

**INTERNATIONAL INSURANCE LAW ASSOCIATION/ AIDA**

**WORLD CONGRESS**

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**Topic IV - POLLUTION INSURANCE  
- METHODS, COVERAGE AND BENEFICIARIES**

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## **QUESTIONNAIRE**

### **Introduction**

The environmental damage insurance topic, that covers losses resulting from pollution, was selected by AIDA's Brazilian Chapter for its discussion during the World Congress to be held in Rio de Janeiro, in October 2018.

Such choice was justified by the growing frequency and intensity of environmental damages worldwide that sometimes even affect entire communities and stops the production of goods and the supply of basic public services. History has been disclosing events of great impact relating to chemical industries (such as Seveso/1976 and Bhopal/1984), to oil industries (such as black tides from oil spill in several locations, and Exxon Valdez in the Gulf of Alaska/1989), to nuclear industry (such as Three Miles Island, Chernobyl), and, recently, the explosion at Deepwater Horizon in 2010, in the Gulf of Mexico, that produced a significant repercussion.

In Brazil, environmental pollution has been raising great awareness and discussions, particularly in view of the last relevant event occurred in Mariana city (State of Minas Gerais), in November 2015, resulting from the collapse of the Fundão dam, that spilled 50 million cubic meters of mine wastes downstream, contaminated the Doce River in its whole extension, and caused huge environmental, social and economic impact to populations and cities.

This context requires an analysis on how national legislations address the matter, as well as on the contribution provided by the insurance industry to either remedy or mitigate the impact from environmental damages. The local reports will be particularly useful to the evaluation of an issue whose perceptions may vary on a significant basis, depending on national legal and administrative peculiarities. Please prepare your report in such a way as to submit the information as required for a correct and full understanding of the answers to the questions made herein.

This questionnaire only contains indicative questions. Please try to inform to all, the issues you may consider important for the study of the topic, in the light of your country's scenario. Any information and comments shall be relevant. As the purpose of this questionnaire is to know the situation in your country, we kindly ask you to provide answers that specifically refer to such scenario.

**PRELIMINARY REMARK:**

**Please note that the questions under “1. Environmental Legal Aspects relating to liability issues are aimed at ensuring a better understanding of the pollution insurance law and practice in different countries. Answering those questions is left to the sole discretion of the national reporter who may freely choose to answer only questions relating to insurance law aspects (i.e. to questions from “2. Legal aspects on environmental insurance policies” to “7. Academic development”).**

**1. Environmental legal aspects (answer is optional)**

**1.1. Which are the major general rules on civil liability arising from environmental damages in your country?**

In Bolivia, the regulations in force regarding civil liability derived from environmental damages are the following:

The Law of the Environment Law 1333 promulgated on April 27, 1992 and its regulations ARTICLE 48 of the Regulation for the Management of Environmental includes

For the development of environmental management, in addition to this Regulation, the following will apply:

- a) Regulations for Environmental Prevention and Control;
- b) Regulation of Activities with Hazardous Substances;
- c) Solid Waste Management Regulations;
- d) Regulation on Atmospheric Pollution;

## e) Regulation on Water Pollution

**1.2. Please describe the main characteristics and objectives of environmental civil liability in the light of national legislation and court precedents.**

**1.2.1. How are environmental damages described under the law?**

**These provisions have several different definitions on pollution and other environmental damage**

There are of course different norms and regulations related to environment and pollution

**1.2.2. Who may or may not be directly or indirectly liable?**

Civil Liability rules are generally applied, in which case the liability may upon the owner of the activity of whoever caused any environmental accident, although in principle it has to be the owner of the activity per se.

Article 22 establishes that it is the duty of the state and civil individuals to prevent and control any hazards to the environment in general, or natural disasters caused thereby in general.

The State must prompt, and foster investigation of any natural disasters related to human health, environment and the national economy.

**Article 99 of the environmental Law, establishes that any default to comply with established measures and all norms and regulations related thereof, will be considered as administrative infringements if they are not considered felonies.**

Such infringements will be sanctioned by competent administrative authorities pursuant to all effective and applicable regulations.

**Art. 100.** any natural or legal person as public servants have the obligation to denounce to any competent authority any infringements to the environment.

**Art. 101.**

For all intents and purposes of Article 100° the following procedure must be followed:

- a) Once a written claim has been submitted, the receiving authority has 24 hours (mandatory) will schedule an appointment to the inspection and assessment of the matter, which must take place within 72 hours thereof, but always bearing in mind the different terms due to distance. The inspection will be performed at the site of the

alleged infringement and be duly recorded under a deed and then a probatory term of 6 days will be established as of the claim or charge thereof.

Once the probatory term expires, within 48 hours a resolution will be issued under liability.

