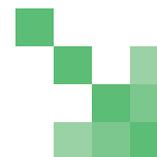


# Norway

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## OVERVIEW

### 1. Please provide a brief overview of the environmental regulatory framework and authorities in your jurisdiction.

#### Regulatory framework

The Norwegian environmental framework consists of a wide set of rules, including:

- Principles of environmental law, some of which are codified in section 110b of the Constitution.
- Provisions stating more definite goals for the quality of the environment, or that impose prohibitions or a duty to act a certain way.
- Framework acts such as the Pollution Control Act, that set out the main rules and principles, and grant power to the authorities to establish more detailed rules in regulations.
- Provisions regarding liability for compensation.
- Procedural rules relating to decision making.

The core of the environmental legislative regime consists of the:

- Pollution Control Act (*13 March 1981 No. 6*) on, among other things, pollution and waste.
- Planning and Building Act (*14 June 1985 No. 77*), which contains important provisions about environmental impact assessments.
- Product Control Act (*11 June 1976 No. 79*), which contains provisions relating to products.

These Acts are supported by regulations on the various issues they cover. Other key acts include the:

- Greenhouse Gas Emission Trading Act (*17 December 2004 No. 99*).
- Environmental Information Act (*9 May 2003 No. 31*).

Sector-specific acts have additional, or alternative, provisions relating to the relevant sector, for example the Petroleum Activities Act (*29 November 1996 No. 72*) and the Norwegian Maritime Code (*24 June 1994 No. 39*).

In addition, Norway has entered into various international agreements on general as well as environmental issues, for example, the Agreement on the European Economic Area (EEA), through which Norway must implement certain EU directives and regulations, the Kyoto Protocol (1997) and the Gothenburg Protocol, to mention a few. International obligations must be implemented into Norwegian law to bind Norwegian individuals and entities.

#### Regulatory authorities

Generally, the environmental legislation and related matters are supervised and enforced by the following:

- At national level, the King (in practical terms, the government), the Ministry of Environment and the Pollution Control Authority (*see box, The regulatory authorities*).
- At county level, the county municipality and the county governor, or person authorised by the Ministry of Environment.
- At municipal level, the relevant municipality.

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

Although the level of enforcement may vary between sectors, on average there is a high degree of enforcement. In certain business sectors such as the offshore industry, the level of control and enforcement is very high.

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

NGOs appear in the media fairly regularly to try to influence the drafting and amendment of relevant legislation, or to accuse the authorities and companies of not performing their tasks correctly. NGOs occasionally take action against the authorities and companies through demonstrations, and civil disobedience actions.

Notably, NGOs are also allowed, on certain conditions, to file legal and/or administrative complaints against administrative decisions to which they are not formally a party. NGOs regularly use this access, for example in April 2007 two NGOs filed an administrative complaint with the Petroleum Safety Authority and the Pollution Control Authority for issuing emission and drilling permits in the Barents Sea. In addition, the Supreme Court has gradually allowed environmental NGOs to take certain legal proceedings.

## PERMITTING OF EMISSIONS

**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?**

### Regulatory regime

Norway has an integrated regime to the extent that the Pollution Control Act regulates various forms of pollution and waste. A person cannot possess, do, or start anything that may involve a risk of pollution, unless this is lawful under section 8 or 9, or permitted by a decision made under section 11 (*section 7, Pollution Control Act*). Pollution means (*section 6, Pollution Control Act*):

- The introduction of solids, liquids or gases to air, water or ground.
- Noise and vibrations, light and other radiation, to the extent decided by the relevant authority.
- Effects on temperature that cause or may cause damage or nuisance to the environment.
- Anything that may aggravate the damage or nuisance caused by earlier pollution, or that together with environmental impacts (*see above*) causes, or may cause, damage or nuisance to the environment.

There is an exemption for ordinary pollution from certain sources such as fisheries, agriculture, forestry, ordinary households and temporary construction work (*section 8, Pollution Control Act*). The relevant authority has power to issue regulations on emission limit values, threshold limit values, the set up of installations, quality and qualification requirements (*section 9, Pollution Control Act*).

### Permits

The relevant authority can issue a permit on application, with or without conditions, for any activity that involves a risk of pollution (*section 11, Pollution Control Act*). In special cases, the relevant authority can issue such permits without the prior submission of an application.

