

ENVIRONMENTAL RADAR

May 2022

Legislation (State and Federal)

FEDERAL

Stockholm Convention on Persistent Organic Pollutants

Brazilian Federal Government approves PCB Management Manual and National Inventory System

As a signatory to the Stockholm Convention on Organic Pollutants, enacted by Brazilian Federal Decree No. 5,472/2005, Brazil is expected to carry out the controlled disposal of materials and fluids contaminated by Polychlorinated Biphenyls (PCBs) and their waste, implementing the environmentally appropriate final disposal until 2028.

By its turn, pursuant to Brazilian Federal Law No. 14,250/2021, holders of equipment with PCBs or PCB waste are required to draft, keep available and send the PCBs inventory to the competent environmental agency within three (3) years after the enactment thereof on 11/26/2021.

In order to enable compliance with said regulations, the Ministries of the

Environment (MMA) and of Mines and Energy (MME) have approved, by means of Interministerial Ordinance MMA/MME No. 107/2022, the PCB Management Manual for Electrical Equipment for Holders and Recipients and the Brazilian National PCB Inventory System, within the scope of the Brazilian National Information System on Solid Waste Management (*Sistema Nacional de Informações sobre a Gestão dos Resíduos Sólidos* - SINIR).

The submission of information on the PCB inventory shall take place no longer than **by the deadline of 11/26/2024, with updates every two (2) years until 2029**, comprising information concerning the previous year.

Attention shall be drawn to the fact that the implementation of procedures and the

import of PCBs is prohibited and that the use of equipment with values exceeding 50 mg/kg of PCBs will be prohibited after 2025, in line with the Convention on Persistent Organic Pollutants (POPs).

Click [here](#) to access the Interministerial Ordinance MMA/MME No. 107/2022. The documents approved by means of said Ordinance as the SINIR can both be accessed [here](#).

Environmental Conciliation

IBAMA publishes new application for adherence to environmental conciliation

•The Brazilian Institute of the Environment and Renewable Natural Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*, better known by the acronym IBAMA) has released a new application for adherence to environmental conciliation within its environmental sanctioning procedure, prior to the conciliation hearing and autonomous, i.e., whereby the holding of this sort of hearing is waived, as provided for in Joint Ordinance MMA/IBAMA/ICMBio No. 589/2020.

The interested party in an environmental conciliation is given the opportunity to choose one among the four (4) sort of legal solutions provided for in Joint Normative Instruction MMA/IBAMA/ICMBio No. 1/2021:

- i. Payment of the fine upon request (with 30% discount) on the overall amount;
- ii. Payment of the fine by means of installments (with 30% discount) on the overall amount in the preliminary analysis report;
- iii. Conversion of the fine (with a 60% discount, if submitted prior to the conciliation hearing) into services for the preservation, improvement and redress of the quality of the environment, as a direct execution;
- iv. Conversion of the fine (with a 60% discount, if submitted prior to the conciliation hearing) into services for

the preservation, improvement and redress of the quality of the environment by means of a deposit in a court account arising from Public Call No. 02/2018.

The request shall be subject to the analysis of the competent Environmental Conciliation Team (*Equipe de Conciliação Ambiental* – or simply “ECAC” as locally known) of IBAMA and, if approved, the assessed person will be notified by email, with a term of fifteen (15) days, counted as of the corresponding receipt of the email, to execute the Term of Adhesion. Once the deadline has expired, ECAC shall declare that the conciliation was fruitless and shall then forward the process for fact finding, discovery and evidentiary phase. The adhesion will be formalized only after the consolidation of the fine within the scope of the preliminary analysis of the environmental assessment.

For further information on the subject and in order to access to the application form, please click [here](#).

STATE LEGISLATION

MATO GROSSO

Decarbonization of the Economy

The Brazilian State of Mato Grosso establishes a procedure to join/adhere to the Mato Grosso Carbon Neutral Program, a commitment to neutralize GHG emissions by 2035

To implement the Carbon Neutral Program referred to in State Decree No. 1,160/2021, which establishes a voluntary commitment to neutralize greenhouse gas (GHG) emissions by 2035, the Government of the State of Mato Grosso has established, by means of the Normative Instruction (IN) No. 5/2022 and the State Environment Secretariat (Secretaria Estadual de Meio Ambiente - SEMA), the procedure for obtaining the Mato Grosso Carbon Neutral Seal.

