Environmental Risk Management

Jurisdictional comparisons **First edition 2012**

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1. ENVIRONMENTAL LAW FRAMEWORK

1.1 The basis of domestic environmental policy and law

The fundamental principles underlying the approach to liability and regulation of environmental issues in Norway are as follows:

- polluter pays principle;
- environmentally sound techniques and methods of operation;
- the general duty of care;
- precautionary principle;
- the principle of knowledge-based management;
- the ecosystem approach and cumulative environment effects;
- the principle of species management; and
- the Constitution of 17 May 1814 (The Norwegian Constitution section 110b establishes a right to a certain quality of environment and the public's right to environmental information).

The Norwegian Pollution Control Act

The Norwegian Pollution Control Act of 1981 (Act of 13 March 1981 No.6 concerning Protection Against Pollution and Concerning Waste, the 'Act') was the first unified law in Norway concerning pollution and waste issues. It was at that time a political goal to create one basic legal framework for all types of pollution and waste. The Act was established for the purpose of preventing and reducing harm and nuisance from pollution. This objective is reflected in section 7 which establishes that pollution as defined in section 6 of the Act is forbidden, unless it is specifically permitted by law, regulations or individual permits.

The Act is a framework act setting out main rules and principles, and granting power to establish detailed rules in discharge permits and regulations issued by the pollution control authorities. The Act is based on the polluter pays principle which is reflected in the provisions regarding compensation and liability for environmental damage.

Violation of environmental permits is, in certain circumstances, subject to administrative and criminal sanctions. For example, the relevant pollution control authorities (see section 1.4 below) have the power to:

- impose a pollution fine;
- arrange for measures to be implemented and claim the costs, damages or losses incurred by the public authorities from the person responsible;
- decide that the use of or damage to another person's property is

permissible in return for remuneration; and
- revoke the permit.

In addition, in certain cases of non-compliance with certain provisions of the Act and/or regulations issued thereunder, the responsible authority (the Climate and Pollution Agency, County Governor or municipality) can issue coercive fines. Wilful or negligent non-compliance can be penalised with fines or imprisonment for a term of up to three months.

Other penal provisions may apply under sector legislation.

The Norwegian Environment Information Act

The objective of the Environment Information Act (Act of 9 May 2003 No.31) is to ensure public access to environmental information and thus make it easier for individuals to contribute to the protection of the environment, to protect themselves against injury to health and environmental damage, and to influence public and private decision-makers in environmental matters. The Act is also intended to promote public participation in decision-making processes of significance relating to the environment.

The Environmental Information Act provides any member of the public with the right to request and receive environmental-related information from any public authority. A request can be rejected if it is too generally formulated or it is not possible to identify the information that is requested. It can also be rejected if the information in question can be kept confidential according to the Freedom of Information Act.

The right to request and receive environmental-related information is not only relevant for public authorities; any member of the public can also address such a request to any company about the environmental impact of the company's activities.

The Norwegian Planning and Building Act

A new Norwegian Planning and Building Act (the 'Planning Act') came into force on 17 July 2009 (Act of 27 June 2008 No. 71 relating to Planning and the Processing of Building Applications). Important amendments introduced by this new Act include strengthening controls of construction work, making environmental considerations more predictable. An objective of the Act is to provide a more effective tool for helping municipal and regional authorities incorporate climate considerations into their planning efforts. The Act now stipulates that municipalities and counties shall take climate considerations into account in their planning activities. They are also charged with drawing up plans that reduce energy consumption and transport needs. The competent authority may impose penal provisions on any person who wilfully or negligently acts in contravention of the provisions made in or pursuant to the Act or carries out a project without obtaining the required permission pursuant to the Act.

The Norwegian Product Control Act

The purpose of the Product Control Act (Act 11 June 1976 No.79 relating to

the Control of Products and Consumer Services) is to prevent products from causing damage to health or disturbances of the environment in the form of disturbances of ecosystems, pollution, waste, noise or the like. A further purpose of the Act is to prevent consumer services from causing damage to health.

This Act applies to production, including the testing, import, marketing, use and other handling of products. The Act also applies to consumer services.

