



# Q&A on Environmental Law in France

**C L I F F O R D**  
**C H A N C E**

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## Introduction

Using a Q&A format, this article provides a guide to environmental law in France and gives a practical description of a wide range of topics including:

- Emissions to air and water
- Environmental impact assessments
- Waste
- Contaminated land
- Environmental issues in transactions

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It is one of a series of 10 articles produced by Clifford Chance covering Australia, Belgium, Czech Republic, France, Italy, Germany, the Netherlands, Poland, Spain and the United Kingdom (England & Wales). These articles can be found on this link:

<http://www.cliffordchance.com/environment>

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## Environmental regulatory framework

### 1. What are the key pieces of environmental legislation and the regulatory authorities in your jurisdiction?

#### Key legislation

A significant proportion of environmental legislation in France originates from EU law, which is directly applicable or implemented through national legislation.

The key environmental rules and principles are:

- The Environmental Charter, which was promulgated by law No. 2005-205 (dated 1 March 2005), and which has constitutional standing, protecting the right to a clean environment.
- The Environmental Code. Article L. 110-1 of the Environmental Code provides that:
  - natural areas, resources and habitats, sites and landscapes, air quality, animals and plant species, and the biological diversity and balance to which they contribute are all part of the common heritage of the nation;
  - the protection, enhancement, restoration, rehabilitation and management of the above are of general interest and contribute to the goal of achieving sustainable development. In turn, this aims to satisfy the development needs and protect the health of current generations without compromising the ability of future generations to meet their own needs.
- This approach is based on the following principles:
  - the precautionary principle;
  - the principle of preventive and corrective action;
  - the polluter pays principle; and

- the principle of participation.

The Environmental Code combines the main legal and regulatory texts, which are applicable to "classified facilities" (see below), waste, water and air. Classified facilities are those that may present a risk to the surrounding area, public health and safety, agriculture, the protection of nature and the environment and the conservation of sites, monuments and places of archaeological heritage. They fall within the scope of the nomenclature established by the relevant legislation. They are subject to an integrated permit regime, which is divided into the declaration regime (for lowest risk activities), the registration regime (for medium risk activities) or the authorisation regime (for highest risk activities) (see *Question 4*).

The Environmental Code has been recently modified by Ordinance n°2012-34 of 11 January 2012 regarding the administrative:

- Organisation of the environmental police.
- Penalties and criminal punishment in the case of a violation of the Environmental Code.

The purpose of Ordinance n°2012-34 is to bring consistency to the different entities in charge of the environmental police as well as applicable sanctions in the different fields of the Environmental Code.

The Ministry of Ecology, Sustainable Development and Energy (*Le ministère de l'Ecologie, du Développement durable et de l'Energie (Ministère de l'Environnement)*) (Ministry of Environment) is the main body responsible for developing environmental policy and drafting environmental legislation.

However, at a regional level, several other entities contribute to the creation and execution of environmental legislation:

- The 21 DREALs (*Direction Régionale de l'Environnement, de l'Aménagement et du Logement*) (Regional Departments of the Environment, Planning and Housing) are responsible for implementing sustainable development policies in France, notably commitments under Grenelle 2 (an environmental law implemented by Decree No. 2011-828 of 11 July 2011).
- The *Préfets* (state representatives) of departments (administrative divisions) (and sometimes of *régions*) oversee and control environmental compliance. They can impose administrative sanctions and suspend

operators when they do not comply with their environmental duties.

- The Environmental Inspectorate (which includes the Classified Facilities Inspectorate) is a body of Inspectors that acts as environmental police for industrial and agricultural facilities, as well as for water and nature issues. They are responsible for preventing and reducing hazards and nuisances emanating from the facilities, to protect the environment and human health. They have a wide range of powers to inspect and access classified facilities (see above) to ensure compliance with their environmental obligations. The Inspectors also have several specific responsibilities, including:
  - routine monitoring of classified facilities;
  - performing inspections;
  - providing information to operators and the public about environmental hazards.

Mayors for each town are responsible for the management of waste in their town.

### Public participation

Law n°2012-1460 of 27 December 2012 strengthened:

- Third parties' rights of access to environmental information.
- Public participation in public authorities' decision making.
- Access to justice in environmental matters.

Subject to certain exceptions, before a public authority makes a decision which will have an impact on the environment, it must invite representations from the public.

### The impact of Directive 2010/75/EU on industrial emissions (Industrial Emissions Directive)

A special legal framework has been implemented for the facilities mentioned in Annex I of the Industrial Emissions Directive. 40 new categories in the nomenclature of the facilities classified for environmental protection have been created and are now regulated by the classified facilities regulation.

## Regulatory enforcement

### 2. To what extent are environmental requirements enforced by regulators in your jurisdiction?

The Inspectors are in charge of inspecting classified facilities (see *Question 1*). The Inspectorate has set an objective to inspect:

- The 2,000 most dangerous facilities considered to be "priority facilities" (in particular, Seveso facilities (that is, facilities with major industrial accident risks) and waste disposal facilities processing waste in excess of a certain threshold), each year.
- The 8,000 medium risk facilities that are subject to an integrated permit (see *Questions 4 and 5*), every three years as a minimum.
- Other lower risk classified facilities that are subject to an integrated permit, at least every ten years.

The Inspectors also have other general powers of inspection and can implement controls following a complaint or an incident.

The *Préfet* can order administrative sanctions if the operator has not complied with the requirements of its permit. The Environment Code also provides for criminal sanctions for each piece of legislation.

Although the Inspectors are among the most important environmental regulatory bodies in France, there are only 1,200 Inspectors to cover around 500,000 classified facilities. Therefore, there are insufficient Inspectors compared to the number of classified facilities, which has a detrimental impact on enforcement activities. Many non-compliance situations are undetected and, as a result, certain environmental requirements go unenforced.

## Environmental NGOs

### 3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active in your jurisdiction?

There are a number of national and local organisations active in the protection of the environment sector, especially in sensitive areas such as nuclear energy, hydrocarbon pollution and landscape protection.

Some of these organisations are specifically accredited by public entities (for example the Ministry of Environment or the *Préfet*) as key environmental players. This accreditation provides them with some benefits to assist with their actions, including:

- Easier access to relevant environmental information.
- The right to participate in environmental projects and reforms.
- Extended rights to bring legal actions.

All organisations involved in environmental protection can bring legal actions on their own behalf, subject to the following conditions:

- For administrative claims, they can challenge an administrative decision that they consider may cause damage to the environment in their area, for example a planning permission or a permit for a classified facility.
- For civil claims, they can bring a claim as a victim in order to repair damage to the environment. For example, a number of NGOs brought a claim against Total SA when the Erika oil tanker sank and caused damage to the coastline.