According to the new regulations, the seal can be obtained by submitting a request for adherence and a Voluntary Statement of Commitment, in addition to standard forms for four (4) different categories:

- i. **Financing Seal:** issued to any institution that contributes resources to projects related to the Mato Grosso Carbon Neutral Program, with concrete and formal demonstration of the existence of financing within the territory of the State of Mato Grosso;
- ii. **Supporter Seal:** granted to institutions that properly evidence to have strategies with range and target audience that will support the Mato Grosso Carbon Neutral Program, with annual verification by SEMA of compliance with such measures;
- iii. **Commitment Seal:** granted to individuals and companies that actually undertake a voluntary commitment to neutralize GHG emissions at their units located within

the territory of the State of Mato Grosso by 2035, with an intermediate net reduction target of 80% by 2030; it can be carried out per production unit or for the whole business group;

- iv. **Carbon Neutral Seal:** to be granted to those who actually meet the neutralization target, upon presentation of a GHG inventory, to be confirmed by an organization accredited by CGCRE/INMETRO.

The Seals may be canceled at the request of the party or upon: a) suspension or non-compliance with the agreements and/or goals which have been voluntarily assumed; b) illegal deforestation or other infractions that jeopardize the results of the goals that have been undertaken; c) suspension or cancellation of the Rural Environmental Registry (Cadastro Ambiental Rural - CAR); d) suspension or cancellation of an environmental permit.

Said Normative Instruction also establishes a Management Committee to manage activities related to the voluntary goal, to be comprised by three (3) representatives from each of the (four) 4 existing categories of seals and chaired by SEMA.

Such Committee shall also formulate a State action plan for the integration of all initiatives to meet the voluntary targets.

The full text of said Normative Instruction No. 05/2022 can be accessed [here](#).

Reforestation (Forest Compensation)

The State of Mato Grosso operational launch of Forest Compensation credits

In order to demonstrate compliance with mandatory Forest Compensation, the State Environment Secretariat (Secretaria Estadual de Meio Ambiente - SEMA) of the State of Mato Grosso established the procedure for issuing Forest Compensation credits, by means of SEMA/MT Ordinance No. 20/2022.

The issuance of Forest Compensation credits arises from the collection of the Forest Replacement Fee (*Taxa de Reposição Florestal*) to the Forestry Development Fund of the State of Mato Grosso (*Desenvolve Floresta*), and it will depend on the presentation of the Forest Compensation Fee Discharge Certificate - issued according to the volume presented in the Forest Product Sales Document, and will be performed in the following cases:

- (i) Removal of vegetation authorized by SEMA;
- (ii) Chippers that use forest products from the removal of authorized vegetation, for the consumer who is identified in the Statement of Sale of Forest Products (*Declaração de Venda de Produtos Florestais - DVPF*).

The full text of Ordinance SEMA/MT No. 20/2022 can be accessed [here](#).

RIO GRANDE DO SUL

Photovoltaic Energy

The State of Rio Grande do Sul provides for environmental licensing to generate electricity from solar sources

The State Institute for Environmental Protection of Rio Grande do Sul (*Fundação Estadual de Proteção Ambiental do Rio Grande do Sul - FEPAM*), by means of Ordinance FEPAM No. 235/2022, has established new criteria for the environmental licensing of photovoltaic energy projects.

The Ordinance establishes that the environmental licensing of electricity from solar sources, with an installed power of less than or equal to 5 MW and in an area

of up to 15 hectares is not subject to environmental licensing at State level. Also, if the energy produced takes place through a Transmission Line with a voltage greater than 38 kV, a specific permit must be required.

Furthermore, it was established that the licensing of photovoltaic energy production greater than 5MW must be supported by a Simplified Environmental Report (*Relatório Ambiental Simplificado - RAS*) regardless of the size. The

exceptions that will cause it to be subject to the legal framework of the Environmental Impact Study and Environmental Impact Report (*Estudo de Impacto Ambiental e Relatório de Impacto Ambiental*- EIA/RIMA) are:

- i. Use of technology for the production of heliothermic solar energy;
- ii. Identification of direct socio-cultural impacts that lead to the unfeasibility of local communities or its complete removal;
- iii. Identification of potential environmental impacts to endemic, endangered or migratory species, when identified in the Area of Direct Influence (Área de Influência Direta - AID) of the enterprise;

- iv. Cutting and removal of primary and secondary vegetation in the advanced stage of regeneration in the Atlantic Forest Biome

As a final aspect to be addressed, the new regulation also prohibits the establishment of such projects in Permanent Preservation Areas and Legal Reserves.

The full text of FEPAM Ordinance No. 235/2022 can be accessed [here](#).

RORAIMA

Rural Environmental Registry

Roraima establishes procedures for suspension, cancellation and changes to the Rural Environmental Registry (better known by the acronym “CAR”)

The State Institute of the Environment and Water Resources of the Government of the State of Roraima (*Fundação Estadual do Meio Ambiente e Recursos Hídricos do Governo do Estado de Roraima* - FEMARH), by means of the Normative Instruction known as IN FEMARH/PRES No. 09/2022, provided for the administrative procedures for suspension and cancellation of Rural Environmental Registry (CAR), as well as for changing access data to the Owner/Possessor Center at the National Rural Environmental Registry System (*Sistema Nacional de Cadastro Ambiental Rural* - SICAR).