Any person that wilfully or negligently contravenes provisions set out in or issued under this Act or conditions laid down under section 7 shall be liable to fines and/or a term of imprisonment of up to three months, unless more severe penal provisions apply.

The Norwegian Svalbard Environment Act

The purpose of this Act (Act of 15 June 2001 No.79 relating to the Protection of the Environment in Svalbard) is to preserve a virtually untouched environment in Svalbard with respect to continuous areas of wilderness, landscape elements, flora, fauna and cultural heritage. The Act allows for environmentally sound settlement, research and commercial activities. Special enforcement and sanctions apply.

The Norwegian Petroleum Act

The Norwegian Petroleum Act (Act of 29 November 1996 No.72 relating to petroleum activities) section 7-3 establishes strict liability for pollution damage as a consequence of effluence or discharge of petroleum from a facility, including a well, and costs of reasonable measures to avert or limit such damage or such loss, as well as damage or loss as a consequence of such measures. Special enforcement measures apply.

The Norwegian Nature Diversity Act

The Nature Diversity Act (Act of 19 June 2009 No.100 relating to the Management of Biological, Geological and Landscape Diversity) signals a new era in Norwegian nature management. When the environment is threatened, the authorities will have a duty to respond with appropriate measures. The Act provides rules for the sustainable use and protection of the natural environment. This means new tools for safeguarding nature. The Nature Diversity Act applies both on land and at sea.

The Nature Diversity Act establishes key principles including general duty of care, knowledge-based management, the precautionary principle, the polluter pays principle and environmentally sound techniques and methods of operation that are to be used as a basis for the exercise of authority under the Nature Diversity Act and other statutes and decisions on the allocation of public grants.

Chapters VIII–IX of the Nature Diversity Act contain provisions on supervision, enforcement and sanctions, including the imposition of fines or imprisonment. There are also important new provisions on environmental compensation. The duty to pay such compensation will take effect when an order has been made by the competent authority.

1.2 Legal mechanisms aimed at transferring the long-term environmental costs of project developments to the private sector

Greenhouse gas emissions trading schemes

Domestic environmental policy

The Norwegian government has stated that it will undertake to reduce global greenhouse gas emissions by the equivalent of 30 per cent of its own 1990 emissions by 2020. This is 10 per cent higher than the joint European objective. Approximately two-thirds of the cuts in emissions should be made in Norway. Norway has pledged to achieve carbon neutrality by 2050 at the latest, and within 2030 at the latest if a global climate agreement is achieved.

Norwegian implementation of the European Union Emissions Trading Scheme (EU ETS)

Norway is a part of the EU ETS. The European Emission Trading Directive (Directive 2003/87/EC) is incorporated into the European Economic Area (EEA) Agreement and is implemented in Norwegian legislation through the Norwegian Greenhouse Gas Emission Trading Act of 17 December 2004 No.99. The Greenhouse Gas Emission Trading Act applies to companies operating in the petroleum sector, energy producers, producers of iron, steel and other ferrous metals and producers of cement, lime, glass, fiberglass and other fibrous material. As from 1 January 2012 the aviation industry is a part of the EU Emission Trading Scheme.

The amending directive (Directive 2009/29/EC) to the Emission Trading Directive has allowed for free allocation of emission allowances (EUA) to the offshore petroleum sector. As from Phase III (2013–2020) the Norwegian government has signalled that Norway will implement this amending directive.

NO_X-tax and the NO_X fund

The nitrogen oxide tax ('NO_X tax')is a special duty to the Norwegian treasury and is established under Act No.11 of 19 May 1933 concerning Special Taxes. The purpose of the tax is to achieve cost effective reductions in the emissions of NO_X, and in combination with other instruments, contributes to the fulfilment of Norway's commitments under the Gothenburg Protocol. The tax shall be payable in the amount of NOK 15 per kilogram of emission of nitrogen oxides on energy production delivery from the following sources:

- propulsion machinery with a total installed capacity of over 750 kW;
- engines, boilers and turbines with a total installed capacity of more than 10 MW; and
- flares on offshore installations and facilities on land.