## Environmental permits

### 4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

#### Integrated permitting regime

There is an integrated permitting regime, which is provided for in the legislation regarding classified facilities.

The integrated permit sets thresholds, monitoring requirements and general operational conditions relating to the following environmental legislation:

- The Integrated Pollution Prevention and Control regime (IPPC), under Directive 96/61/EC concerning integrated pollution prevention and control (IPPC Directive).
- Directives 82/501/EEC on the major-accident hazards of certain industrial activities (Seveso I Directive) and Directive 96/82/EC on the control of major accident

hazards involving dangerous substances (Seveso II Directive).

- Legislation in the Environmental Code regarding waste, water, air and noise pollution.

#### Separate permits

Additional permits may be required under other pieces of legislation for the following:

- Water installations mentioned in Article L. 214-1 of the Environmental Code.
- The use of certain substances, products or production processes in certain categories of classified facilities (for example, genetically modified organisms (GMOs)).

## 5. What is the framework for the integrated permitting regime?

### Permits and regulator

Operators of industrial sites that perform an activity listed in the classified facilities legislation (see also [Question 1](#)) must submit a declaration, to register or to apply for an integrated permit depending on the following:

- The activity in question.
- The substances in question (for example, whether they are extremely flammable or very toxic).
- Volumes of substances used.

**Authorisation regime.** The operators required to request an authorisation from the relevant *Préfet* must perform both:

- An environmental impact assessment (EIA).
- A hazard assessment.

The *Préfet* must then:

- Send the application to the Inspectorate and the relevant consultative bodies.
- Launch a public inquiry procedure.
- Decide whether to grant the requested permit.

**Registration regime.** The process to register the activity is similar to that for the application regime but more simplified (for example, where the EIA and the public inquiry are systematically required in the authorisation regime, they are required on a case-by-case basis in the registration regime).

**Declaration regime.** A notification letter of the activities must be sent to the *Préfet*.

### Length of permit

Generally, integrated permits are not limited in duration but are subject to review. However, in certain circumstances

(for example, quarries) they can be limited. The regulator must periodically review the conditions attached to the permits and ensure that they are complied with.

The integrated permit lapses if either:

- The classified facility was not commissioned within three years of its permit issuing date.
- The activity is discontinued for two successive years.

The *Préfet* can suspend the environmental permit if the activities involve a risk of serious pollution or if the attached requirements are not complied with.

### Restrictions on transfer

If an operator wants to transfer its permit to a third party, the following conditions must be complied with:

- For classified facilities subject to authorisation, waste deposits, quarries, carbon storage facilities, and facilities subject to particular access and use restrictions and rights, the new operator must give financial guarantees and a new authorisation must be applied for.
- For other facilities, there is no restriction regarding the transfer of permits. The new operator must simply notify the transfer to the *Préfet* within one month.

A change only in the ownership of a company's share capital does not trigger any transfer obligations.

### Penalties

Administrative and/or criminal sanctions can be imposed on defaulting operators.

The following administrative sanctions can be imposed:

- If the requirements set out in the integrated permit are not properly complied with, the *Préfet* can serve a notice calling on the operator to comply with its obligations within a specific time frame.
- If the operator fails to comply with the notice, the *Préfet* may:
  - require that the operator deposits with a public accountant an amount of money corresponding to the cost of the work to be carried out. This sum will be returned to the operator gradually as the required measures are performed;
  - carry out the required measures at the expense of the operator; or
  - suspend the operation of the facility until the conditions imposed have been fulfilled and take any necessary provisional measures.

Following notification by the Inspector of the minutes of its inspection, the prosecutor decides whether or not to prosecute the operator. The following criminal sanctions can apply:

- Operating a classified facility without the relevant permit constitutes a criminal offence punishable by a fine of:
  - EUR75,000 and one year's imprisonment if an authorisation or registration was required and the operator failed give the necessary prior formal notice (EUR375,000 for legal entities) (Article L.173-1, Environmental Code); or
  - EUR15,000 and one year's imprisonment if a declaration was required (EUR75,000 for legal entities) (Article L.173-2, Environmental Code).
- For other types of infringement, including a breach of integrated permit conditions, a fine can be levied.

## Water pollution

### 6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?

Key rules and principles are set in Articles L. 210-1 et seq and R. 211-1 et seq of the Environmental Code.

#### Permits and regulator

The following facilities are subject to specific requirements for water pollution:

- Operators of facilities that are not classified facilities.
- Works, facilities or activities relating to water (in particular those involving water collection or disposal).

The type of works, facilities or activities determines the applicable regime. Operators must, depending on the extent and nature of the activities in question, either:

- Submit a declaration to the *Préfet*.
- Apply to the *Préfet* for an environmental permit.

For classified facilities, the obligations in the environmental permit apply in addition to those in the integrated permit (see *Question 4*).

The environmental permit can set thresholds, monitoring requirements and general operational conditions.

#### Prohibited activities

Certain types of discharge, waste disposal or other activities that can cause harm to water, health or flora and fauna are prohibited.

#### Clean-up/compensation

When the facilities, works or projects have ceased, the operator or the owner (if there is no operator) must clean up the site in such a way to avoid damaging the balance of water resources. The *Préfet* can impose requirements for the clean-up works to be performed.

The court may also order a person who caused water pollution to restore the aquatic environment to its condition before the prohibited activities occurred, irrespective of any fine or prison term imposed (see *below*, [Penalties](#)).

#### Penalties

Administrative and/or criminal sanctions can be incurred by defaulting operators.

The following administrative sanctions can apply:

- Operating or performing activities without the relevant permit is an offence, which can lead to a notice being served and, in the case of non-compliance with that notice, to the closure or removal of the facility or works.
- If the requirements set out in the permit are not properly complied with, the *Préfet* can serve a notice calling on the operator, or failing that the owner, to comply with its obligations within a specific time frame.
- If the operator, or failing that the owner, does not comply with the notice served, the *Préfet* can:
  - require that the operator deposits with a public accountant an amount of money that corresponds with the cost for the amount of the work required to be carried out. This sum is returned to the operator or the owner gradually as the required measures are performed;
  - carry out the required measures at the expense of the operator or the owner; or
  - suspend the operation of the facility until the conditions imposed have been fulfilled and take any necessary provisional measures at the expense of the owner or the operator.