If possible, pollution problems are solved for larger areas as a whole, based on general plans and local development plans. Therefore, if an activity will conflict with final plans drawn up under the Planning and Building Act, the relevant authority will only grant a permit under the Planning and Building Act with the consent of the planning authorities.

Although the Pollution Control Act sets out the main rules for permits, more specific requirements are contained in the regulations applicable to the relevant environmental activity.

However, to ease the burden on the applicant, the Pollution Control Authority has prepared an extensive application form (*Application for a discharge permit: Application form for industrial enterprises*) that covers:

- Manufacturing.

- Releases to water.
- Releases to air.
- Waste.
- Noise.
- Preventive measures and contingency plans for abnormal releases.
- Internal control systems.
- Measuring releases of pollutants.

In most cases companies can fill in one form and apply for one permit. However, it is advisable to enquire whether specific rules and regulations apply to a specific sector. For instance, there is a separate form for applications for a permit to collect hazardous waste.

**5. If there is an integrated permitting regime, please provide a brief overview of it, in particular:**

- **What permits are needed and which regulator issues them?**
- **How long do permits last?**
- **Are there restrictions on transferring permits?**
- **What are the penalties for non-compliance?**

### Permits

The authorities usually issue one permit for all types of pollution and waste that will be caused by the activities in question. The Pollution Control Authority generally issues the permit but in certain industries it delegates this authority to the County Governor.

Companies subject to the Greenhouse Gas Emission Trading Act will, in addition to the general permit provided under the Pollution Control Act, need a specific permit for emissions of carbon dioxide that are subject to the Greenhouse Gas Emission Act (*see Question 8*).

### Duration

Permits are generally not subject to time limits. However, the authorities can, on certain specific conditions, alter or withdraw permits (*general provisions, Public Administration Act*). In addition, they have a wider power to rescind or alter the conditions attached to a permit issued under the Pollution Control Act or regulations under it, or to impose new conditions, and if necessary withdraw the permit in certain circumstances (*section 18, Pollution Control Act*). Notably, a permit can be withdrawn or altered if it was issued more than ten years ago (*section 18, Pollution Control Act*).

Commonly, permits are altered due to information obtained from the responsible individual/entity, which has a duty to notify:

- An activity that may involve major pollution problems (*section 13, Pollution Control Act*).

- When equipment is replaced or pollution increases (*section 19, Pollution Control Act*).

### Transfer

Emission permits are not transferable as such but where a business merely changes owner without really changing other elements such as the activities performed, the permit application is in most cases likely to be a formality.

### Penalties

Non-compliance is, in certain circumstances, subject to administrative and criminal sanctions. For example, the Pollution Control Authority can:

- Impose a pollution fine (*section 73, Pollution Control Act*).
- Arrange for measures to be implemented and claim the costs, damage or losses incurred by the public authorities from the person responsible (*sections 74, 76 and 77, Pollution Control Act*).
- Decide that the use of or damage to another person's property is permissible in return for remuneration (*section 75, Pollution Control Act*).

In addition, if non-compliance breaches the Pollution Regulation (*1 June 2004 No. 931*), the responsible authority (the PCA, County Governor or municipality) can issue coercive fines.

Wilful or negligent non-compliance can be penalised with fines or imprisonment for a term up to three months, or both (*section 78, Pollution Control Act*).

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### 6. Please summarise the regulatory regime for water pollution (whether part of an integrated regime or separate). In particular:

- Are any activities prohibited (such as causing or failing to prevent water pollution)?
  - What permits or other authorisations are required and which regulator issues them?
  - Can the regulator require a polluter to clean-up or pay compensation for the water pollution?
  - What are the penalties for non-compliance?
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### Prohibited activities

The general duty to avoid pollution applies equally to water pollution (*section 7, Pollution Control Act*) (*see Question 4*). More specific requirements and prohibitions apply to various emissions to water, including seawater, freshwater, and subsoil water (*Pollution Regulation*).

Special provisions apply to certain sector-specific acts, for example the Petroleum Act and implementing regulations, and the Maritime Code. Specific requirements apply to wastewater (*Chapters 11 to 16, Pollution Regulation*).