The NO_X fund is a cost-sharing mechanism where the participants can apply for financial support for emission reducing measures. The payment to the fund substitutes the governmental NO_X tax for the associated participants.

CO_2 taxation

The CO_2 tax is charged on petroleum which is burnt and natural gas which

is discharged into the air, as well as on CO_2 separated from petroleum and discharged into the air, and for installations used in connection with production or transportation of petroleum in Norwegian internal waters and the Norwegian continental shelf. Since its introduction in 1991, the tax has been subject to several fundamental changes.

At present, the CO_2 tax applies to almost half of the total CO_2 emissions in Norway, but it is expected to have reduced importance in the future as more sectors are becoming subject to the Emission Trading Scheme. Historically, the CO_2 tax has covered about 52 per cent of the Norwegian greenhouse gas emissions and about 68 per cent of total CO_2 emissions in Norway. A system has been established where businesses that are subject to the emissions trading regime as well as the CO_2 tax will get reimbursements for the dual use of policy instruments.

1.3 Future developments in Norwegian environmental law

Environmental guidelines for the environmental monitoring of offshore oil and gas activities

In October 2011, Norway adopted new environmental guidelines for the environmental monitoring of offshore oil and gas activities entitled 'Guidelines for offshore environmental monitoring on the Norwegian continental shelf' (the 'Guidelines'). Pursuant to these newly issued environmental guidelines, the Norwegian authorities require, among other things, that production of water is to be reduced to only what is considered absolutely necessary.

Electricity certificates

The Norwegian Act on Electricity Certificates entered into force on 1 January 2012. Thus, with effect from this date, Norway has a joint electricity certificate regime with Sweden. The objective is to provide incentives to increased production of renewable energy. Trading in electricity certificates will stimulate production of electricity from renewable energy sources such as wind, water and biomass. The market is organised in such a way that producers of renewable energy are granted an allocation of certificates in accordance with the equivalent amount of produced energy. According to the Act on Electricity Certificates, Section 16, anyone who delivers electricity to end users, who consumes electricity that is self-produced and who buys electricity for his or her own consumption on the Nordic power exchange (Nord Pool Spot) or through bilateral agreements must buy electricity certificates. This shall result in an extra source of income to the producers of renewable energy. Appurtenant regulations are expected to be adopted in the near future.

Carbon capture and storage

Norwegian authorities aim at building the world's biggest full scale Carbon Capture and Storage facility ('CCS facility'). The CCS facility is to be constructed adjacent to an existing a Combined Heat and Power (CHP) station. The first step is building a CCS Test Centre for the development and

testing of CO2-handling technology. This is costly compared to emission trading, and partial state financing is an absolute necessity and thus the project depends on the approval by the European Free Trade Association Surveillance Authority. The project is now in the planning phase, which includes a comprehensive technology qualification and programme. An investment decision is expected in 2016.

A new proposal for EU regulation on offshore security

The European Commission has issued a proposal for a new regulation on security measures for offshore oil- and gas activities. Some of the proposed provisions are not in line with the existing Norwegian regime, and it remains to be seen how Norway will deal with the implementation of the final regulation.

1.4 The regulators and enforcement

Overview

The environmental legislation is administered and enforced by the pollution control authorities, which include the following bodies:

- at the national level: the King (which in real terms should be understood as the government), the Ministry of Environment and the Climate and Pollution Agency (a directorate under the Ministry of Environment);
- at county level: the county municipality and the county governor; and
- at municipal level: the relevant municipalities in which activities are carried out.

The Norwegian Ministry of the Environment

The Ministry of the Environment has the overall responsibility for carrying out the environmental policies of the government. This includes environmental policy across ministerial boundaries and involves a responsibility for coordinating issues that are the responsibility of several different ministries. To a large degree the Ministry's work is related to the development of legal, administrative and economic instruments.

The Ministry is superior to inter alia the Climate and Pollution Agency.