The following criminal sanctions can apply:

- Operating or performing works without the relevant permit is punishable with up to one year's

imprisonment and a fine of EUR75,000 (EUR375,000 for legal entities) (Article L.173-1, Environmental Code).

- Discharging or tipping substances, or letting them flow, into freshwaters, whether directly or indirectly, the action or reaction of which kills fish or damages their nutrition, reproduction or food value, is punishable by up to two years' imprisonment and a fine of EUR75,000 (EUR 375,000 for legal entities) (Article L.216-6, Environmental Code).

## Air pollution

### 7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

#### Permits and regulator

Air emissions are regulated under the classified facility legislation (see [Question 1](#)).

The Order relating to the extraction and consumption of water and to emissions of all kind from classified facilities dated 2 February 1998 sets threshold values for each polluting substance, taking into consideration the best available techniques at a reasonable cost. These apply to facilities subject to the integrated permit regime (see [Question 4](#)).

Stricter thresholds can be imposed within individual operating permits of registered and authorised facilities based on the nature of the facility and the local environment.

If the operator of a classified facility fails to abide by the requirements set out in its operating permit, the *Préfet* follows the procedure set out in [Question 5](#).

#### Prohibited activities

Certain types of discharge that can cause harm to air quality are monitored by the approved certification body (Article L.221-1, Environmental Code). Construction products, wall and flooring application, paint and varnishes that discharge substances into the air must be labelled as volatile pollutants (Article L.221-10, Environmental Code).

In the case of severe air pollution, emergency measures can be implemented such as restricting the circulation of road vehicles (Article L.223-1, Environmental Code).

#### Clean-up/compensation

French regulation does not provide any specific obligations for the operator in terms of air pollution when industrial activities cease. However, the court can order any person who has caused severe air pollution directly endangering the environment or health to take all measures to stop the pollution, irrespective of any fine or prison term imposed (see below, [Penalties](#)).

#### Penalties

Discharging certain substances into the air causing air pollution and without respecting prior formal notice obligations is punishable with two years' imprisonment and a fine of EUR75,000 (EUR375,000 for legal entities) (Article L.226-9, Environmental Code).

Running facilities that cause severe damage to the air quality without the relevant permit is punishable with three years' imprisonment and a fine of EUR150,000 (EUR750,000 for legal entities) (Article L.173-3 2°, Environmental Code).

## Climate change, renewable energy and energy efficiency

### 8. Are there any national targets or legal requirements for reducing greenhouse gas emissions, increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)? Is there a national strategy on climate change, renewable energy and/or energy efficiency?

#### Increasing renewable energy

Directive 2009/28/EC on the promotion of the use of energy produced from renewable sources (Renewable Energy Directive) sets out mandatory targets for the share of the gross final consumption of energy to be produced from renewable sources. The mandatory target for France is 23% for 2020 (*Renewable Energy Directive*).

Currently, French net electricity production is generated from the following:

- Renewable sources (13%).

- Wind sources (2.2%).
- Photovoltaic sources (0.3%).
- Hydraulic sources (9.3%).

In addition, the Renewable Energy Directive imposes an obligation on EU member states to ensure that at least 10% of their overall transport fuel consumption comes from renewable sources (largely to be met by increasing the use of sustainable bio-fuels).

#### Increasing energy efficiency

Directive 2010/31/EU on the energy performance of buildings came into force on 1 February 2012. It sets higher standards for energy performance to promote more advanced energy performance for buildings.

The Thermic Building Regulation 2012 under Grenelle 2 states that all new buildings must consume less than 50kW per square metre per year. This regulation applies to both:

- Buildings from the commercial sector or homes located in an ANRU zone (where buildings are renovated to improve social diversity) for which a building permit was applied for after 28 October 2012.
- All other new buildings from 1 January 2013.

The Thermic Building Regulation includes the following:

- Regulation of thermic characteristics of buildings.
- Creation of an "energy performance diagnosis", which measures energy consumption and carbon dioxide emissions for certain types of housing and feasibility studies for significant buildings.
- Strengthening of existing energy-performance labels.
- Introduction of tax incentives and lessening of construction rules.

On 25 October 2012, the EU adopted the Directive 2012/27/EU on energy efficiency. This Directive establishes a common framework of measures for the promotion of energy efficiency within the Union. This is to ensure the Union achieves a 20% headline target on energy efficiency by 2020 and to lead the way for further energy efficiency improvements beyond that date. It lays down rules designed to remove barriers in the energy market and to overcome market failures that hinder efficiency in the supply and use of energy. In particular the Directive provides for the establishment of indicative national energy efficiency targets for 2020 and a compulsory requirement for large companies to have energy audits every four years. Member states are required to bring into force the laws necessary to comply with the Directive by 25 June 2014

(Article 28(1)). Discussions over implementation in the UK are ongoing.

## 9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented?

### Parties to UNFCCC/Kyoto Protocol

The EU and the France are parties to the UNFCCC and the Kyoto Protocol.

The EU's emissions reduction target under the Kyoto Protocol was to reduce its greenhouse gas emissions by 8% from 1990 levels in the period 2008 to 2012 (the end of the first commitment period). The EU's target was redistributed among member states, and France agreed to a reduction of 0% (stabilisation) for the first commitment period.

A second commitment period has now been agreed until 2020 with parties setting their own reduction objectives. The parties have also agreed to an amendment to the Kyoto Protocol to provide for an overall objective of reducing emissions by 18% below 1990 levels by 2020 (the original objective was a 5% reduction below 1990 levels in the first commitment period). The EU and member states have committed to this target on a joint basis (and the EU has pledged to strengthen the commitment to a 30% reduction if a strong international agreement is reached). Parties that have signed up to the second commitment period will review their emissions reduction objectives in 2014.

### Implementation

The EU Emissions Trading System (EU ETS) has been implemented at the EU-level to reduce emissions and fulfil its commitments under the Kyoto Protocol. See [Question 10](#).

## 10. What, if any, emissions/carbon trading schemes operate in your jurisdiction?

### EU ETS overview

As an EU member state, France is covered by the EU ETS, which works in four compliance stages:

- Phase I of the EU ETS ran from 2005 to 31 December 2007.
- Phase II ran from 1 January 2008 to 31 December 2012.
- Phase III started on 1 January 2013 and will run to 31 December 2020 (see below, [Phase III](#)).
- Phase IV will begin in 2021.

The EU ETS applies to specified heavy industrial activities and energy production activities and establishes a mandatory cap-and-trade system. Participants must surrender allowances (or other credits) at the end of each compliance period to match their emissions. If the operator fails to comply with this obligation, a fine of EUR100 per tonne of excess carbon dioxide can be imposed by the *Préfet*. In addition, the operator must still return the missing allowances. Each allowance represents the emissions of one tonne of carbon dioxide.