### Permits

The emission permit is usually issued by the Pollution Control Authority but this authority may be delegated to the County Governor in minor cases, and cases that mainly have a local effect.

### Liability

Both the owner of certain polluting objects and the polluter may be liable to compensate for pollution and waste damage (*Chapter 8, Pollution Control Act*). As a starting point, the liability is objective.

Specific provisions apply to the petroleum industry and the shipping industry (*Chapters 7 and 8, Petroleum Activities Act, and Chapter 10, Maritime Code*). In addition to liability for compensation, the individual/entity responsible is, in certain circumstances, required to clean up, or alternatively held responsible for the cost of clean up (*section 76, Pollution Control Act*).

Certain penalties apply for non-compliance with the Pollution Control Act (*see Question 5*).

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### 7. Please summarise the regulatory regime for air pollution (whether part of an integrated regime or separate). In particular:

- Are any activities prohibited (such as discharging certain substances into the air without a permit or causing air pollution)?
  - What permits or other authorisations are required and which regulator issues them?
  - Can the regulator require the polluter to clean-up or pay compensation for the air pollution?
  - What are the penalties for non-compliance?
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### Prohibited activities

The general duty to avoid pollution applies equally to air pollution (*section 7, Pollution Control Act*) (*see Question 4*). There are more detailed provisions in the underlying regulations, such as the Pollution Regulation. In addition, the Greenhouse Gas Emission Trading Act applies to some industrial sectors (*see Question 8*).

### Permits

The emission permit is usually issued by the PCA, although this authority is delegated to the County Governor in minor cases, and cases that mainly have a local effect.

### Liability

The compensation scheme, duty to clean up, and the penalty regime under the Pollution Control Act also apply to air pollution (*see Question 5*).

**8. Please provide a brief overview of emissions trading schemes in your jurisdiction, including any national targets and carbon allowances systems. Is your jurisdiction party to international agreements on this issue and how have they been implemented into your national law?**

The Greenhouse Gas Emission Trading Act introduced a quota system for carbon dioxide emissions, effective from 1 January 2005. The authorities allocate quotas for carbon dioxide emissions among certain entities in the business sectors subject to the quota system. Each quota allows the emission of a certain amount of carbon dioxide, currently one tonne.

Until 31 December 2007, 95% of quotas are allocated for free. Under recent amendments to the Greenhouse Gas Emission Trading Act relating to 2008 to 2012, 85% of quotas on average will still, in certain circumstances, be allocated for free, the quota system is expanded to a wider range of business sectors, and the scope of the Act may be further expanded.

The quotas are tradable, so those already operating in the relevant business sectors can implement measures to reduce emissions and sell unused quotas, or buy quotas on the market. New entrants to the market will not be allocated quotas. This effectively means that new entrants subject to the Greenhouse Gas Emission Trading Act must buy quotas on the market.

The Greenhouse Gas Emission Trading Act implements Norway's obligations under the Kyoto Protocol. Although Norway did not implement Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community for 2005 to 2007, the Norwegian scheme still resembled the EU scheme.

For 2008 to 2012, Norway will largely be part of the European quota system, with certain exceptions and differences that are to be agreed between the European Commission and the Norwegian Government.

Norway is bound under the Kyoto Protocol not to increase the emissions of greenhouse gases by more than 1% compared to the 1990 level throughout 2008 to 2012.

## ENVIRONMENTAL IMPACT ASSESSMENTS

**9. Please provide a brief overview of the requirements to carry out environmental impact assessments (EIAs) for certain projects (for example, construction of an oil and gas facility). In particular:**

- **What type of projects and impacts are covered?**
- **Are permits or other documents required before the project can start and which regulator issues them?**
- **What are the penalties for non-compliance?**

### Regulatory framework

The duty to perform EIAs is established generally in section 110b of the Constitution. In addition, the authorities can impose a duty

to perform an assessment when receiving notification of certain developments, the effects of the activity or the activity itself (*section 13, Pollution Control Act*).

Chapter 7a of the Planning and Building Act and its implementing regulations have in effect replaced section 13 of the Pollution Control Act. Due to the broad scope of chapter 7a of the Planning and Building Act, most assessments are now carried out according to the regime established under the Planning and Building Act. The two regimes have as an interface section 11 of the Pollution Control Act, which establishes that if possible, pollution problems will be solved for larger areas as a whole based on general plans and local development plans, such as county master plans and municipal master plans regulated by the Planning and Building Act.

