintain a national public system that provides environmental information and is organized regionally;
- administer the Environmental Impact Assessment System at the national level, coordinate the creation of standards of environmental quality and determine the programs which will carry these out;
- coordinate the pertinent bodies for obtaining support for international environmental initiatives, and act, along with the Agency of International Cooperation, as the national funnel for internationally funded environmental projects;
- finance projects and activities aimed at protecting the environment, preserving nature and conserving the natural heritage.

Safety & Health Authorities
Two administrative groups share responsibilities for workplace safety and health: the Ministry of Labor and Social Security, and the Ministry of Health.

The Ministry of Labor and Social Security is organized around two separate undersecretaries: Labor and Social Security. The Labor Directorate (“Dirección General del Trabajo”) is one of the primary agencies serving the undersecretary of labor while the Social Security Service (SSS) is one of the main agencies supporting the undersecretary of social security.

The Labor Directorate is a technical service that is responsible for the enforcement and supervision of the labor laws, the supervision of the operation of the labor unions, and the prevention and resolution of labor conflicts. Its functions are exercised through the labor inspectors, which exist in those provinces, departments and municipalities determined by the director of the service.

The SSS concerns itself with the administration of the mandatory worker insurance system.

History of EH&S Legislation

Environmental
Prior to the enactment of the 1980 constitution and current Environmental Framework Law—“Ley de Bases del Medio Ambiente,” No. 19,300 of 1994—Chile did not have legislation systematically organized for the protection of the environment as a whole. Instead, it had a diverse, greatly dispersed and miscellaneous set of natural resources—related legislation, separated by sectors, with only incidental environmental relevance.

In recognition of this, CONAMA started, in June 1990, the formidable task of identifying, assembling and publishing the sectoral legislation then in force.

From this research, a total of 1,004 legal texts of different hierarchies were identified. After a careful review of their level of effectiveness, 718 legal texts were finally included in the “Repertorio de la Legislación de Relevancia Ambiental en Chile,” which was published in January 1992. This document covered legislation enacted through the end of 1991; municipal ordinances or regulatory plans were not included in this compilation.

Within the broad concept of “legislation,” the repertory included, in what refers to national laws, the constitution (1), codes (6), laws (57), decrees with the force of law (19), law decrees (30), regulations and simple decrees (452), resolutions (79) and official Chilean norms approved by the Instituto Nacional de Normalización (10). In the international area, it included treaties (3), conventions (18), agreements (26), covenants (11), pacts (2) and protocols (4) ratified or agreed to by Chile.

In January 1993, following the same methodology and format, CONAMA published Supplement No. 1 to the repertory, which identified and processed the environmental legislation enacted between Jan. 22 and Dec. 31, 1992. During this period, 58 new legal texts and regulations of incidental environmental relevance were issued. Finally, in 2003, CONAMA issued a complete compilation publication which includes all of the environmental legislation published until that date.

Safety & Health
Chilean health legislation dates back to 1924 with the enactment of Law No. 4,054 which established mandatory worker insurance for sickness and disability, and Law No. 4,055 of that same year, which provided compensation for labor accidents.

Administration and management was entrusted to a social security agency, the Caja de Seguro Obligatorio. This system was complemented through the years by a vast and extremely complex set of legislation, which provided broad social security benefits to workers and employees until the major reform of 1980.

In 1980, two major developments took place. First, a new constitution was enacted, which guaranteed the right of all persons to health protection. Under this guarantee, the state provides free and equal access to all actions related to health promotion, protection and recovery. It also guarantees the right of every person to choose the health system, to which it may affiliate, which can be private or public.

In the second event, the existing social security system was drastically reformed by Decree Law No. 3500, which established a new social welfare and pension system, and by Decree Law No. 3501, of the same year, which adjusted the social security contributions of all workers to make them consistent with Decree Law No. 3500.

Future SH&E Legislation
In March 2002, with the purpose of ensuring the country’s future sustainable development, CONAMA made public its continued on page 18
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Environmental Agenda for the period 2002-06. This agenda contemplates the adoption of new standards or regulations for water, household wastes, air, the environmental impact assessment system, the preservation and protection of the natural heritage, territorial planning, noise pollution, environmental recovery within the larger cities, which extends to the treatment of waste, water and air pollution, and the issuance of air pollution bonds.