Facilities that release emissions into the air must be granted an authorisation to emit greenhouse gases. This is covered by the integrated permit.

Following allocation and auctioning, allowances are subsequently traded in an online registry enabling companies to purchase additional allowances to meet their obligations. To obtain and surrender allowances, a participant must have an account in an online registry. Operators can obtain also credits (that can be traded in the EU ETS) by investing in:

- Qualifying projects to reduce emissions in industrialised countries and certain countries in economic transition (known as joint implementation (JI) under the Kyoto Protocol).
- Projects to reduce emissions in developing countries (known as the clean development mechanism (CDM) under the Kyoto Protocol).

Operators can surrender any of these credits as well as EU allowances to comply with their obligations under the EU ETS.

### Aviation

From 1 January 2012, the EU ETS covers any aircraft operator, whether EU- or foreign-based, operating international flights on routes to, from or between EU airports. There will be certain exemptions, including for light aircraft, military flights, flights for government business and testing flights. Various complaints were made by non-EU countries at the inclusion of flights to or from destinations outside the EU into the EU ETS. As a result, the EU

excluded these flights during 2012 from the EU ETS, pending discussions at international level over the future position of international aviation in the scheme.

### Phase III

The main changes for Phase III are as follows:

- There is a single EU registry for all users, which was activated on 20 June 2012, rather than national member state registries.
- There is a single EU-wide cap on emissions, which will decrease annually meaning that the former National Allocation Plans will no longer be required.
- Other greenhouse gases and industrial sectors will be included.
- Allocation of allowances will be replaced to a large degree by auctioning, with at least 50% of allowances auctioned from 2013.
- The use of credits from JI and CDM projects are limited.

## Environmental impact assessments

### 11. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

The Environmental Code provides for EIAs. The procedure was modified by a Decree on the reform of environmental impact assessments dated 29 December 2011. The modifications apply to classified facilities for which the registration or the authorisation application is submitted after 1 June 2012. The main change concerns classified facilities submitted to registration and other specifically listed infrastructures. For these the requirement for an EIA is determined on a case-by-case basis.

#### Scope

An EIA must be performed both:

- On a compulsory basis, for works projects (for example, renovation), construction projects, public and private planning projects that are most likely to have a major impact on the environment and public health due to certain factors, including their nature, size or location. For example, classified facilities subject to prior authorisation, basic nuclear facilities, major building constructions or transport infrastructure, activities likely

to impact a Natura 2000 site (that is, an EU nature protection area) or aquatic environments.

- On a case-by-case basis, for classified facilities subject to registration and other specifically listed infrastructures.

#### Permits and regulator

The entity in charge of the project must perform the EIA and provide it as part of its application file.

The EIA must specifically include all of the following:

- A description of the project.
- An analysis of the initial state of the area likely to be affected.
- An assessment of the effects of the project on the environment or public health.
- A proposition of alternative measures.
- A proposition of measures aimed at mitigating the project's negative effects.

The competent environmental authority (which can be the Ministry of Environment or the *Préfet* of the region, depending on the type of project) must issue an opinion.

The authority determining the application decides whether to issue an authorisation (a building permit or an operating permit and so on), taking into account the EIA, the opinion issued by the competent environmental authority and the result of the public consultation, if applicable.

The authorisation will contain requirements to mitigate, avoid or offset any negative environmental impacts.

#### Penalties

The authority determining the application can serve a notice calling on the operator to comply with the requirements within a specific time frame, if the operator has previously failed to observe these requirements claiming to mitigate, avoid or offset negative environmental impacts.

If the operator fails to comply with the notice, the authority determining the application can take various enforcement measures ensuring compliance (including payment of a deposit, works at the operator's expense and facility supervision) (see [Question 5](#)).

If the EIA was not properly carried out, the permission or development consent can be legally challenged within a limited time frame, depending on the type of authorisation given.

## Waste

### 12. What is the regulatory regime for waste?

The key rules and principles for waste are set out in Articles L. 541-1 et seq and D. 541-1 et seq of the Environmental Code.

Waste is defined as any substance or object or, more generally, any movable good, that the holder has discarded, intends to discard or must discard.

#### Permits and regulator

The operation and management of waste facilities falls within the classified facilities regime. In terms of waste activities, the classification under the authorisation, registration or declaration system depends on both:

- The hazardous nature of the waste received and processed.
- The industrial process involved.

#### Prohibited activities

Any person who produces or holds waste under conditions likely to harm human health or the environment must properly dispose of it or have it disposed of. A producer or holder of this waste is responsible for it until it has been disposed of.

It is an offence to abandon, deposit or manage waste in breach of waste legislation (without an environmental permit), in a manner that is likely to cause pollution or harm human health.

#### Operator criteria

The permit holder must:

- Be the operator.
- Give a financial guarantee.
- Have accreditation (if specific waste is concerned such as polychlorinated biphenyl, or non-household packaging).

#### Special rules for certain waste

Additional requirements apply for hazardous waste, including:

- Specific packaging and labelling.
- The sorting of hazardous waste by a qualified company.
- A mandatory monitoring regime to be completed throughout the entire management process.

Electrical waste and electronic equipment must be dealt with separately by a certified operator. The best processing, recovery and recycling techniques must be applied.

### Penalties

For prohibited activities, the mayor of the location in which the activity is situated can serve a notice calling on the defaulting producer and holder of the waste to comply with its obligations within one month.

If the producer or holder fails to comply with the notice, the Mayor/*Préfet* can, in addition to its powers to impose measures to ensure compliance (that is, payment of deposits, works at the operator's expense and facility suspension) both:

- Order a fixed daily fee to be paid up to a maximum of EUR1,500 per day.
- Order the payment of a maximum fine up to EUR150,000 (EUR750,000 for legal entities) (Article L.541-3, Environmental Code).

Most of the sanctions under the waste regime are punishable by a fine and/or imprisonment. The length of the sentence depends on the actual offence and its seriousness.

## Asbestos

### 13. What is the regulatory regime for asbestos?

#### Prohibited activities

The production, manufacture and sale of asbestos containing materials have been banned since 1 January 1997.

#### Main obligations

All types of buildings for which a building permit was granted before 1 July 1997, are subject to the following:

- **Owner inspection/reporting duties.** Building owners must perform an investigation to identify asbestos in certain areas of the building. The investigation report must recommend whether a periodic assessment of asbestos containing materials, a dust measurement or a closed containment, or removal works are required.