The provisions regarding EIAs apply to certain county master plans and municipal master plans, and to other plans and initiatives regulated by other legislation that may have material effects on the environment, natural resources or the community (*sections 16-2 and 33-1, Planning and Building Act*).

The Regulation on Impact Assessments (*1 April 2005 No. 276 Chapter 3*) gives further information on the scope of the regime, which includes:

- The development of industrial, storage and office buildings, including public buildings and buildings for public use, with an area of use over 5,000 square metres.
- Roads, railways, tram and underground routes.
- Ski slopes and ski lifts, aerial cable cars and other leisure complexes.

Some plans and initiatives are considered under sector legislation by the relevant regulator. For instance, in the offshore petroleum industry (*sections 4-2 and 4-3, Petroleum Act*), the licensees must submit plans for the development and operation of petroleum deposits to the Ministry of Oil and Energy for approval, before starting such projects. The plan must contain an account of environmental aspects and information on how a facility can be decommissioned and disposed of when the petroleum activities have ceased.

For projects not regulated by sector-specific legislation, building permits issued under the Planning and Building Act may be required before starting development, depending on:

- The location and size of the project.
- The activities performed when the development is completed.
- Whether the project is regulated by sector-specific legislation.
- The county and municipality plans for the area.

The responsible authority on matters relating to the Planning and Building Act is usually the municipality but county master plans are subject to the approval of the County Council, with the approval of the Government.

## Penalties

Certain penalties apply for non-compliance with the Pollution Control Act (*see Question 5*).

Non-compliance with the Planning and Building Act can lead to:

- Fines.
- Unlawful work being stopped and unlawful use discontinued.
- An order or prohibition.
- Liability to pay compensation or coercive fines.

Other penal provisions may apply under sector legislation.

## WASTE

### 10. Please provide a brief overview of the regulatory regime for waste. In particular:

- What activities are prohibited (such as storing or disposing of waste without a permit)?
- What permits or other authorisations are required and which regulator issues them?
- Do operators need to meet certain criteria (such as having sufficient financial means to operate landfills and other waste disposal sites)?
- Are there special rules for certain types of waste (such as hazardous waste or electrical equipment)?
- What are the penalties for non-compliance?

### The regulatory regime

Under the Pollution Control Act, the term waste means discarded objects of personal property or substances. Surplus objects and substances from service industries, manufacturing industries, treatment plants and so on are also considered to be waste (*section 27, Pollution Control Act*).

There is a general prohibition on littering, that is, no person can empty, leave, store or transport waste so that it is unsightly or may cause damage or nuisance to the environment (*section 28, Pollution Control Act*). This applies equally to wrecked ships, aircraft and other similar large objects. However, the general prohibition does not prevent waste from being dealt with at waste storage sites or at waste treatment and disposal plants with permits issued under the Pollution Control Act, nor does it prevent waste from being delivered to such facilities.

### Permits

A person that operates a waste storage site or waste treatment and disposal plant that may result in pollution or be unsightly must have a permit issued under section 11 of the Pollution Con-

trol Act (*see Question 4*). The permit can impose conditions that must be met and maintained by the applicant, for instance in relation to transport, treatment, recovery and storage of waste, and measures to prevent the facility from becoming unsightly.

### Special rules for certain types of waste

There are special regulations relating to certain types of waste, including:

- Dangerous waste such as waste from health and veterinary services.
- Waste that contains environmental poisons.
- Certain batteries.

### Penalties

A person that has breached the general prohibition against littering must arrange the necessary clean-up measures (*section 37, Pollution Control Act*).

Certain penalties apply for non-compliance with the Pollution Control Act (*see Question 5*).

## ASBESTOS

### 11. Please provide a brief overview of the regulatory regime for asbestos in buildings. In particular:

- What activities are prohibited?
- What are the main obligations (such as investigating the presence of asbestos and risk assessments for employees) and who is liable to carry them out?
- What permits or other authorisations are required and which regulator issues them?
- What are the penalties for non-compliance?