The Norwegian Climate and Pollution Agency

The Climate and Pollution Agency reports to the Ministry of Environment and is responsible for providing the professional basis for decisions of the Ministry in connection with pollution issues. In addition, the Pollution Control Authority has an executive responsibility with regard to:

- instructions and control relating to measures to combat industrial pollution;
- acute pollution;
- chemical substances and products;
- monitoring pollution in the air and water; and
- issuing environmental permits subject to the Pollution Control Act.

The Climate and Pollution Agency is authorised to issue instructions to the County Departments of Environmental Affairs and to the Governor´s

office on Svalbard concerning, eg pollution, waste and products.

Powers of the pollution control authorities in cases of breach of law and/or permits

The pollution control authorities are obliged to keep environmental information updated, and to monitor and control that the permit holders abide by the conditions in the permits and the relevant legislation. As such, they have wide powers to perform activities as mentioned and also to order the permit holder to perform activities. It should be noted that all holders of environmental permits have a duty to establish and maintain an internal control system capable of, inter alia, assessing the operations with respect to the limits laid down in the permits, as well as the general influence on the environment, human health and safety.

The pollution control authorities are further empowered to perform audits, planned inspections and unannounced inspections, and might in connection with such audits and inspections request that the permit holder prepare documents, provide samples, or place employees at the availability of the authority for interviews.

The enforcement measures and penal sanctions available are described in section 1.1 above.

Enforcement level

Generally, although varying between different business sectors, there is a high degree of enforcement, and criminal charges are frequently raised against polluters for unlawful pollution. In certain business sectors, such as within the offshore petroleum industry, the level of enforcement is very high.

2. ENVIRONMENTAL INCIDENTS AND DAMAGE

2.1 Liability for environmental incidents or damage

Liability for leaks, spills or emissions only arises if such (incidents) is considered to be illegal pollution under the Pollution Control Act: section 6 establishes that the introduction of solids, liquids or gases to water and ground is pollution. Pursuant to section 7 of the Act, pollution is illegal unless the pollution is lawful under section 8 or 9, or permitted by a decision made by the relevant pollution authority under section 11 (permit). An operator cannot be liable for emissions within permit limits unless the permit has been granted on the basis of false or misleading information.

If leaks, spills or emissions are deemed to be illegal pollution, the main principle is that the polluter pays. The principle is reflected in several provisions of the Act, pursuant to which a polluter is under a duty to stop or remove the pollution or to limit the effects of pollution. In addition, on certain conditions, the owner of real property, an object, an installation or an enterprise that causes pollution damage is liable to pay compensation pursuant to the Act regardless of any fault on his part.

The responsible authority can, under certain conditions, order an individual that possesses, does, or starts anything that results, or may result in, pollution to arrange or pay for any investigations or similar measures.

According to the Petroleum Act section 7-3 the licensee is liable for pollution damage without regard to fault. The provisions relating to liability of licensees apply correspondingly to an operator who is not a licensee when the Ministry of Oil and Energy has decided in connection with the approval of operator status.

2.2 Requirements to report environmental incidents or damage to regulators

In respect of illegal pollution, a reporting duty is established under the Pollution Control Act. Permits granted in accordance with the Act normally establish certain reporting obligations. The Act also establishes mandatory reporting obligations in cases of acute pollution.

2.3 Historic environmental damage and current (or purchasing) operators or landowners

For an overview of the general liability rules, see section 2.1 above.

The polluter pays principle applies to historic contamination, eg the liability for owners of real property, etc, and applies to previous owners even after the sale of the property or if the previous owner company is liquidated.

In 2010, the Supreme Court in Norway determined in a high-profile case on seabed pollution caused by two former marine paint production plants in Bergen. The court decided that the liability for pollution could be imposed on the parent company as a consequence of the branch company's unlawful actions.

