

EXECUTIVE SUMMARY

This study was conducted by the Universidad de Chile / Universidad Marítima de Chile Consortium as commissioned by the GEF/ UNEP project “Development of a National Implementation Plan for the Management of Persistent Organic Pollutants in Chile.”

The main objective of the study was to prepare an analysis of the current Chilean legal framework for POPs and identify the legal modifications that would be required to fill existing gaps in our legislation and thus support the National Implementation Plan and fulfill the requirements and mandates of the Convention.

The first section of the study focuses on a description of the Stockholm Convention and its reach, and how this interacts with related international conventions, particularly the Basel and Rotterdam Conventions.

As Section A states, the Stockholm Convention on Persistent Organic Pollutants is the international community’s response to the need to reduce and eliminate the environmental release of a specific category of chemicals called “persistent organic pollutants” or POPs. It identifies the final aim of the Convention to be the elimination of intentionally produced POPs and the steady reduction (or, if possible, total prevention) of the unintentional release of persistent organic pollutants as by-products. To accomplish this, the Convention establishes control measures for the production, use, import and export, and elimination of POPs; in other words, for the complete life cycle of the chemical.

The Convention provides a framework based on the precautionary principle to guarantee the elimination without risk or the steady reduction of 12 priority POPs. Included among these are pesticides, industrial chemical products, and unintentional by-products. This Section also indicates that under the Convention, Parties may continue to identify other POPs among existing substances using an agreed upon screening process. Furthermore, Parties to the Convention have an obligation to prevent the production and use of new substances that present POPs characteristics.

Under its overall objectives, the Convention differentiates among control measures for each POPs category (pesticide, industrial chemicals, and unintentional pollutants and by-products)¹. In addition,

it explicitly provides for clean production mechanisms and technical and financial assistance, and provides a detailed legal analysis of these matters.

The second section of the study aims to identify and analyze, in light of the Convention’s provisions, Chilean legislation on POPs or other legal norms pertinent for the Convention’s application. This extensive analysis distinguishes among the following: i) regulations related to intentionally produced POPs; ii) regulations on the elimination of unintentional POPs; iii) regulations for POPs stockpiles and wastes, including on this point an analysis of the state of legislation concerning “contaminated sites;” and iv) legislation concerning indemnification and damages for harm to health and the environment and that associated with aspects such as public information, awareness, and education.

In this regard, and in relation to the regulatory framework for intentionally produced POPs, concerning the elimination and reduction of POPs production and use, the study concludes that Chile has sufficiently broad and absolute prohibitions regarding POPs used in agriculture (pesticides) to fulfill its commitments under the Convention without having any obvious initial gaps. Binding resolutions of SAG (Agriculture and Livestock Service) analyzed in this section ban the import, manufacture, sale, distribution, and use of the pesticides in question (Aldrin, Chlordane, Dieldrin, Endrin, Heptachlor, Hexachlorobenzene –a ban on pesticide formulas that contain Hexachlorobenzene-, Mirex and Toxaphene, a clear indication of the above, and covered under Article 3.1.a) i), at least with respect to Annex A pesticides). Regarding PCBs, the study concludes that current regulations do not allow for meeting the requirements of the same Article on elimination found in Part II of Annex A. In relation to the requirement to eliminate POPs imports and exports, sanitary, agricultural, and customs regulations in Chile reviewed in Section II clearly indicate the respective powers of the Health Services and SAG regarding enforcement and control of importing products or hazardous substances, and in particular agricultural pesticides.

¹ UNEP Administrative Council. *Decisión 19/13C*, 1997.

Nevertheless, regarding hexachlorobenzene, no specific regulations for industrial products exist (except SAG resolution N° 90, for its presence in agricultural pesticides), which means there is a legal gap that could be remedied by the regulatory authority of the Ministry of Health. Additionally, the PCB ban is restricted to their use as a dielectric fluid in transformers, condensers and other electric equipment, and not for all their other industrial applications, which is another gap that should be legally remedied.

In terms of legislation associated with the reduction or elimination of unintentionally produced POPs, the study concludes that Chilean legislation is deficient, despite there being specific legal tools and instruments –basically the legal framework for enacting emission and quality standards – that would allow legislation in this area to be substantially strengthened.

Concerning existing regulations on POPs stockpiles and wastes, legislation was assessed as generally positive, notwithstanding the identification of significant gaps. The different regulations and provisions reviewed showed that Chile's legal framework could be deemed generally adequate in certain areas (transport, storage, restrictions and prohibitions of certain POPs waste, for example). However, in terms of having comprehensive, environmentally sound waste management norms, existing Chilean legislation has a significant weakness, namely, that there is no law in effect that comprehensively regulates hazardous waste management. This was one of the clearest gaps identified throughout the study, although it is being addressed through the enactment of new "Rules for Hazardous Waste Management," which are in progress. Another clear regulatory gap identified in the study that needs fixing was the identification and recovery of chemically contaminated sites.

In the area of civil liability for environmental damage, the Stockholm Convention does not set down precepts for liability for damages caused by intentional or unintentional POPs releases, although the Conference of the Parties has a resolution on responsibility for and reparation of damages resulting from the intentional use of POPs and their introduction into the environment.

Under existing legislation, Chile has a relatively broad spectrum of legal provisions that would enable legal action for reparation and indemnification for damages caused by POPs, both for their environmental and health effects. The reparatory action for environmental damage provided for under Law 19.300 (Environmental Framework Law) could be a relevant instrument in this regard, given the aim for which it was designed (to address any significant environmental damage), and could be an important tool, among others, for demanding recovery or cleanup of contaminated sites—including, of course, POPs pollution –especially given that its statute of limitations runs from when the damage is manifest, not from when it is committed.

The third section of the study compares legislation from the United States and the European Union in an interesting analysis that examines the regulatory approach of these bodies in the area of POPs. As an example, the following table summarizes legislative similarities and differences between Chile and the European Union, and then between Chile and the U.S.:

European Union

	European Union	Chile
POPs Intentional	Similarities <ul style="list-style-type: none"> • Ban on Sale and Use Differences <ul style="list-style-type: none"> • No limits on production • No regulation of Mirex • Special regulation for PCBs 	Similarities <ul style="list-style-type: none"> • Ban on Sale and Use Differences <ul style="list-style-type: none"> • Prohibits manufacture of POPs pesticides. • Mirex regulated • Insufficient PCB regulation
Unintentional POPs	Regulation and Control through Emission standards	Unintentional releases not regulated
Stockpiles and Wastes	Similarities Non-compliance with the Stockholm Convention – waste recovery is not controlled Differences Special regulation for stockpile and waste management	Similarities Non-compliance with the Stockholm Convention – waste recovery is not controlled Differences Partial regulation, incomplete and non-specific
POPs in food	Differences Maximum Tolerance Limits established for all POPs in food	Differences Tolerance Limits set for only some POPs

United States

	United States	Chile
Intentional POPs	Difference All uses of POPs banned	Differences POPs prohibited for agricultural use.
Unintentional POPs	Difference Extensively regulated	Difference Dioxins and Furans not regulated
Stockpiles and Wastes	Difference Special regulations for Contaminated sites	Difference No regulations for Contaminated Sites
POPs in food	Difference No tolerance levels allowed	Difference Tolerance levels for only some POPs in food