The rule provides justifications for the suspension/cancellation request and establishes that there will be analysis and verification of the information provided in all cases. To be precise: (i) duplicity of enrollment; (ii) unification of areas of the same owners/possessors; (iii) enrollment that are not in line with the concept of rural property; (iv) registration containing information that is totally or partially inaccurate, misleading or omitted; (v) urban properties with land subdivision registration (urban subdivision); (vi) recommendation from control bodies; (vii) administrative decision by FEMARH; (viii) court decision; and (ix) non-compliance with deadlines established in notices.

In turn, requests to change access data may be made either by the owner/possessor or by third parties, if the transfer of possession and/or title and technical responsibility is properly demonstrated.

The filing of the request shall be carried out by means of the Electronic Information System (SEI), and supported with the request pursuant to the Normative Instruction, the CAR registration receipt, the individual taxpayers' registration (locally known as "CP") or the corporate taxpayers' registration (CNPJ) of the title owner or possessor, the document that properly evidences the title or possession of the

real property, the articles of association and the court decision (as applicable), in addition to documents demonstrating the reasons for the request.

Subsequently, the request shall be submitted to the Directorate of Research and Technology in Territorial Management (*Diretoria de Pesquisa e Tecnologia em Gestão Territorial - DPTGT*), which, if granted, will suspend/cancel and notify the interested party by means of SICAR or SEI.

The full text of Normative Instruction IN FEMARH/PRES No. 9/2022 can be accessed [here](#).

MARANHÃO

Dams

The State of Maranhão establishes State Policy on the Rights of Populations Affected by Dams

The Government of the State of Maranhão established, by means of the enactment of State Law No. 11,687/2022, the State Policy on the Rights of Populations Affected by Dams (*Política Estadual de Direitos das Populações Atingidas por Barragens - PEAB*), whereby it intends to ensure rights to those who, directly or indirectly, suffer damages resulting from the construction of dams within the territory of the State of Maranhão.

The new law creates the Program for the Rights of Populations Affected by Dams (*Programa de Direitos das Populações Atingidas por Barragens - PDPAB*), formulated at the expense of the dam builder, comprising specific programs intended to ensure rights established by the PEAB, such as, for instance: repair by means of replacement, indemnification, equivalent compensation understood when other goods or

situations are offered that, although not replacing the lost good or situation, are considered satisfactory in material or moral terms, respecting the preferences and specificities of that community; collective resettlement that benefits the preservation of original cultural and neighborhood background; possibility of collective negotiations (free and informed); compensation for any possible moral, individual and collective damages, resulting from the inconveniences suffered by reason of compulsory removal or evacuation, among others.

To inspect and encourage the PEAB, the Law also establishes a State Committee - a collegiate body, of a consultative and deliberative nature -, comprised by members of the public government, builders and entrepreneur-managers (those who hold the permits for the right

to operate the dam, or, in the absence of anyone who exploits them, that who owns the right to the land) and civil society, ensuring the involvement of social movements of those affected by dams. The Government Attorney's Office and the Public Defender's Office will be permanent guests at its meetings.

The full text of State Law No. 11,687/2022 can be accessed [here](#).

CASE LAW

Brazilian Superior Court of Justice Need to fully repair the environmental damage

The Second Panel of the Brazilian Superior Court of Justice (STJ), under the Special Appeal (*Recurso Especial* - REsp) No. 1,923,855/SC, understood that the compensation for environmental damage shall comprise all of the damages caused, not being permitted the discount of expenses related to business activity (taxes, etc.).

The decision was ruled in a Public Civil Action, which was ruled groundless in the first level of jurisdiction, and amended by the Court of Appeals of Santa Catarina State to set the corresponding compensation at 50% of the total revenue from the irregular extraction of clay and sand, discounting expenses arising from the business activity.

The Federal Government appealed to the Brazilian Superior Court of Justice

claiming that the compensation must comprise the totality of the damages caused to the Public Administration, *"under penalty of frustrating the pedagogical-punitive nature of the sanction and encouraging the impunity of the offending company, which practiced serious conduct with irregular mineral extraction"*.

Said Special Appeal was provided to establish compensation at 100% of the company's revenue or the market value of the product sold – whichever was greater.

The full text of the court decision and Notice No. 374 issued by the Brazilian Superior Court of Appeals can be accessed [here](#) and [here](#).

