

# Legal Alert – New Law on Environmental Crimes

## New Law on environmental crimes

Law 21,595, published on August 17, 2023, systematizes economic crimes and threats to the environment by modifying various legal bodies that typify crimes against the socioeconomic order, and adapting the penalties applicable to all of them.

Regarding environmental matters, Law 21,595:

1. Categorizes a series of existing crimes with environmental content, as second-category economic crimes.
2. Creates new "environmental" crimes both in the Criminal Code and in Law 20,417 that creates the Ministry, the Environmental Assessment Service and the Superintendence of the Environment (hereinafter "LO-SMA").

## New environmental crimes

These crimes share certain common characteristics:

1. They are completely independent of economic crimes.
2. They will be considered as economic crimes if any of the connecting factors indicated in article two of Law 21,595 occur, which are: (i) that the act is perpetrated in the exercise of a position, function or role in a company, or (ii) when it is for the economic or other benefit of a company.
3. They can be committed by both natural and legal persons.
4. There is a link between the new crimes and sectoral regulations, especially in environmental and water matters.

## 1. Pollution offences under conditions of administrative illegality

These crimes relate to the typically relevant modes of environmental affectation (pollution), in addition to some condition of administrative illegality.

Art. CP	Criminal offence	Penalty and associated fine
305	<p><b><u>Circumvention of the Environmental Impact Assessment System (SEIA) and pollution.</u></b></p> <p>Executing a polluting action without having submitted their activity to the SEIA knowing that they are obliged to do so. The polluting action may consist of any of the following actions:</p> <ol style="list-style-type: none"> <li>1) Discharge of polluting substances into maritime or inland waters.</li> <li>2) Extract inland waters, whether surface or groundwater, or maritime waters.</li> <li>3) Discharge or deposit polluting substances in the soil or subsoil, whether continental or maritime.</li> <li>4) Pour soil or other solids into wetlands.</li> <li>5) Remove components from the soil or subsoil.</li> <li>6) Release pollutants into the air.</li> </ol>	<ul style="list-style-type: none"> <li>➤ <u>Penalty:</u> <ul style="list-style-type: none"> <li>▪ From 61 days to 3 years.</li> <li>▪ From 541 days to 5 years if the activity had to undergo an EIA.</li> </ul> </li> <li>➤ <u>Fine:</u> <ul style="list-style-type: none"> <li>▪ From 120 to 60,000 UTM, if the maximum penalty indicated is less than that of minor imprisonment in its maximum degree.</li> </ul> </li> </ul>
306	<p><b><u>Repeated infringement of environmental regulations.</u></b></p> <p>A polluting action is carried out (i) in infringement of an environmental management instrument such as an emission standard or an Environmental Qualification Resolution ("RCA"); and (ii) the offender has been sanctioned in two different sanctioning procedures, for serious or very serious infractions within the 10 years prior to the punishable act and committed in the same unit subject to control of the authority.</p> <p>The polluting scenarios are the same as those of Article 305.</p>	<ul style="list-style-type: none"> <li>➤ <u>Penalty:</u> <ul style="list-style-type: none"> <li>▪ From 61 days to 3 years.</li> </ul> </li> <li>➤ <u>Fine:</u> <ul style="list-style-type: none"> <li>▪ From 120 to 60,000 UTM, if the maximum penalty indicated is less than that of minor imprisonment in its maximum degree.</li> </ul> </li> </ul>
307	<p><b><u>Illegal water extraction in restricted areas.</u></b></p> <p>It follows the same structure as the crimes just described, but refers especially to water <u>extraction</u>: when having an authorization to extract inland water, either surface or groundwater, the extraction is carried out in violation of the rules of its distribution and use in circumstances that the authority:</p> <ol style="list-style-type: none"> <li>1) Has established a temporary reduction of the exercise of those rights; or</li> <li>2) Has declared: <ol style="list-style-type: none"> <li>i. A prohibition zone for new groundwater exploitations; or</li> <li>ii. A restriction area for an hydrogeological sector; or</li> <li>iii. The depletion of natural water sources.</li> <li>iv. A water scarcity zone.</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>➤ <u>Penalty:</u> <ul style="list-style-type: none"> <li>▪ From 61 days to 3 years.</li> </ul> </li> <li>➤ <u>Fine:</u> <ul style="list-style-type: none"> <li>▪ From 120 to 60,000 UTM, if the maximum penalty indicated is less than that of minor imprisonment in its maximum degree.</li> </ul> </li> </ul>

## 2. Crimes of serious affectation

In the above crimes, the affectation of the environment is not the main element of the crime, rather the key feature is that the conduct occurs in circumstances of administrative illegality.