2.4 Channelling environmental liability

Under the Petroleum Act section 7-4 the liability of a licensee for pollution damage may only be claimed pursuant to the rules provided in that Act. Section 7-4 establishes that liability for pollution damage cannot be claimed against:

- anyone who by agreement with a licensee or his contractors has performed tasks or work in connection with the petroleum activities;
- anyone who has manufactured or delivered equipment to be used in the petroleum activities;
- anyone who undertakes measures to avert or limit pollution damage, or to save life or rescue values which have been endangered in connection with the petroleum activities, unless the measures are performed in conflict with prohibitions imposed by public authorities or are performed by someone other than public authorities in spite of express prohibition by the operator or the owner of the values threatened; and
- anyone employed by a licensee or by someone mentioned above.

Furthermore, if the licensee has been ordered to pay compensation for pollution damage, but fails to pay within the time limit stipulated by the judgment, the party that has sustained damage may bring action against the party that has caused the damage to the same extent as the licensee may bring action for recourse against the party causing the damage. The licensee may claim compensation from the party causing pollution damage to him to the same extent as the licensee may bring action for recourse against the

party causing the damage.

Norway is a member of the Offshore Pollution Liability Agreement (OPOL). Under OPOL, Norway has resolved to provide orderly means for compensating and reimbursing any person who sustains pollution damage and any public authority which incurs costs for taking remedial measures as a result of a discharge of oil from any offshore facility so used and located within the jurisdiction of a state denominated hereunder as a 'Designated State', provided that such party is the operator of the offshore facility and has made this contract applicable to it.

2.5 Can liability be imposed on a wider net of parties?

Liability is allocated on the basis of the causal relations leading to pollution. For the authorities, the starting point is that the polluters pay for the pollution, for which each polluter is responsible. However, it may be difficult to establish the probable causal connections. On certain conditions liability may be joint and several.

In absence of any agreement to the contrary, each polluter is only liable inter partes for the pollution he or she has caused on a pro rata basis. If applicable, a polluter may seek recourse from any co-polluters.

Liability for polluting can be imposed on parties other than the polluter/operator if they are directly associated with the environmental incident or damage. If the third party has an economic interest in the incident or damage, liability may be imposed according to the polluter pays principle.

For lenders, liability can arise if they have taken possession of the company or the polluting installations. The lenders will then have direct economic influence over the company and its decisions and be regarded as an operator according to the Act.

Liability for environmental wrongdoing can also be imposed on directors and officers of companies. Monetary fines for directors and officers can be covered by insurance. However, insurance does not provide coverage against culpable negligence or wilful misconduct, or criminal liability, such as imprisonment or coercive fines.

Class actions are available under Norwegian law. The access to file class actions was introduced in 2008 and as of yet there are no Supreme Court precedents, but judicial scholars believe that class actions may play a role, inter alia, in relation to pollution damage liability.

2.6 Legal constraints to contractual allocation of liability for environmental incidents or damage in joint venture and principal/contractor relationships

In principle, the parties cannot agree that the liability for an illegal action shall be any different than what follows from the relevant legislation.

Licensees of a petroleum production license will be liable to the same extent as the operator.

Inter partes, parties can agree to limit their liability, or risk of liability, but this will not exclude the operator/principal from being held liable by the authorities. Hence, it shall not be possible to limit its responsibility by

contract. However, according to section 53 of the Pollution Control Act, the provisions of Chapter 8 of the act, relating to the obligation to pay compensation in case of pollution damages, apply to the extent the liability question is not specifically regulated by law or by contract. Although the application of this provision is a bit unclear, it leaves some room for the parties to agree on contractual provisions relating to the allocation of liability.

2.7 Environmental insurance for environmental incidents and/or damage

There are various liability insurance products in Norway that cover a broad range of liability for physical damage to a person or property. Specialised insurance companies provide specific business sectors, such as the petroleum industry and the shipping industry, with specific solutions. Such insurance contracts are often tailored to cover specific environmental risks in connection with a specific activity, and result in cost efficiency. Environmental impacts are often on a large scale and constitute great costs for the responsible party. This has led to the need for restricted environmental insurance within specific areas of responsibility.

3. ENVIRONMENTAL IMPACT ASSESSMENT AND LICENSING

3.1 EIA requirements

The duty to perform Environmental Impact Assessments (EIAs) is based on inter alia the principles established in section 110b of the Norwegian Constitution.