Water
In terms similar to those that exist for air quality, the government plans to issue uniform quality standards for all continental waters. In the process of adopting these standards, the government will hold consultations with each regional government to establish standards that reflect each region’s use of this resource. The objective was that by 2003, at least 80 percent of the sewage from the country’s largest cities would receive appropriate sanitary treatment.

Air Pollution Bonds
Article 47(B) of Law No. 19,300, the environmental framework law, establishes that prevention and decontamination plans may include the use of economic instruments, such as tradeable emissions permits. On this basis, on July 16, 2003, the government submitted a bill which is presently being examined by Congress and which will regulate the issuance of air decontamination bonds.

Construction Noise
On June 1, 2004, CONAMA published in the Official Gazette, for public consultation, a draft project that will regulate noise emissions in construction activities. The project is based on Supreme Decree No. 264 of 1997 of the Ministry Secretary of the Presidency.

Community Noise
Due to the numerous and contradictory nature of community noise regulations that have been adopted by the various municipalities, CONAMA has in preparation a Municipal Model Ordinance for Community Upsetting Noises which as of the date of publication of this protocol has not yet been adopted.

Environmental Recovery
CONAMA is executing an environmental recovery and modernization program for the country’s largest cities that highlights the reduction of the volume of wastes generated and includes support of the responsible institutions. The goal is that by 2005, approximately 80 percent of residential wastes will be deposited in appropriate sanitary landfills.

Environmental Crime
Congress is currently discussing the possibility of adding a new title to the penal code that would establish “environmental crimes” and punish those who commit them. The bill would punish those who are responsible for endangering the balance of the natural ecosystems by infringing on the general or special provisions that protect the environment.

Enforcement of SH&E Legislation

Administrative Actions
CONAMA or the COREMAS, unlike the U.S. EPA, do not have direct legal enforcement authority. Instead, the respective sectoral authorities, in accordance with their governing laws, as will be discussed below, exercise enforcement.

In addition, a distinction must be made between the sanctions associated with infringement of the terms and conditions of an approval of an environmental impact study or declaration, and that of the various environmental plans that are applicable to the regulated community.

In accordance with Article 64 of Law No. 19,300 (Environmental Framework Law), enforcement arises in connection with the role and participation that State agencies have in the environmental impact assessment process. These agencies have the duty to supervise the permanent fulfillment of the terms and conditions under which the corresponding environmental impact study or statements were approved. In the event of a breach thereof, the respective authorities can request COREMA or CONAMA, as the case may be, to issue either a reprimand, a penalty of up to 500 monthly tax units (equivalent to approximately $28,000 U.S.) or the cancellation of the respective approval, without prejudice to their right to exercise the corresponding civil or criminal actions.

Under Article 56 of Law No. 19,300, the municipalities and other competent state agencies may request the competent judge to impose administrative sanctions against those responsible for emission sources that have not complied with environmental prevention or decontamination plans, or with special regulations for emergency plans, or that have not met the requirements of those environmental management plans regulated by Law 19,300.

In accordance with the procedures established in the law, the judge may impose the sanction of a reprimand, a penalty of 1,000 monthly tax units (equivalent to approximately $56,000 U.S.) or require temporary or permanent closure of the offending establishment. If the offender continues to violate the conditions or terms set forth by the judge, an additional penalty of 40 monthly tax units per day may be imposed.

Civil Liability
Two situations must be distinguished. The first is the traditional responsibility of whoever, willfully or negligently, causes injury or damage to another person or property, which is regulated by the general rules of the civil code. Under these rules, the affected party has the burden of demonstrating that the resulting damage was directly caused by that negligent action or omission.

The second situation is that of environmental damage which is different and is regulated by Articles 52, 53, 54, 55, 56 and 57 of Law No. 19,300 (Environmental Framework Law).