Since 1 February 2012, owners of private areas of buildings must produce a record called an "asbestos folder - private areas" that contains the results relating to the private areas.

Owners of collective areas of the buildings must provide a record called an "asbestos technical report" that contains the results relating to those collective areas only. These reports must be up to date and made available to all interested parties (for example, occupants of the building or employers, and so on).

- **Management of asbestos in buildings.** The owners must manage the risks inherent in asbestos containing materials on an ongoing basis. Depending on these risks, this will involve periodic assessment, dust concentration monitoring and/or asbestos removal works.
- **Duties of the seller of a building.** On the sale of a building the sellers must perform an asbestos assessment in certain areas of the building.

An "asbestos affidavit" must be provided in the "technical diagnosis folder" provided by the seller of a building for which a building permit was granted before 1 July 1997.

- **Obligations relating to working premises.** Companies are responsible for the safety of their employees as far as asbestos is concerned. In particular, they must implement specific preventative measures and monitor their employees' health.

Considering the number of claims, a dedicated fund was created to compensate for damage caused by employees' exposure to asbestos. It is funded by the state and by the social security system.

#### Accreditation of assessors

Companies that assess premises to identify asbestos must have official accreditation by the French Accreditation Committee (*Comité Français d'Accréditation*) (COFRAC).

#### Penalties

The following administrative sanctions can apply:

- If the owner fails to perform the asbestos assessment the *Préfet* can order the owner to comply with this obligation within a limited time frame.
- If the owner or the operator fails to perform asbestos removal works the *Préfet* can order the owner to comply with this obligation within a limited time frame. In the case of emergency, if the owner (or the operator, in the case of a defaulting owner) does not comply with this obligation, the required measures are taken at the direction of the *Préfet* and at the expense of the operator.

In relation to criminal sanctions, a maximum fine of EUR1,500 can be incurred in cases where asbestos monitoring or removal work is not carried out.

### Asbestos waste

Waste, such as asbestos waste, is regulated by Directive 2008/98/EC on waste (Revised Waste Framework Directive).

Annex II of Article R.541-8 of the Environmental Code lists dangerous waste that could affect human health and environment. There are two categories of dangerous asbestos waste:

- Waste that is considered as dangerous whatever the concentration of asbestos.
- Waste that is considered as dangerous only if the waste contains asbestos in a concentration that is superior or equal to 0.1%.

Requirements applicable to transport, storage, packaging and disposal of asbestos waste depends on the category of waste. Dangerous asbestos waste is subject to stricter controls (Article R.541-42 and req., Environmental Code) than non-dangerous asbestos waste.

The operators of classified facilities that produce or treat asbestos waste must declare to the administrative authorities each year the nature, quantity and destination of this waste.

## Contaminated land

### 14. What is the regulatory regime for contaminated land?

#### Regulator and legislation

Two key pieces of legislation apply to contaminated land:

- Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive) (implemented in France by the Law relating to Environmental Liability and adaptation of various provisions to EU Environmental Law dated 1 August 2008), which relates to environmental damage caused to the soil that presents a risk to human health (*environmental liability regime*).
- The classified facility legislation, where land has been contaminated as a result of the operation of a classified facility (see also [Question 1](#)).

#### Investigation and clean-up

The competent authority, which is normally the *Préfet* of the region where the damage has occurred, must undertake all of the following:

- Investigate to find the perpetrator of the damage.
- Assess the scope of the damage.
- Prove the causal link between the damage and the perpetrator of the damage.
- Set the required measures for remediation and ensure that the operator completes them.

The necessary measures must be taken to ensure that, as a minimum, the relevant contaminating items are removed, controlled, contained or diminished so that the contaminated land no longer poses any significant risk of adversely affecting human health, taking into account its current use or approved future use at the time of the damage.

Where environmental damage (including contaminated land) is caused after 30 April 2007 by certain hazardous activities (for example, activities that are subject to IPPC permits) a strict liability regime operates to require the operator to remedy the damage. In addition, operators are subject to a duty to prevent damage occurring.

Under the classified facility regime, when a facility is permanently closed, the operator must notify the authorities of its termination at the latest one month, three months or six months (for the most dangerous facilities) before closure, depending on the permitting regime to which the facility is subject.

The last operator of the classified facility before closure is considered to be liable to perform any required remediation works where land is found to be contaminated.

The operator must remediate the site to a standard such that it does not harm the environment or public health. The remedial measures are determined taking into consideration the future use of the site.

The future use of the site is either specified in the permit or determined following a procedure involving the operator, the mayor, the owner of the land and the *Préfet*. If the parties fail to agree, the future use is deemed to be similar to the last use.

The *Préfet* can pursue the last operator and can order him to pay for the specific remediation or monitoring measures up to thirty years after he has terminated his operation at the site but also during the operation of the classified facility.

## Penalties

In relation to administrative sanctions, if the operator fails to comply with the notice received (see above), the authority can take various enforcement measures ensuring compliance (including payment of a deposit, works at the operator's expense and facility supervision) (see [Question 5](#)).

Under the classified facility regime, the following administrative sanctions can apply:

- If the remedial measures requested by the *Préfet* are not properly complied with, the *Préfet* can serve a notice calling the operator to comply with its requirements within a specific time frame.
- If the operator fails to comply with the notice served, the *Préfet* can both:
  - require that the operator deposits with a public accountant the amount corresponding to the amount of money required to pay for the works to be carried out. This sum is returned to the operator gradually as the required measures are performed; and
  - have the required measures enforced at the direction of the *Préfet* and at the expense of the operator.

In relation to criminal sanctions, failure to comply with the notice served by the *Préfet* calling on the operator to comply is punishable with up to one year's imprisonment and a fine of EUR15,000 for classified facilities, as well as facilities that are likely to damage water quality and aquatic diversity (EUR75,000 for legal entities) (Article L.173-2 I, Environmental Code).

These sanctions are harsher where a breach relates to a national park. Failure to comply is punishable with up to two years' imprisonment and a EUR100,000 fine (Article L.173-2 II, Environmental Code).

A legal entity can additionally incur specific sanctions such as a prohibition on operating its facility for up to five years.

## 15. Who is liable for the clean-up of contaminated land? Can this be excluded?

### Liable party

**Environmental liability regime.** The operator responsible for the damage is liable for the remedial works.

An operator is defined as any natural or legal, private or public person who operates or controls the occupational activity (environmental liability regime).