- b)** Such resolution must be substantiated and establish the corresponding penalty plus any damage or loss. Such resolution and in the event any infringements or loss is declare, must be technically substantiated by the Secretary of Environment , who will in turn file the claim before the corresponding Environmental Magistrate to rule on the penalties, damage and/or loss.

Whoever believes such a resolution is not fairly treated, make file remedies or appeals within three days thereof. Such recourse must be duly substantiated and be seen and resolved by the immediate hierarchical authority. For this type of claim, the legal domicile of the parties must be clearly stated, as well as the authority who has seen the case originally.

- c)** Should the petitioner suspect any abnormalities in the proceedings of the case, it should be forthwith denounced and submitted to the DA's office for the corresponding legal procedures.

### 1.2.3. How the grounds of the environmental damage are established?

Such ground may be of fact, that is to say attributable to the persons that have caused it and the civil liability thereof. If we refer to a Force Majeure event, the liability falls on the person responsible of the activity t without a liability exponent thereof, Civil Objective liability will apply

### 1.2.4. Does your legislation provide for strict and/or fault-based environmental liability?

The Environmental Law, under Article 39 establishes that the State will regulate and control any liquid waste, solid or gaseous that may jeopardize or cause damage of water bodies or the land surrounding it.

Article 41°.- The State through its competent entities will norm and regulate the disposal or discharge of any substance, vapor, smoke or dust that could jeopardize or damage the atmosphere and thus the health, environment or annoy the population in general and cause damage to private or public health.

As established, civil liability, corresponds to the owner or titleholder of any activity that may jeopardize the atmosphere, which relation may or may not be proven nor the measure the amount of damage caused.

**1.3. Are there peculiarities regarding environmental damages resulting from pollution? If so, are there differences in the legal treatment for air, soil or water pollution?**

There are of course different norms and regulations related to environment and pollution

Regulations of water contamination which state for example:

ARTICLE 39°.- The State will norm, regulate and control the disposal of any liquid, solid or gaseous substance that may cause or is prone to cause water pollution or the degradation of its surroundings. The corresponding entities will supervise and regulate the comprehensive, rational, protection and conservation use and conservation of water bodies.

WATER CONTAMINATION is hereby defined as the alteration of the chemical, physical and/or biological alteration of water bodies by alien substances that are either over or below the maximum or minimum admissible limits, as applicable; which may jeopardize human health, or which may undermine its welfare or environment.

Regulation of solid waste is defined as pollution caused by solid waste: Any deterioration of the natural quality of the environment, as the direct or indirect result of the undue presence, management and/or final disposition of solid waste.

The Environmental Law, rules on atmospheric pollution, pursuant to Article 41° thereof, as follows. - The State through its corresponding entities will norm and regulate the atmospheric disposal of any substance, whether vapor, gas, smoke or dust which may jeopardize health, environment, annoy communities and its inhabitants and any other perilous effects to public or private property

**1.4. Which are the governmental entities in charge of authorizing and supervising activities that produce environmental impacts or pollution?**

The authorities involved in environmental management in Bolivia are:

The MDSMA (Ministry of Sustainable Development and Environment), which is the competent authority on environment at a national level, pursuant to Law 1493 of Ministries of the Executive Power

The Prefect (Currently Governor) through the environmental unit on a Departmental level.

Furthermore, Departmental Councils on Environment (CODEMA for its acronym in Spanish) have also been established in each Department as the top decision-making level and consultation on a Departmental basis;

Municipal Governments

Territorial Base organizations (OTB's for its acronym in Spanish)

Sector competent bodies

The National Fund of the Environment (FONAMA, for its acronym in Spanish)

The civil organizations on environment are also acknowledged for environment management

#### **1.4.1. Which is the scope of activity of these entities?**

MDSMA (Ministry of Development and Sustainable Development for its acronym in Spanish) will establish, in coordination with competent Sectorial entities the following direct regulation instruments, which are of a general nature:

- a) norms on environmental quality
- b) norms on the disposal of affluent discharge on different water bodies and the atmosphere
- c) norms related to effluents and emissions, based on available environmental technologies;
- d) environmental regulations for and of products.

For the elaboration and operation of regulatory norms and dispositions related to the environment management, the Ministry of Sustainable Development and Environment Management and the competent Sectorial body must always bear in mind the following parameters: a) substantiation; b) a technical-scientific study that substantiates its approval; c) a favourable ruling issued by the national Development Council.

Always subject to the activities, there are several different bodies involved, including civil organization participation

Pursuant to the General Regulations Environment Management

The Minister of Sustainable Development and Environment is the competent authority on a national level, pursuant to Law 1493 of the Ministries of the Executive.

The Prefect, (Currently Governor) through the environmental unit under its tuition is the competent authority on a Departmental level.

The Departmental environment councils (CODEMA, for its acronym in Spanish) in each of the Departments are the top-level decision making and consultation authorities on a Departmental level.