In accordance with the above provisions of the Environmental Framework Law, there is a legal presumption of liability for environmental damage when there is a violation of the environmental quality standards, emission standards, environmental or decontamination plans, special regulations for environmental emergency situations or of the environmental protection, preservation or conservation rules established in Law 19,300 or other relevant laws or regulations. However, compensation in these situations will only be granted if a causal relationship can be established between the said violation and the resulting damage.

Strict Liability
Law No. 19,300 does not recognize strict liability nor is there any indication that this situation will change. However, strict liability is recognized in some special laws such as those on nuclear security, (Articles 49 and 56 of Law No. 18,302 of 1984)
and maritime navigation (Law Decree No. 2222 of 1978). However, no information has been found indicating the existence of cases in which the strict liability provisions of these laws has been invoked.

**Criminal Sanctions**
As noted, a bill is now pending before Congress that would punish those who commit environmental crimes. This bill will be without prejudice to Article 314 of the penal code that allows for the imposition of a prison sentence to anyone who infects or poisons water for human consumption causing death or serious damage to health; or to anyone who adulterates substances destined for public consumption by making them hazardous to health.

**Audit Privilege**
An essential element of the law on privileged information is whether the information, by its nature, circumstances or the relationship between the parties concerned, is secret or confidential, or not. Therefore, the question of whether disclosure is required in a given case is open to interpretation.

Without prejudice to the exceptions mentioned below, the general rule is that titled professionals, including, among others, lawyers and priests, are under the duty not to reveal those facts which have been communicated to them in confidence by reason of their profession or office. Public employees have a similar obligation, which extends to documents, papers or archives under their responsibility. The breach of this duty may be subject to both civil and criminal sanctions.

Therefore, if a private party requests an environmental audit, the resulting information would not be privileged unless it can qualify as being secret or confidential by its nature, circumstances or the parties involved. In essence, the qualifying factor will revolve around whether or not a confidential relationship has been established with a titled professional and whether or not the work was performed at the direction of that titled professional. In Chile, the term “titled professional” includes lawyers, accountants and engineers, among others. The issue of confidentiality and privilege may be of limited relevance in Chile, for the authorities will only request such information (such as audit findings) from private parties if and when they have a legal cause.

If the party requesting the environmental audit is a corporation that has more than 100 shareholders or in which 10 percent of the subscribed capital belongs to a minimum of 100 shareholders, the disclosure of information is subject to special rules.

Pursuant to Article 10 of Law No. 18,045 of 1981, such entities come under the supervision of the superintendency of securities and must provide the latter and the general public, in a timely, accurate and complete manner, every essential fact or piece of information related to them and their affairs at the time they happen. Moreover, their board of directors must also provide shareholders and the public in general, with sufficient and timely information on the legal, economic and financial status of the company.

Without prejudice to the above, with the approval of three-fourths of the directors in office, certain facts or antecedents related to pending businesses which, if made known, could be detrimental to the corporate interest may be kept confidential, provided such decisions are communicated to the superintendency the day after their adoption. Whether the results of an environmental audit require disclosure will depend on the materiality of the findings relative to the financial condition of the company.

**Access to Information**
There is nothing in Chilean law resembling freedom of information-type legislation. The country’s constitution recognizes the right of every person to submit petitions to the authorities concerning any matter, public or private, without any other limitation other than that of using respectful and convenient terms. Of course, such petitions may request access to specific information and, in that event, the response of the corresponding authority will be determined on a case-by-case basis and in consideration of the merits of the request.

**Safety Data Sheets**
The Chilean Ministry of Health Decree No. 594 of 1999 (594/99) requires safety data sheets (SDS) to be maintained where hazardous substances are stored. Norma Chilena (NCh) No. 2245 of 2003 replaces Norma Chilena (NCh) No. 2245 of 1993 of the Chilean National Standards Institute, which established standards for the content and order of the sections of SDS and hazardous labels. Norm ISO 10014-1:1994 was used for the preparation of this standard. These standards are consistent with the EU format as per Directive 2001/58/EC.