Therefore, the operator must both:

- Identify potential remedial measures and submit them to the *Préfet* for approval.
- Clean up the soil according to the requirements set by the *Préfet*.

In an emergency, and when the operator is not immediately identified, several bodies (local administrative entities, environmental protection organisations, or owners of the land where there is soil damage and so on) can propose that they themselves perform the relevant clean-up works.

**Classified facility regime.** Two parties can be liable for remedial works under the classified facility regime:

The last operator of the classified facility before closure. If the last operator can prove that its activity cannot be the source of the pollution, a former operator may be liable for the site decontamination.

Under specific conditions, the Agency for the Environment and Energy Management (*Agence de l'Environnement et de la Maîtrise de l'Energie*) (ADEME), paid by the French government, if the last operator (or responsible former operator) cannot pay the remediation works because, for example, it no longer exists or is insolvent.

### Owner/occupier liability

The possible liability of owners or occupiers with respect to contaminated land has been the subject of several cases. There are two key situations to distinguish:

- Under civil case law, administrative case law and Ministry of Environment guidance, the owner or occupier of contaminated land is not liable for remediation of the contaminated land unless he is the last operator of the site.
- A site owner or occupier can be held liable as a "waste-holder" (see [Question 12](#)) but only if the contaminated land has been "excavated" and has therefore become waste. In this case, the owner or occupier must deal with the waste in compliance with waste legislation (L. 541-1 et seq, Environmental Code), unless the owner or occupier can prove it is not responsible for and has not facilitated the abandonment of the waste.

### Previous owner/occupier liability

See above, [Owner/occupier liability](#).

### Limitation of liability

**Environmental liability regime.** The operator is liable for 30 years from the date of causing the damage.

**Classified facility regime.** The operator is liable for 30 years from the date of the notification of termination of activity and can be subject to requirements for remediation or monitoring.

## 16. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability?

### Lender liability

Lenders are not liable if they are not considered the last operators.

However, if the lender enforces its security and takes possession of a property it may be held liable under waste legislation as a holder of waste, if this applies (*Articles L. 541-2 and L. 541-3, Environmental Code*).

### Minimising liability

Lenders can minimise liability by not taking possession of contaminated property. In addition, it is essential for lenders to carry out detailed due diligence of the assets or of the company to be financed. Once the potential environmental risks are identified, lenders usually obtain additional warranties from the borrower to mitigate these.

## 17. Can an individual bring legal action against a polluter, owner or occupier?

A polluter, owner or occupier can be liable to neighbours and third parties under either:

- Civil law (similar to tort law), on the basis of:
  - liability for fault;
  - liability for negligence;
  - liability for damage caused by an object over which the polluter has control; and
  - "neighbour abnormal disturbance" under which, if a nuisance is considered as abnormal, even in the absence of any fault, damages can be awarded to the claimant and/or measures can be ordered by the judge to be implemented to remedy the situation.

- Criminal law, for damages or injuries suffered if the contamination they caused has migrated offsite and affected others.

## Environmental liability and asset/share transfers

### 18. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

#### Asset sale

The last (that is, current) operator of the business is liable to the authorities (the administration) for the clean-up costs for contamination caused by the activities it (or its predecessors as operators (the last-in-the-chain principle)) performs.

Consequently, the buyer automatically inherits the pre-acquisition environmental liability for damage previously caused provided that it becomes the "last operator" by maintaining the activity of the previous operator.

If the buyer does not continue the same activity as the seller, the seller is the "last operator" and liability remains with it.

When a purchaser is considering purchasing a business, it must consider whether:

- The business has all the necessary environmental permits required to operate legally.
- The permits currently held by the seller are transferable to the buyer.
- The seller has complied with all applicable environmental laws.

While the buyer is not liable for pre-acquisition breaches of law or permits, it must ascertain if there are any issues it must address to continue the business lawfully after the sale (for example, whether upgrades are necessary to the plant or equipment).

Liabilities in asset acquisitions with a change of operator are often limited by warranties or indemnities issued by the seller to the benefit of the buyer. These private agreements are not enforceable against the *Préfet*. Therefore, the *Préfet* will require remediation works to be carried out by the new operator, which will be contractually entitled to

bring a claim against the seller on the basis of the warranties or indemnities provided by the seller.

#### Share sale

A mere acquisition of shares does not involve a change of operator. Consequently, the operator retains all environmental liability.

### 19. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

#### Asset sale

A seller can retain environmental liability after an asset sale in both of the following situations, where:

- The buyer has not performed the same activities as the seller previously did on the site. The seller remains the last operator and bears the corresponding obligations (see [Question 18](#)).
- The seller agreed to grant the buyer warranties or indemnities.

#### Share sale

A seller can retain environmental liability after a share sale, where it agreed to grant the buyer warranties or indemnities.

There is also a small risk that the seller could incur liabilities post-acquisition if the seller, during its ownership of the target's shares, had sufficiently direct involvement in the target's activities (the corporate veil may be lifted, exposing the seller to potential liability as a shareholder).

### 20. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?

#### Asset sale

When a facility subject to authorisation or registration has been operated on a piece of land, a seller must inform the purchaser in writing of the major hazards resulting from the operation, to the best of his knowledge (Article L. 514-20, Environmental Code). In addition, if the seller is the operator of the facility, he also must indicate to the purchaser in writing if its activity required the handling or storage of chemical or radioactive substances.

Failure for the seller to comply with Article L. 514-20 potentially allows the purchaser to either:

- Bring a claim for the sale to be cancelled.

- Receive a refund of part of the purchase price.
- Demand remediation of the site, at the expense of the seller, as long as the cost of the remediation is not disproportionate to the sale price.

In addition, a buyer generally requires a seller to give environmental warranties concerning the environmental condition of the business and its assets, to encourage the seller to disclose environmental information. Unless the seller makes a full disclosure of all relevant environmental information to the buyer, the seller is potentially liable to pay damages to the buyer if the warranties prove to be incorrect and the buyer suffers loss.

#### Share sale

A seller can be liable to the buyer if it makes a misrepresentation or misleads the buyer through its conduct.

See above, [Asset sale](#).

### 21. Is environmental due diligence common in an asset sale/a share sale?

It is common for environmental due diligence to be undertaken in commercial transactions. However, its extent or scope depends on the:

- Nature of the target's activities, the business or asset to be acquired.
- Parties' attitudes to and understanding of the environmental risk and any time constraints for the transaction, meaning that extensive investigations are not possible.
- Nature of the sale (for example, whether the seller has produced a seller's due diligence pack and/or if the sale is being run as a competitive auction).