The Pollution Control Act section 13 establishes a duty to send notification and carry out EIAs for any activity that may involve major pollution problems. Any person that is planning any activity which may involve serious pollution at a new site or significant developments of a new character at a site where there is existing activity shall at an early stage of the planning process send notification to the Climate and Pollution Agency.

The Climate and Pollution Agency may decide that any person planning any activity for which notification is mandatory shall carry out an EIA to reveal any effects the pollution might have. The EIA shall normally include a study of different types of pollution the activity will generate during normal operations and also in the event of all conceivable types of accidents, and the likelihood of such accidents, what short- and long-term effects the pollution may have. If necessary, studies have to be made of natural conditions in the areas that may be affected by pollution. In particular, it must be ascertained how pollution will affect people's use of the environment and who will suffer particular nuisance as a result of pollution. Alternative locations, production processes, purification measures and ways of recovering waste shall be evaluated, as will the reasons for the solutions chosen by the applicant, how the activity will be integrated into the general and local development plans for the area, and if relevant, how it will restrict future planning. The Climate and Pollution Agency may decide when the EIA shall be available and what it shall include.

In addition to the above, the Regulation on Environmental Impact Assessment 26 May 2009, issued under the Planning and Building Act, establishes a duty to perform EIAs under certain circumstances. The purpose of the regulation is to ensure that the environment, natural resources and community interests are taken into account in the preparation of plans or projects, and when a decision is made as to whether, and if so what conditions, plans or projects may be carried out. The geographical extent of the Regulations follows from section 1 of the Norwegian Planning and Building Act.

The types of projects for which EIAs are required comprise:

- industry, other buildings and installations, eg metal processing, installations for the production of non-ferrous crude metals from ores, production of pulp from timber or similar fibrous materials, wind power plants with an installed effect exceeding 10 MW, hydropower plants generating more than 40 GWh per year, thermal power stations and other combustion installations with a heat output of 150 MW or more, crude oil refineries, petroleum storage facilities, extraction of petroleum and natural gas for commercial purposes;
- infrastructure projects, eg motorways, railway lines, tramways, airports and the establishment of new trading ports and harbour facilities; and
- other projects, eg wastewater treatment plants and military shooting ranges.

There is also a duty to perform impact assessments under the Petroleum Act. Prior to the opening of new areas with a view to granting production licenses, an evaluation shall be undertaken of the various interests involved in the relevant area. In this evaluation, an assessment shall be made of the impact of the petroleum activities on trade such as fisheries, industry and the environment, and of possible risks of pollution, as well as the economic and social effects that may result from the petroleum activities.

3.2 The primary environmental project licence

The Climate and Pollution Agency has prepared an extensive form of application to be used by industrial enterprises in order to ease the application process. Normally, a single permit covers all parts of the activities from a certain facility or business, but in some cases one needs to apply for separate permits using separate forms of applications, eg for the collection of hazardous waste and for emitting greenhouse gases if the facility is subject to the duty to surrender allowances.

Normally, a license will be granted within 2 to 6 months following application, but for major projects a timeframe of 8 to 12 months is not unusual.

A person applying for an environmental permit or any person with a legal interest in the matter can appeal a decision to reject the application or – if the permit is granted on certain conditions – to the conditions stipulated in the permit. An appeal will have to be filed within three weeks from the time the notification of the decision came to the appellant's knowledge. The Public Administration Act sets out the general provisions on appeal

and reversal of decisions made by public authorities, and this applies also to environmental permits.

An appeal is addressed to the administrative body immediately superior to the authority that made the decision, but the appeal is sent through the decision making body in order for this body to evaluate whether to reverse or maintain its decision. In the latter case, the appeal is forwarded to the superior body, which then makes the final decision within the public administration.

The decision by the appeal body might be brought before the ordinary courts, which have the powers to render the decision invalid, or before the Parliamentary Ombudsman, who evaluates the application of the law, the procedural issues, etc, and gives a statement in the matter which, albeit not legally binding upon public authorities, often leads to reversal of the decision in question.