### Prohibited activities

It is generally prohibited to produce, import, export and trade asbestos fibres or products that contain asbestos fibres (*section 22, Regulation on Products 1 June 2004 No. 922*) (Products Regulation). The Pollution Control Authority can make exemptions from the prohibition, possibly with conditions required to prevent damage or inconvenience.

The use and other handling of asbestos and material containing asbestos is prohibited, unless in situations expressly exempted by the regulation, for example certain activities such as demolition, repair and maintenance of material containing asbestos (*section 6, Regulation on asbestos of 26 April 2005 No 362*) (Asbestos Regulation).

### Obligations

The employer is under a duty to ensure these regulations are met, and must assess to what extent the workers may be exposed to asbestos,

and the risk to the workers' health and safety. Further, the employer must ensure that the workers' exposure to asbestos dust is reduced to a minimum by implementing measures, including:

- Signposting areas where work with asbestos is being carried out.
- Providing training and instructions.
- Medical examinations.

The employer must keep a register of workers exposed to asbestos and notify the Labour Inspection Authority before starting work involving asbestos.

### Authorisation

Undertakings that are to carry out demolition, repair and maintenance of material containing asbestos must obtain permission from the Labour Inspection Authority.

### Penalties

The penalties for non-compliance with the Products Regulation or the Asbestos Regulation include fines and imprisonment up to three months.

## CONTAMINATED LAND

**12. Please provide a brief overview of the regulatory regime for contaminated land. In particular:**

- Which regulator is responsible and which legislation applies?
- In what circumstances can a regulator require the investigation and clean-up of contaminated land?
- What are the penalties for non-compliance?

### Regulatory framework

Contaminated land is regulated by the general pollution provisions of the Pollution Control Act (see Question 4), and chapters 1 and 2 of the Pollution Regulation. The regulatory authority relating to contaminated land is divided between the Pollution Control Authority and the local municipality.

### Investigation and clean-up

The authority responsible can order a person that possesses, does, or starts anything that results, or may result in, pollution to arrange or pay for any investigations or similar measures (section 51, Pollution Control Act). The authority can only issue such orders if such measures may reasonably be required to:

- Determine whether and to what extent the activity results in, or may result in, pollution.
- Ascertain the cause of or impact of pollution that has occurred.

- Ascertain how the pollution is to be remediated.

The Pollution Regulation contains further provisions on the duty to perform inspections and investigations. The individual/entity responsible is under a general duty to ensure that measures are taken to stop or remove the pollution or limit its effects, and to mitigate any damage or nuisance resulting from the pollution or from measures to counteract it (section 7, Pollution Control Act and Chapter 6 on Acute Pollution).

The PCA can order the individual/entity responsible to clean-up, but in practice this normally only happens when activities stop, or when there are acute emissions.

### Penalties

Certain penalties apply for non-compliance with the Pollution Control Act (see Question 5).

## 13. In relation to liability for contaminated land:

- Which party is liable for carrying out or paying for environmental investigation and clean-up?
- Can an owner or occupier who has not caused contamination be liable for investigation and clean-up of contamination on their land?
- Can previous owners or occupiers be liable for contamination they have caused in the past?
- Are there limits on liability or ways for a party to limit its liability?

### Liability

A person that possesses, does, or starts anything that results, or may result in, pollution, can be ordered to arrange or pay for investigations or similar measures (section 51, Pollution Control Act) (see Question 12).

### Owners and occupiers

Whereas an owner who has not caused contamination can be liable for investigation and clean-up under the Act, it is questionable whether an occupier who has not caused contamination can be liable. Generally, if the occupier is not at fault, the owner is more likely to be liable.

Basically, the owner of a polluting property is liable in tort for pollution damage caused by activities connected to that property (section 55, Pollution Control Act). Therefore any present owners are liable. If the present owner has not been made aware of the past polluting activity at the property this may be more complex.

Section 55 of the Pollution Control Act can also be used against a previous owner, who can be liable in tort for pollution damage, even after the sale of the property, or if the previous owner company is liquidated. Such liability may also be shared between the owner and a previous owner of the same property.

### Limiting liability

Parties can attempt to limit their liability between themselves by agreement, but such an agreement will not exclude the previous owner from liability to the authorities if issues arise. To limit financial exposure, indemnities given by the buyer should therefore include a right for the seller to seek recourse against the buyer, if a claim is made against the seller by the authorities.