#### Scope

Environmental due diligence usually includes

- Historic environmental reports, surveys or audits (including those relating to the presence of asbestos).
- Environmental permits or consents required to operate the business or occupy a site.
- Compliance with those environmental permits or consents.
- Circumstances existing that may give rise to a breach of environmental law in the future.
- Fines, penalties, lawsuits, claims, notifications or complaints made or threatened (either on behalf of, or against, the target).

- Spills, leakages or emissions of any hazardous substances.
- Onsite and offsite contamination.

Due diligence on carbon emissions and other climate change-related issues (such as energy use and sustainability), and compliance with regulations (such as Regulation (EC) 1907/2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH) and Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)) is increasingly being undertaken.

#### Types of assessment

Environmental due diligence can take one of the following forms:

- Appointing environmental consultants to carry out interviews with management and in particular with those responsible for environmental management (occasionally this may also be undertaken by means of a questionnaire set by the consultant).
- Detailed environmental assessments, including compliance reviews and potential soil and groundwater investigations.
- Legal risk assessments that involve reviewing information contained in a data room.

#### Environmental consultants

Sometimes sellers commission their own environmental reports in advance of the transaction and provide the buyer with copies of these, often to discourage buyers from insisting on warranties or indemnities. In these circumstances buyers generally seek a letter of reliance or a collateral warranty from the seller's environmental consultants so that the buyer can rely on the reports. However, buyers often engage their own environmental consultants to assist in identifying material environmental risks, among other reasons, because the scope of the seller's consultant is unlikely to meet all of the buyer's requirements.

When engaging environmental consultants, negotiating their terms of appointment usually focuses on the following:

- Scope of the review.
- Financial and time limits of the consultant's liability.
- Extent of their professional indemnity insurance cover.

## 22. Are environmental warranties and indemnities usually given and what

### issues do they usually cover in an asset sale/a share sale?

Whether or not sellers provide environmental warranties and/or indemnities to buyers in commercial transactions depends on a number of factors, such as:

- The nature of the target's business and the likelihood of significant environmental impacts.
- Whether significant environmental issues have been identified during due diligence.
- The parties' attitudes to the allocation of environmental risk.
- Whether it is a competitive auction or a private sale.
- The bargaining strength of each party.

#### Asset sale

A seller usually gives the following types of environmental warranties in an asset sale:

- The business has obtained all environmental permits necessary to operate on the date on which the business is sold.
- The business has complied with applicable environmental laws and permits.
- The business is not the subject of any environmental proceedings, claims, investigations or complaints.
- There is no contamination or pollution present on any of the business' assets or properties.
- All environmental reports relating to the business or the properties have been disclosed.

Sellers usually seek to limit as many warranties as possible by reference to seller awareness and materiality.

If the seller agrees to give an environmental indemnity, it is usually limited to liabilities associated with any contamination present on the target's properties before the sale and generally to specific issues identified during the due diligence process. The indemnity usually covers costs incurred as a result of regulatory action and third party civil claims and may also cover the costs of voluntary clean-up.

#### Share sale

Similar warranties and indemnities are usually agreed in a share sale as in an asset sale (see above, [Asset sale](#)).

### 23. Are there usually limits on environmental warranties and indemnities?

Environmental warranties are nearly always limited by time and subject to a financial cap. These are subject to negotiation but are often similar to the position on other warranties. The cap often includes all warranty claims and is linked to a percentage of the purchase price.

Time limits and caps for environmental indemnities vary according to the scope of the indemnity and the environmental losses they are intended to cover.

Financial caps can either be a:

- General cap applicable in the share purchase agreement.
- Specific cap tailored to environmental issues.

Market practice for limitation by time of the warranties is up to five to ten years.

## Reporting and auditing

### 24. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?

#### Public registers

Environmental information can be accessed from a number of website sources:

- The Ministry of Environment manages several environmental information databases in the "risk prevention/classified facility inspection" section at [www.developpement-durable.gouv.fr](http://www.developpement-durable.gouv.fr).
- French registry of polluting emissions ([www.pollutionsindustrielles.ecologie.gouv.fr](http://www.pollutionsindustrielles.ecologie.gouv.fr)).
- Inventory and summary of industrial accidents that have occurred since 1998 (<http://aria.ecologie.gouv.fr>).
- *Basias* (<http://basias.brgm.fr>) and *Basol* (<http://basol.environnement.gouv.fr>) websites contain information about:
  - former industrial sites and/or potential contaminated sites; and
  - list of sites requiring preventive or remediation works.

#### Third party procedures

Every DREAL has a website that grants access to:

- General and specific information.
- Permits.
- Environmental reports in relation to various sites.

### 25. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

#### Environmental auditing

Environmental auditing is not compulsory. However, many companies carry out an environmental audit (either internally or through external consultants), to satisfy demands of shareholders, customers and other stakeholders.

#### Reporting requirements

In accordance with the requirements of their environmental permit, operators must perform periodical analyses of air, water and noise emissions, and soil. These results must be sent to the regulatory authority.

Operators of the highest risk classified facilities must, at each material change in their operating conditions, issue an updated report on soil pollution at the facility. This report is sent to the *Préfet*, the mayor and the owner of the land on which the facility is located.

### 26. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

Under the environmental liability regime, if environmental damage occurs, the operator (public or private person having a professional economic activity) must inform the relevant authority without delay.

More specifically, the operator of a classified facility must notify, without delay, any incident or accident that can affect the environment or public health.

An incident or accident report is then sent by the operator to the classified facilities inspectorate.

This report must comprise both the:

- Circumstances, causes and effects of the incident on the public and the environment.
- Measures taken or planned to avoid similar accidents or incidents.

## 27. What access powers do environmental regulators have to access a company?

The access powers are different depending on the applicable legislation.

Inspectors have wide-ranging powers of inspection. They can visit a classified facility either:

- At any time of the day or night without the operator's consent; such unexpected visit aims to verify compliance of the facility at any given time.
- Following a 48-hour notice to the operator (this method allows the operator to choose a third party who can assist him in the discussion of various specific aspects of the operation of the facility, for example, technical compliance with regulation or the efficiency of the fire system).

Inspectors have access to all relevant documents, to check compliance with the requirements set out in the integrated permit using the following procedure:

- The inspector must establish a list of the documents he wishes to take away. This list must be countersigned by the operator.
- Original documents must be returned to the operator within one month of the inspection.
- The inspector must inform the operator about the inspection results and send his report to the *Préfet* and the operator. The operator can give comments on it.