Municipal governments must a) comply with all environmental regulations on a departmental and National level; b) propose Municipal Environmental Action Plans pursuant to the guidelines, national and departmental policies; c) To review the Environmental Card and issue a report on the quality of the EEIA (Environmental Impact Evaluation, for its acronym in Spanish) of the projects, works and activities under its tuition pursuant to the RPCA (Regulation of Environmental Prevention and Control, for its acronym in Spanish); d) review the Regulation of Environmental Prevention and Control and Environmental Manifestos and convey a report thereof to the Prefect, who will, if applicable, the DIA or DAA, respectively as established under the RPCA; e) to exercise the functions of control and overview on a local level in relation to the activities that may or may not jeopardize the environment or natural resources.

The Territorial Base Organizations (OTB's for its acronym in Spanish) on behalf of their territorial units, may request further information, promote initiatives, make requests, request public hearings, and file claims before the Environmental Authority related to projects, plans, activities or works which may be about to start or are being developed at their corresponding environmental units. The State and the Environmental authority may request the DA's Office to intervene, and it must mandatorily intervene on behalf of the people and collective interest related to Environmental protection and rational use of renewable natural resources

The competent Sectorial bodies in coordination with the MDSMA and within the national environmental policy framework and plans will have an active part on environmental management

The National Fund of the Environment (FONAMA) is the responsible entity of the management and administration of any funds collected to implement such plans, programs and projects proposed by the MDSMA or Departmental Prefectures.

The competent Environmental Authority will prompt the participation of the civil population of environmental management through education and public broadcasting directly or indirectly related to the protection and conservation of the environment and natural resources.

#### **1.4.2 How do they operate, and on which legal grounds?**

The first part, is related to the foregoing question and the legal grounds are established under the Environmental Law and its regulation

#### **1.5. Is there a legal system of procedural mechanisms in case of environmental offenses?**

##### **1.5.1. Who is in charge of keeping the environmental protection?**

All authorities that have been appointed to do so have this responsibility,

**The Environmental Law, under Article 21, establishes:** “IT is the duty of all natural and legal persons that may be involved in activities that may be directly involved with the environment , to take all preventive measures and inform the competent authorities and directly affected people of any wrongdoing, in order to avoid possible health, environmental or material hazards”.

##### **1.5.2. How does this system work?**

These past few years, the state has been capable enough to remedy and or clean up some business that were responsible enough to acquire or retain environmental safety insurance

#### **2. Legal aspects on environmental insurance policies (answer is required)**

##### **2.1. Is there a specific legal framework to regulate environment insurance policies? If so, please describe such legislation, as well as the major features thereof.**

In such case, General Liability Law is applied pursuant to the Bolivian Civil Cod, specific environmental laws and the regulations thereof.

Provided the GENERAL ENVIRONMENTAL MANAGEMENT REGULATIONS COMPRISES OF THE following provisions

ARTICLE 67° Environmental, economic instruments. May be considered – inter alia-. e) an Environmental Insurance, which must be understood as the coverage of environmental risks accepted by any Insurance Company, against payment of a Prime.



**2.2. In the event of a negative response to the question 2.1, please inform if there is any administrative rule, or any other kind of legal regulation that applies to environmental insurance policies. In this case, please describe such regulation, as well as the major features thereof.**

**In case of negative response: As it has previously answered, there is an ample list that refer to environmental insurance, several of which have or will be mentioned under this report.**

**2.3. Does the law provide for mandatory environmental insurance?**

There is no such thing as a mandatory environmental Insurance. Nevertheless, there are certain agreements or regulations that make them mandatory for certain activities

**2.3.1. If so, which would be the relevant risks, covered items and limits?**

The regulation of environmental Management, states

ARTICLE 31° any natural or legal person that handles hazardous materials, must, on a mandatory basis acquire an Environmental Liability Insurance that cover any possible damage of such activities, including their transportation and/or commercialization.

There are also less hierarchical provisions such as administrative resolutions that oblige certain entities, companies or natural persons to acquire environmental Insurance Activities under different coverage.

**2.4. In case of a legal requirement or regulation, when an environmental insurance policy should be obtained?**

Under most cases, prior to obtain some type of Licenses or agreement, for some Works as a requirement.

**2.4.1. In which step of a venture should such policy be submitted under the law?**

Generally, prior to the initiation of such activity to act preventively

**3. Operational methods for pollution insurance (answer is required)**

**3.1. Which are the pollution insurance's modalities that are offered in the market?  
Performance bonds or civil liability insurance?**

The best accepted manner is that of civil Liability Insurance

**3.1.1. Which kind of risks should be covered thereunder?**

The risks to be covered, are generally remedial and clean up- There are no punitive or penalty for damages covered.

**3.2. Does the law or administrative rule define upper limits for losses or coverage?**

There are no top limits for coverage.