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

A mere lender, who does not own, directly or indirectly, or operate, use or otherwise participate in the activities performed on contaminated land (other than providing finance) cannot be liable. However, like any other individual/entity, the lender may be liable under general tort law for damage caused, for example by negligence.

Notably, an individual/owner can be liable for intentionally or negligently contributing indirectly to pollution damage, by supplying goods and services, carrying out control or supervisory measures, or by similar means (*section 55(2), Pollution Control Act*).

A lender may also be liable if the borrower defaults and the lender takes possession of a pledge, so that the lender can be deemed to be operating, using or otherwise participating in the activities performed on the contaminated land.

#### 15. Can a private individual bring legal action against a polluter, owner or occupier (for example, for damage caused by the movement of contamination onto his land)?

If a private individual has suffered nuisance, personal injury or damage to his property due to pollution caused by a polluter, owner or occupier of land, he normally has the legal interest required to start legal proceedings (*Civil Procedure Act 13 August 1915 No. 6*) (Civil Procedure Act). This applies equally to companies. The individual is able to take legal action based on the Pollution Control Act, tort law, or applicable sector legislation.

Compensation for permitted pollution can only be claimed to the extent that the pollution is unreasonable or unnecessary (under *section 2 (2 to 4), Act of 16 June 1961 No. 15 relating to the legal relationship between neighbouring properties*) (*section 56, Pollution Control Act*).

The Supreme Court has established that, on certain conditions, environmental NGOs may be allowed to take legal action on certain environmental issues (*see Question 3*).

#### 16. In what circumstances can a buyer inherit pre-acquisition environmental liability in:

- An asset sale?
- The sale of a company (share sale)?

A buyer can inherit pre-acquisition environmental liability through an asset or share sale due to the general duty not to possess anything that may involve a risk of pollution, unless this is lawful under the Pollution Control Act (*see Question 4*). The objective liability for compensation applies to owners of assets (*see Question 13*).

In a share sale, under Norwegian law there are several grounds for holding a buyer that becomes a parent company liable for pollution by its target subsidiary. The parent can in certain circumstances be directly liable as “owner” (albeit indirect owner) of the polluting activity, or indirectly liable for negligence as a shareholder or through unwritten rules about piercing the corporate veil.

#### 17. In what circumstances can a seller retain environmental liability after disposal in:

- An asset sale?
- A share sale?

A seller can retain environmental liability after disposal in certain circumstances, in both an asset sale and a share sale (*see Question 13*).

#### 18. Does a seller have to disclose environmental information to the buyer in:

- An asset sale?
- A share sale?

Under Norwegian contract law, the principle of loyalty between parties applies. The seller therefore has an obligation to disclose environmental information, both in an asset sale and a share sale.

The seller has a general obligation, not only related to the buyer, to disclose environmental information under the Act relating to the Right to Environmental Information and Public Participation in Decision-making Processes relating to the Environment (*9 May 2003 No.31*) (Environment Information Act). Any person is entitled to receive environmental information from undertakings, either private or public, concerning factors related to the undertaking, including factor inputs and products, which may have an appreciable effect on the environment (*section 16, Environment Information Act*).

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**19. Is environmental due diligence common in an asset sale or a share sale? If yes:**

- What areas are usually covered?
  - What types of environmental assessments are available?
  - Are environmental consultants usually used? If so, what issues should be covered in an engagement letter (for example, limit on consultant's liability)?
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Environmental due diligence is often carried out, but whether the parties choose to perform environmental due diligence largely depends on the industry, the activities performed, the assets involved, and the risks the parties are exposed to.

**Areas covered**

Typically, areas covered include:

- Environmental permits, authorisations and regulations.
- Past and current investigations, proceedings, violations and lawsuits.
- Compliance issues.
- Operations on properties owned, leased or used.
- Environmental history.
- Environmental reports.
- Any other issues relating to the undertaking, such as hazardous substances and asbestos.

**Types of assessment**

The types of assessments depend on the business sector, activity or asset in question.

Assessments range from a simple environmental survey, to detailed soil and groundwater investigations.