NEWS

Law of Indigenous Peoples Illegal mining in the Yanomami Indigenous Land

The situation on the increasing mining in the Yanomami Indigenous Land led the Group of Indigenous Peoples of Brazil (*Articulação dos Povos Indígenas do Brasil* - APIB) to file a petition on 05/05/2022, under the court records the Claim for Noncompliance with a Fundamental

Precept (*Arguição de Descumprimento de Preceito Fundamental* - ADPF) No. 709, requesting, on an urgent basis, to resume the measures to repress illegal mining in the Yanomami Indigenous Land, with the implementation of efficient measures to restore security and health care for

indigenous people, including the drafting of a Plan for the destruction of irregular airfields and the determination to the Brazilian National Telecommunications Agency (*Agência Nacional de Telecomunicações* - ANATEL) and the Brazilian National Petroleum Agency (*Agência Nacional de Petróleo* - ANP) to collaborate in making illegal mining logistics unfeasible, cutting off the internet in the region - with the exception of indigenous villages - and monitoring the use of fuel.

Also, the Committee on Constitution, Justice and Citizenship (*Comissão de Constituição e Justiça e de Cidadania* -

CCJ) of the House of Representatives approved the creation of a Working Group (WG) to monitor human rights violations in the Yanomami Indigenous Land on 05/03/2022.

The full text of the Claim for Noncompliance with a Fundamental Precept (*Arguição de Descumprimento de Preceito Fundamental* - ADPF) can be accessed [here](#). The news about the institution of the WG can be accessed [here](#). The news on the progress of crimes against the Yanomami can be accessed [here](#).

European Union legislation

Anti-deforestation Bill of Law leaves biomes vulnerable

The new proposal for governing imports from the European Union (EU) could lead to the exposure of 3.2 million square kilometers of native vegetation in South America. In Brazil it corresponds mostly to areas of Cerrado - a biome that has a significant concentration of biodiversity and bordering the current expansion of agribusiness.

According to the analysis conducted by MapBiomas, the problem lies in the adoption of the Food and Agriculture Organization of the United Nations (FAO)

definition of forests, which excludes non-forest ecosystems (grasslands, swamps, woods and savannas). Said definition also jeopardizes the protection of biomes in vegetation located on other continents, such as African savannas and Asian natural grasslands.

The MapBiomas Technical Note entitled “Potential impacts of the due diligence criteria on the protection of threatened South American non-forest natural ecosystems” can be accessed [here](#).

Climate Changes

World Meteorological Organization points to threat to Paris Agreement targets

The latest update produced by the World Meteorological Organization (WMO), published on 05/09/2022, revealed that there is a 50% chance that the global average temperature will reach 1.5°C over pre-industrial levels at least once within

the next five (5) years - the first target of the Paris Agreement - and that there is a 93% chance that one of the years between 2022-2026 will be the new temperature record, currently occupied by the year 2016.

The study points out that such risks are on the rise, with increasing probability, and tend to continue to increase in progression if greenhouse gas emissions are kept at the same levels currently practiced, putting at risk life across the planet.

The full text of the Report entitled Climate Update 2022-2026 - UK Met Office/WMO can be accessed [here](#).

Illegal deforestation

Brazil hits new deforestation record in the Amazon

According to the data obtained from the Time Deforestation Detection System (*Sistema de Detecção de Desmatamento em Tempo Real* - DETER), from the National Institute for Special Research (*Instituto Nacional de Pesquisas Especiais* - INPE), this year's month of April had more than 1,000 square kilometers deforested, surpassing by 74% the historical record held by 2021, with 580 square kilometers. DETER consists of raising alerts of evidence of changes in forest cover in the Amazon and is confirmed on an annual basis by the investigation carried out by the Program for Monitoring the Brazilian Amazon

Forest by Satellite (*Programa de Monitoramento da Floresta Amazônica Brasileira por Satélite* - PRODES) system.

The number is worrisome since April is a rainy month in the Amazon - when wood extraction is difficult -, indicating a worsening trend for the dry season and represents 165% more alerts than those received in the average of the last six (6) months of April.

The analysis of DETER data carried out by the Climate Observatory can be accessed [here](#).

Contact us for any clarification:

CAROLINE DIHL PROLO
E-mail: cprolo@stoccheforbes.com.br

BEATRIZ DE AZEVEDO MARCICO PEREIRA
E-mail: bpereira@stoccheforbes.com.br

CARINA GONDIM MONTENEGRO
E-mail: cmontenegro@stoccheforbes.com.br

GUILHERME LANA PIMENTA
E-mail: glana@stoccheforbes.com.br

LARISSA CUNHA MACEDO
E-mail: lcunha@stoccheforbes.com.br

PAULA MARIOTTI FELDMANN
E-mail: pmfeldmann@stoccheforbes.com.br

NATHAN FELIPE CAETANO DA SILVA
E-mail: ncaetano@stoccheforbes.com.br

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A D V O G A D O S

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