By contrast, in crimes of serious affectation, the reason to punish the act derives from the seriousness of the affectation of one or more environmental components.

What is meant by serious impairment of one or more environmental components? According to art. 310 bis, it is the adverse change produced in any of them, considering the following circumstances:

- A. Spatial extension
- B. Prolonged effects over time
- C. Be irreparable or difficult to repair
- D. Reaching a meaningful group of species
- E. Affect species categorized as extinct, extinct in the wild, critically endangered or endangered or vulnerable
- F. Putting the health of one or more people at serious risk of serious harm
- G. Significantly affect the ecosystem services or functions of the environmental element or component

Art. CP	Criminal offence	Penalty and associated fine
308	<p><b>Polluting action:</b> pouring, depositing or releasing polluting substances, or extracting water or components from the soil or subsoil.</p> <p><b>Serious affectation:</b> seriously affects maritime or inland waters, surface or groundwater, soil or subsoil, whether continental or maritime, or air, or animal or plant health, the existence of water resources or the supply of drinking water, or seriously affects wetlands by dumping land or other solids into them.</p> <p>The penalty depends on whether the serious affectation was perpetrated by concurring either the malicious circumvention of the SEIA (305), contumacious recidivism (306) or illegal extraction of water (307).</p> <p>Article 309, considers the commission for reckless imprudence, mere imprudence, or negligence with violation of the regulations.</p>	<p>➤ <b>Penalty:</b></p> <ul style="list-style-type: none"> <li>▪ <i>When the circumstances of articles 305, 306 or 307 occur.</i></li> </ul> <p>From 5 years and one day to 10 years.</p> <ul style="list-style-type: none"> <li>▪ <i>When the circumstances of articles 305, 306 or 307 do not occur.</i></li> </ul> <p>From 3 years and 1 day to 10 years.</p> <p>➤ <b>Fine:</b></p> <ul style="list-style-type: none"> <li>▪ From 24,000 to 120,000 UTM, if the minimum penalty indicated is equal to or greater than that of minor imprisonment in its maximum degree.</li> </ul>
310	<p><b>Serious impact on the environmental components of protected areas such as:</b></p> <ol style="list-style-type: none"> <li>1) Unspoilt Region Reserve</li> <li>2) National park</li> <li>3) Natural monument</li> <li>4) National reserve</li> <li>5) Wetland of International Importance</li> <li>6) Glaciers.</li> </ol> <p><b>Negligent conduct is also punishable.</b></p>	<p>➤ <b>Penalty:</b></p> <ul style="list-style-type: none"> <li>▪ From 5 years and one day to 10 years.</li> </ul> <p>➤ <b>Fine:</b></p> <ul style="list-style-type: none"> <li>▪ From 24,000 to 120,000 UTM, if the minimum penalty indicated is equal to or greater than that of minor imprisonment in its maximum degree.</li> </ul>

If the crime causes irreversible damage to an ecosystem, the maximum penalties indicated in number 1 of article 308 and in the first and second paragraphs of article 310 shall be imposed.

Fines are additional penalties to imprisonment, that is, they are complementary and not exclusive.

### **3. Crimes introduced into Law No. 20,417**

Law 21,595 also incorporates new crimes to Law No. 20,417 that created the Superintendence of the Environment.

Thus, article 37 bis indicates hypotheses of malicious presentation of false or incorrect information within the evaluation process of a project within SEIA or delivery of false or incomplete information to the Superintendence of the Environment.

Finally, Article 37 ter establishes sanctions related to the obstruction of the SMA's control activities.

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