**Environmental consultants**

Environmental consultants are often used, especially in technically complex matters such as cases relating to possible contaminated land. The issues in an engagement letter should be adapted to the assessments that are to be performed and the risks involved.

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**20. When are environmental warranties and indemnities usually given and what issues do they usually cover in:**

- An asset sale?
  - A share sale?
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Environmental warranties and indemnities are often given but the extent of their use varies according to the business sector and

risks involved. They are most common in transactions related to property where high-risk industries have been carried out, or in share sales in typical high-risk sectors such as the petroleum or metal industries.

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**21. Are there usually limits on environmental warranties and indemnities, for example, time limits or financial caps?**

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There is no fixed practice on limits on environmental warranties or indemnities, which vary according to the business sector and the extent of the risks involved.

**REPORTING AND AUDITING**

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**22. Do regulators keep public registers of environmental information (for example, of environmental permits or contaminated properties)? What is the procedure for a third party to search those registers?**

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The authorities keep a range of registers relating to environmental information, for example the Norwegian Pollutant Release and Transfer Register and the database of registered contaminated land (which is freely accessible on the Pollution Control Authority website).

Requirements for third party access vary from registry to registry but there is a general degree of openness relating to environmental issues and public documents under Norwegian law. In addition, the public authorities and companies are under a duty to disclose environmental information under the Environment Information Act (*see Question 18*).

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

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The environmental regime imposes a range of duties on companies to carry out environmental auditing, to keep certain environmental information available for inspections, and to report to the authorities on a variety of issues, including environmental performance. In addition, sector legislation may impose specific reporting obligations.

In addition, public companies and limited companies have a duty to inform about their activities in their annual report, including input factors and products that may impact on the environment. Companies have a duty to inform about the environmental impact that the activities have, or may have, as well as of any measures already implemented or planned to prevent or reduce adverse environmental effects (*sections 3-3 and 3-3a, Accounting Act 17 July 1998 No. 56*).

A company's auditing and reporting obligations vary according to a number of factors, including the relevant business sector, the activities performed and the assets and products involved. There is a general reporting obligation under the Pollution Control Act (*see Question 5*).

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

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If there is acute pollution or a danger of acute pollution, the nearest police authority must be notified immediately. The duty to provide notification rests with the person responsible for the pollution, but other persons also have a duty to notify, unless this is clearly unnecessary.

Further, and according to a range of provisions in the relevant regulations, companies are under wide obligations to report emissions and other environmental incidents.

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**25. What powers do environmental regulators have to access a company's documents, inspect sites, interview employees and so on?**

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The relevant pollution control authorities must be given unimpeded access to property where pollution may occur or has occurred, or which is or may be exposed to pollution, if this is necessary to exercise its duties under the Pollution Control Act (*section 50, Pollution Control Act*). The same applies to an enterprise that has caused or may cause waste problems.

The relevant pollution control authorities can require documents and other material that may be important to exercise its duties to be submitted for its inspection.

Before inspection of an enterprise, the relevant pollution control authority must contact representatives of the management.

A person that possesses, does, or starts anything that may generate pollution or result in waste problems has a duty to, despite any duty of secrecy, provide the relevant pollution control authority or other public bodies with any information necessary to enable them to carry out their duties under the Pollution Control Act (*section 49, Pollution Control Act*). If special reasons indicate, the relevant pollution control authorities can require an employee who works for the person subject to this duty to provide information.

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**26. 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 usually obtained in practice?**

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There are various liability insurance products in Norway that cover a broad range of liability for physical damage to a person or property. However, insurance companies may be reluctant to cover consequential damage and gradual pollution. Notably, there are specialised insurance companies that cater for specific business sectors such as the petroleum industry, shipping, and particular risks in specific sectors.

## THE REGULATORY AUTHORITIES

### Ministry of Environment

**Main responsibilities.** They include:

- Carrying out the environmental policies of the Government.
- Starting, developing and carrying out its own measures.
- Influencing sectoral Ministries at the national level.
- Co-ordinating the environmental policy objectives of the Government, ensuring follow-up and monitoring results of environmental policies.
- Hearing appeals of the decisions of the Pollution Control Authority.