Over the last 10 to 15 years we have seen that the threshold for NGOs and environmental organisations to have a legal interest in a specific matter, and thus, the ability to appeal or bring a case before the courts, has been lowered.

3.3 Other environmental permits and licences

See section 3.2 above.

4. COMMERCIAL ISSUES, BANKABILITY AND CORPORATE RESPONSIBILITY

4.1 Domestic environmental law requirements and international standards

Norway carries out a comprehensive environmental policy, and to some extent this has resulted in stricter standards for domestic polluters and industry than what is the case in the European Union. This is, for example, the case for fossil-based power production and the offshore petroleum industry. The most important partner to Norway in Europe is the European Union. Norway is not a member state of the EU, which makes it necessary to implement new EU legislation into the EEA Agreement before it has any relevance in Norway. Thus, European environmental cooperation takes place through the EEA Agreement. Norway's commitments through the EEA Agreement do not include two specific legislative acts, Directive 2009/147/EC (the 'Birds Directive') and Directive 1992/43/EC (the 'Habitat Directive'). These regulations have yet upheld great relevance for the Norwegian legislation on a large area. These two directives are carried out through the 'Natura 2000' network and is EU's follow-up of the Bern convention. Norway's follow-up processing of the Bern convention will therefore be compared with the EU's implementation of Natura 2000.

4.2 Disclosure of environmental issues to contract counterparties

In Norway, case law has established a principle of loyalty in contractual relationships. If the seller withholds information regarding environmental issues he may be liable for any problem that arises in the time after the transaction. In case of an acquisition, the buyer is advised to perform due diligence procedure, including regarding environmental issues.

4.3 Transferring liabilities to contract counterparties

The pollution control authorities may hold a previous owner of a property responsible for pollution which occurred during the time which he owned the property, regardless of any contractual arrangements that have been established with the existing owner.

An asset purchase results in the purchaser becoming owner of the facility, property or activity that creates pollution. This implies that the purchaser is directly liable under the Pollution Control Act (or the relevant sector legislation). As such, the buyer/contractor would be liable for any violation of the applicable environmental law or permit, regardless of when the violation occurred, see section 2.3. This legal situation leads to different practices for purchase agreements, depending on whether the object is the shares of a company or its assets.

4.4 Corporate reporting on environmental matters

All joint stock companies are obliged to address the issue of their environmental footprint in their annual reports.

Environmental reporting is mandatory to all businesses in Norway according to the Norwegian Accounting Act. Businesses that are certified through the EU Eco-Management and Audit Scheme (EMAS) are subject to compulsory environmental reporting.

It is not unusual that corporations on a voluntary basis report on environmental matters. This is part of their corporate social responsibility (CSR) profile. Such reports are becoming more and more common, also because environmental due diligence is an important element when it comes to mergers and acquisitions. Such voluntary reporting is often established through international standards:

- the Global Reporting Initiative (GRI); and
- the World Business Council for Sustainable Development (WBCSD).

Under the Emission Trading Scheme it is mandatory to report on the business' emissions. The business, in compliance with the regime, is obliged to report and deliver a certain amount of allowances each year to act in compliance with their obligations. Voluntary purchase of emission rights is also becoming more and more widespread amongst businesses that are not in compliance with an Emission Trading Scheme.

4.5 Freedom of information: to what extent can corporate entities and/or regulators or other public authorities be legally required to disclose environmental information to third parties or the public?

The obligations of public authorities to provide environment-related information to any member of the public follow from two different sets of rules: the Freedom of Information Act and the Environmental Information Act:

- the Freedom of Information Act states that any information held by a public authority shall as a starting point become publicly available to anybody who requests access to the information. In relation to

environment-related information, an important exemption from this starting point is information that is regarded as proprietary information or a business secret;

- the Environmental Information Act provides any member of the public the right to request and receive environment-related information from any public authority. A request can be rejected if it is too generally formulated or it is not possible to identify the information that is requested. It can also be rejected if the information in question can be kept confidential according to the Freedom of Information Act; and
- the right to request and receive environment-related information is not only relevant for public authorities; any member of the public can also address such a request to any company about the environmental impact of that company's activities.

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