The information contained on an SDS must be clear, concise and in Spanish. The standard includes an annex with a model for the preparation of a safety data sheet, which includes the following sections: company information; dangerous component information; physical-chemical properties; risks of fire and explosion; reactivity; health risks; handling and storage requirements; control measures; disposal of hazardous wastes; transport information; regulatory information; and general information. It also includes an annex with a model for the preparation of a transportation safety data sheet.

In addition, Decree No. 594 of 1999 prohibits the use of certain chemicals and contains the Chilean list of occupational exposure limits for chemicals in the workplace.

**Reporting Obligations**
There is no explicit obligation under Chilean law to report accidental spills and/or releases of pollutants. The government approved, in 1998, a special plan for confronting emergencies or disasters caused by hazardous substances or materials. The plan establishes the measures and actions to be undertaken when such situations occur; however, it does not establish the obligation to report them.

**Other Useful Information**

**Sources of Regulatory Information**
Regulatory information can be obtained from the following sources:

- Official Gazette
- La Nación S.A.
- Agustinas 1269 - Casilla 81-D
- Santiago, Chile
- Phone: 56-2-787-0110
- Fax: 56-2-698-3969
- www.anfitrion.cl
- e-mail: Info@anfitrion.cl

**CONAMA**
Comisión Nacional del Medio Ambiente
Centro de Documentación
Teatinos No. 254, Santiago Centro
Phone: 56-2-240-5600
Fax: 56-2-244-5758
www.conama.cl
- e-mail: conama@conama.cl

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ASSE Welcomes Western Australia Chapter

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SSE Vice President Richard Nugent, CSP, presented ASSE’s new Western Australia Chapter its charter during the Industrial Foundation for Accident Prevention Conference in Fremantle, Western Australia, Nov. 15, 2005.

In his remarks during the chapter’s inaugural meeting, Nugent said, “Along with your overwhelming commitment to protecting people, property and the environment, you are now a member of a network of 30,000 occupational safety, health and environmental practitioners from around the globe who are very pleased to welcome you into the ASSE family.

“We know the Industrial Foundation for Accident Prevention and its members have a long history of involvement in safety and health, saving lives and reducing injuries in Australia and we applaud you,” Nugent continued. “The international business focus on occupational safety, health and the environment continues to grow, and as illustrated by the number of ASSE members spread throughout the world.”

As of mid-September, ASSE had more than 900 international members residing in 73 countries, including Mexico, Singapore, South Africa, Trinidad West Indies, Brazil, China, Italy, Jamaica, Venezuela, the U.K., Nigeria and Russia. The Western Australia Chapter already has more than 50 members. ASSE also has international chapters in Saudi Arabia and Kuwait, and sections in Ecuador and Egypt.

Additionally, ASSE is a founding member of the International Network of Safety and Health Practitioner Organizations (INSHPO—www.inshpo.org). INSHPO provides a venue for practitioners.

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Other Contacts

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Chilean American Chamber
of Commerce-Amcham,
América Vespucio No. 80
Santiago, Chile
Phone: (56-2) 290-9747
Fax: (56-2) 206-0911
e-mail: Amcham@entelchile.net

Public Holidays

National holidays are noted at right. This is a working guide only; dates should be verified prior to undertaking any visit. In accordance with Law No. 19.668 of March 10, 2000, there are three specific holidays (Corpus Christi, Saint Peter & Saint Paul and Discovery of the New World) in which the celebration date is transferred to the Monday of the week in which they occur, or to the Monday of the following week if they occur on a Friday if the holiday falls on a Tuesday, Wednesday or Thursday. All dates shown are for 2004. For further information on holidays in Chile, consult www.earthcalendar.net.

Business Customs & Practices

Business practices and protocols vary around the world. What is acceptable in one country may be taboo in another. Useful information on appropriate business practices and protocols in Chile can be obtained from the following sources:

Getting through Customs

Newtown Square, PA
(610) 353-9894
E-mail: 74774.1206@compuserve.com
www.getcustoms.com
WorldBiz.com

Country-specific reports containing current information on international customs, business practices, etiquette and country-specific information can be obtained from the following website: www.worldbiz.com.