**W** [www.regjeringen.no/en/dep/md.html?id=668](http://www.regjeringen.no/en/dep/md.html?id=668)

### Pollution Control Authority (PCA)

**Main responsibilities.** They include:

- Assessing applications for and issuing emission permits under the Pollution Control Act and the Greenhouse Gas Emission Trading Act.
- Monitoring and providing information about environmental development.
- Providing the Ministry of Environment with advice, assessments and expert support.
- Exercising authority through regulations and control measures.
- Assessing the degree to which different sectors of society have achieved their environmental goals.
- Instructing and guiding county governors within its area of responsibility.

**W** [www.sft.no](http://www.sft.no)

Other regulatory authorities include local authorities across Norway, that is, the various counties/County Governors at county level, and municipalities at the municipal level. For further information, please see [www.norge.no](http://www.norge.no)

Companies often take out liability insurance. Insurance companies tailor insurance contracts to cover specific environmental risks connected to a specific activity.

## TAX

**27. What environmental taxes apply in your jurisdiction (for example, tax on waste disposal, carbon tax and tax breaks for carrying out clean-up of contaminated land)? For each tax, please briefly state how it is calculated, who pays it and the tax rates.**

A wide range of environmental taxes and duties apply, and businesses should always investigate which taxes and duties apply for a specific product, emission or activity. The following are some of the more important taxes.

Of key importance is the tax on carbon dioxide emissions. This is the main measure of Norwegian fiscal environmental policy. The tax is directed against emissions from the use of petrol, diesel, mineral oil onshore, as well as within the oil and gas sector on the continental shelf, and ranges from NOK0.53 (about US\$0.1) to NOK0.79 (about US\$0.13) per litre per product unit (or NOK169 (about US\$29) to NOK341 (about US\$59) per tonne of carbon dioxide). In some industrial sectors a reduced tax applies, and some sectors are also exempted. The scheme may be reformed soon (see *Question 28*).

The nitrogen oxide emission tax of NOK15 (about US\$2.6) per kilogram entered into force on 1 January 2007. The tax applies to, among other things, ships, fishing vessels, aircrafts, certain railways and industrial equipment, as well as to offshore flaring and land-based installations. Under certain conditions the tax may be refunded.

The Norwegian fiscal regime also covers waste, including taxes on:

- End-use of waste ranging from NOK59 (about US\$10) to NOK552 (about US\$95) per tonne.
- Drinks packaging: glass and metal NOK4.62 (about US\$0.8) per piece, plastic NOK2.79 (about US\$0.48) per piece and cartons and cardboard NOK1.15 (about US\$0.2) per piece.

A tax of NOK57.69 (about US\$9.91) per kilogram applies to chemicals that are damaging to health and/or the environment.

Further, the Norwegian regime imposes taxes and duties on certain products, for instance a one-off fee on vehicles paid when the vehicle is first registered. The taxes are based on the vehicles' weight, engine rating, carbon dioxide emission and cylinder capacity.

There are no specific tax breaks for carrying out clean-up of contaminated land, but the usual provisions of the Norwegian Income Tax Act relating to tax deductions apply.

## REFORM

**28. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.**

Since environmental law is constantly changing to deal with current issues and problems, individuals/entities concerned should regularly enquire about the most recent developments relating to their business activity or product.

Due to the recent amendments to the Greenhouse Gas Emission Trading Act, the Government has stated (*White Paper 66 (2006-2007) item 3.2.1*) that a proposal to exempt land-based industry from the carbon dioxide tax (see *Question 27*) may be proposed in the Budget for 2008, provided such exemption complies with the relevant EU legislation. Further developments are expected in the autumn and winter of 2007.

Another proposed amendment is to amend the implementing regulation that the Pollution Control Authority has issued. The proposed amendments are subject to public consultation. The proposal covers the extent of the quota system, a deadline for an application for free quotas for the period 2008 to 2012, and changes to the calculation, measurement and reporting of relevant emissions.

In addition, the Pollution Control Authority has submitted a proposal to ban the deposit of biologically degradable waste to public consultation. The proposal is intended to lead to a decrease in the emission of greenhouse gases and environmental poisons. The deadline for comments is 1 November 2007.

The authorities are proposing a broad ban on 18 environmental poisons in consumer products. The proposal involves various products containing plastic, construction products, textile, paint and varnish used for industrial purposes. The deadline for comments is 1 September 2007.

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