**3.2.1. Which are the criteria that should apply to limits' definition?**

There is no experience on the matter

**3.3. Is there any difference in the legal treatment to state-owned and private corporations?**

There are no differences insofar as legal treatment for private or public enterprises; however, it is evident that those authorities in charge may have certain bias insofar as private or public companies.

**3.4. Is there any difference in the legal treatment to fix and mobile facilities?**

There are also no differences insofar as treatment of mobile or fixed installations- Where the difference lies is pursuant to the activities being developed, for example in the case of hazardous and polluting material transportations.

**3.5. Is there any difference in the legal treatment to underground works, mines or underground quarries?**

Yes, Insurance companies, may establish certain requirements prior to the coverage.

**3.6. Are insurers used to insert pre-contractual provisions in the policy (pre-contractual disclosure)?**

YES, some Insurance companies can establish pre-contractual provisions in the policy

**3.6.1. Which are the most usual ones?**

They are to establish a prudential method of care or corrective measures which may be analysed pursuant to a pre-analysis risk inspection.

**4. Coverage under pollution insurance (answer is required)**

**4.1. Which are the major covered risks relating to civil liability arising from pollution?**

The main risks, covered would be repairs and environmental clean-up.

**4.2. Which are the major covered guarantees for events arising from pollution?**

There are no express guarantees under insurance policies; nevertheless, there may be insurance policies that are subrogated to third parties such as the contractors, and they become some sort of guarantees.

**4.3. Which are the major covered operational risks arising from pollution?**

Some policies may cover operational risks; however, this is not a general common policy.

**4.4. Does the insurance cover fines?**

In most cases insurance do not cover penalties on an express manner

**4.5. Does coverage for individual moral damages exists, being understood as any physical or psychological suffering experienced by the victim and/or injury against his/her honor or personality?**

Most policies do not cover this type of risk

**4.6. Does coverage for collective moral damages exists, being understood as any moral injury undergone by a group of certain persons who are interconnected by a fundamental legal relationship or by a same event experienced by all of them, or any injury to non-determinable trans-individual rights?**

Most policies do not cover this type of risk

**4.7. Does coverage for punitive damages exists, being understood as any penalty imposed to the agent of the illicit conduct, in addition to the compensation of damages themselves?**

Policies in their majority only cover remedial costs

**5. Beneficiaries (answer is required)**

**5.1. Who is entitled to be beneficiary of losses recoverable under pollution insurance? Any individuals, legal entities, state-owned or private institutions, collectivities?**

Pursuant to current coverage, the State through local governments which at the moment of the approval of the Law, were known as Prefectures, have become the entities in charge of

establishing sanctions and environmental obligations or liabilities. The law also acknowledges the participation of other public and private entities, and even those known as Territorial Base Organizations (OTB's) under different limitations.

## **6. Market status (answer is required)**

### **6.1. Which is the percentage of participation of the environmental insurance at the insurance market?**

Current statistic available information, acknowledges only Civil Liability, which last year had a percentage of 5% in relation to General Insurance; out of this percentage it is very possible that only 2% of such insurance carries Civil Environmental Liability.

#### **6.1.1 As regards the figures thereof, what is the yearly participation of premiums collected under environmental insurance?**

Pursuant to the information given by the Pension Control, Supervision and Insurance Authority, in 1996; out of \$us. 264.674.000 of total prime, the amount covered by Civil Liability was of 13.321.000 that includes some part of Environmental Civil Liability.

### **6.2. Which are the sectors of economic activity that are used to obtain environmental insurance?**

Those areas that most use Civil Liability Insurance, and in some cases on a mandatory basis, are Mining, Hydrocarbons oil and hydrocarbon transportation.

### **6.3. During the last 5 (five) years, which is the sum of losses paid in virtue of environmental damages?**

We do not count on complete data on losses paid for environmental damage in general

#### **6.3.1. Which percentage of the aforesaid losses was covered under insurance?;**

We only count on disasters covered by Civil Liability in general that in 2016 were of an amount of 21 % over total primes; surely less than half of that would correspond to Environmental Civil Liability, which in other words, would mean that on a total payment of 2.832.000; Environmental Civil Liability could only account for less than a Million US Dollars.

## **7. Academic development (answer is required)**

**7.1 Are there research institutes focused on the study of environmental insurance?  
Please identify them.**

There are no specialized economic institutes or organization that deal only with Environmental Civil Liability; however, such issues do often come up in energy congresses within the AIDA, Bolivia Insurance Rights

**7.2 Are there academic and scientific works produced in the fields of law, economy, environment or other similar area, that are specialize in environmental insurance?  
Please indicate some reference legal manuscripts and books, and the main authors thereof.**

The issue has been addressed in some energy conferences and insurance law conferences of AIDA BOLIVIA, but there is no institute or academic entity especially dedicated to environmental law.

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