Inspectors acting under legislation regarding air and water can both:

- Inspect the facility between 8am and 8pm or at any time when the building is open to the public or if an activity falling within its remit is currently being performed.
- Consult any document.

The public prosecutor must be advised of any such inspection and can prevent it from taking place.

## Environmental insurance

### 28. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?

#### Types of insurance and risk

Standard insurance policies do not generally cover specific environmental damage due to the particular nature of this risk.

However, customised insurance policies have been created by insurance companies in order to cover large scale environmental pollution damage.

**General liability and damage to property.** Major pollution damage caused to third parties such as neighbours, clients or subcontractors can be insured against under an insurance contract covering civil liability. They can be covered by either:

- General civil liability insurance contracts, in which coverage is often limited to sudden and accidental pollution and under which the insured amounts are limited.
- Specifically dedicated civil liability for environmental damage contracts, which offer broader insurance, including for gradual pollution. This type of insurance policy covers the financial consequences of liability to third parties arising out of damage in relation to the industrial, commercial or agricultural installations of the insured party. The contract has to cover a genuine hazard (that is, it must cover an unpredictable event).

Damage to the company's property and protection against injury to humans can also be insured against.

**Environmental liability regime damage.** Liability under the Environmental Liability Directive, and pure environmental damage to water, soil, and protected species and habitats can be covered by environmental liability insurance contracts. The guarantees may include:

- Costs and evaluation of the damage.
- Prevention and remediation measures.
- The costs to determine the remediation measures.
- Administrative, judicial and execution costs.

- Data collection costs.
- Monitoring and follow-up costs.

However, these policies exclude environmental damage due to:

- Wilful misconduct from the insured person.
- Discharges or emissions authorised by the relevant administrative authorities for operating of the site.
- Failure to abide by the legal and regulatory obligations in force.
- Poor condition of facilities.
- Lack of maintenance that was known or should to have been known.

In practice, environmental insurance can be helpful in an asset or share sale of industrial facilities in order to transfer the liability of any potential contamination of the land to the insurer if the contracting parties cannot agree on a cap or time limit for the warranties relating to environmental liability.

#### Obtaining insurance

The area of environmental insurance continues to grow steadily and the policies available have increased. The options now available include:

- Third party liability for pollution.
- Costs of environmental clean-up.
- Loss of profits caused by an administrative order to stop operating a plant totally or partially following environmental damage to the site.

Large insurers and reinsurers have combined their skills and capacities within Assurpol, which is a pool that mutualises environmental risk. Within this framework, a policyholder enters into an insurance contract with an insurer, which is reinsured by Assurpol. Consequently, many insurance contracts are based on the Assurpol standard insurance policy. However, insurers that are non-Assurpol members are emerging, proposing non-standard policies and sometimes have more financial capacity.

## Environmental tax

### 29. What are the main environmental taxes in your jurisdiction?

A general tax, established in 1999, regarding polluting activities (*la taxe générale sur les activités polluantes*) (TGAP), allowed the implementation of the "polluter pays principle". The TGAP aims to deter polluting behaviour,

while creating resources to prevent, monitor and clean-up pollution.

The person liable to pay the tax and the activity triggering the payment of the tax are specified in the Customs Code. The scope of application of the TGAP is evolving.

There are two types of TGAP. Classified facilities subject to authorisation (that is, to the exclusion of classified facilities subject to declaration or registration) must pay the TGAP at the time the authorisation is issued. Furthermore, certain classified facilities expressly listed in the nomenclature must also pay the TGAP for the operation of a facility on a yearly basis.

The TGAP also covers specific polluting activities such as:

- The manufacturing of washing powder and phytosanitary products.
- Extraction materials.
- The storage and incineration of household waste.
- Plastic bags at the checkout counter.

Different rates of levy apply depending on the polluting activities. The applicable rate depends on the polluting activity (for example, EUR45.34 per tonne of hydrochloric acid emission or EUR6.40 per tonne for certain types of domestic waste).

## Reform

### 30. What proposals are there for significant reform (changes) of environmental law in your jurisdiction?

#### New prohibition of chemicals

Members of the National Assembly have proposed a bill to ban the manufacturing, sale or offering of products that contain phthalates, parabens or alkylphenol. This text is still under discussion (Bill No. 486, transmitted to the Senate on 3 May 2011).

#### Environmental damage

Members of the Senate introduced a bill on 23 May 2012 that aims to integrate the concept of "ecological damage" into the Civil Code. This would amount to a reinforcement of the civil liability regime with more effective remediation of environmental damage. This text is still under discussion (Bill n°520, transmitted to the National Assembly on 17 May 2013)

### Change of classification of waste

A Decree relating to the "end-of-waste" procedure dated 30 April 2012, outlined how waste would no longer be classified as waste in the future. The Decree took effect on 1 October 2012.

## The regulatory authorities

### Ministry of Ecology, Sustainable Development and Energy

**Main activities.** The Ministry of Ecology, Sustainable Development and Energy is the main body responsible for developing environmental policy and drafting environmental legislation.

W [www.developpement-durable.gouv.fr](http://www.developpement-durable.gouv.fr)

### Classified Facility Inspectorate (Inspection des installations classées)

**Main activities.** The Inspectors have a wide range of powers to inspect, and specifically they have the power to access facilities to ensure that the facilities are in compliance with their environmental obligations.

They also provide information for the operators, and the public, about environmental hazards.

W [www.installationsclassées.developpement-durable.gouv.fr](http://www.installationsclassées.developpement-durable.gouv.fr)

### Regional Directorates of Environment, Land Settlement and Housing (Directions Régionales de l'Environnement, de l'Aménagement et du Logement) (DREAL)

**Main activities.** The 21 DREALs are responsible for implementing sustainable development policies in France, notably commitments under Grenelle 2.

W [www.paca.developpement-durable.gouv.fr](http://www.paca.developpement-durable.gouv.fr)

### Online resources

W <http://www.legifrance.gouv.fr/>

**Description.** Official website where original language text of legislation and case law can be found. Certain pieces of legislation and codes can be found in English, the translation is for guidance purposes only.

W [www.developpement-durable.gouv.fr](http://www.developpement-durable.gouv.fr) **Description.**

Official website of the Ministry of Environment, in charge of environmental matters. The information available is for guidance purposes only.

W <http://www.ineris.fr/aida/>

**Description.** Official website of the governmental department that deals specifically with classified facilities for the protection of the environment. The information available is for guidance purposes only.

W

<http://iate.europa.eu/iatediff/SearchByQueryLoad.do?method=load>

**Description.** IATE is an EU inter-institutional terminology database.

## Appendix: Author details

### Author



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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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