

ENVIRONMENTAL RADAR

April 2022

Legislation (State and Federal)

FEDERAL

Environmental Regularization

Federal Government publishes decree that could boost land regularization in Brazil

On March 30, the federal government published Federal Decree 11,015/2022 instituting the National Environmental Regularization Plan for Farming Properties, referred to as “RegularizArgo”, and its Management Committee, subordinated to the Ministry of Agriculture, Fisheries and Supply (“MAPA”), in an effort to push forward Brazil’s environmental regularization agenda.

According to the Decree, the Plan will guide government efforts to implement the Forestry Code (Federal Law 12,651/2012) to guarantee that the efforts of the various federated entities involved are aligned and effective, in order to support (i) productive environmental recovery actions for farming properties; (ii) development and adoption of

the Federal Technical Register (“CAR”) and the National Rural Environmental Registration System (“Sicar”); and (iii) government and/or public/private actions and strategies to support environmental regularization of farming properties, in addition to other efforts.

The management committee will be responsible for producing, approving and monitoring this strategy, which will be based on annual reports supervising RegularizArgo activities and guarantee environmental regularization efforts are successful.

For further information, Federal Decree 11,015/2022 is available [here](#).

Oil and natural gas exploration and production

MME and MMA Institute rules for joint comments on plans to issue permits for oil and natural gas production and exploration areas

The Ministry of Mines and Energy (“MME”) and the Ministry for the Environment (“MMA”) published Interministerial Directive 01/2022 on March 24, setting out deadlines, criteria and procedures for the Ministries to jointly comment on plans to issue permits for natural gas and oil production and exploration areas, subject to the provisions in article 6, § 2 and 3, section II of National Energy Policy Council Resolution 17/2007.

According to the directive, when a permit involves a maritime sedimentary basin, the National Petroleum, Natural Gas and Biofuels Agency (“ANP”) will request a report from the Brazilian Institute for the Environment and Renewable Natural Resources (“Ibama”) and the Chico Mendes Institute for Biodiversity Conservation (“ICMBio”) providing geo-referenced information for blocks or areas the ANP plans to offer on a permanent basis. In cases involving terrestrial sedimentary basins, the ANP will request a similar report from the state environmental agency in question. The reports will provide information about (i) oil and gas licensing rules; (ii) whether the

area involved overlaps with conservation units or related buffer zones; (iii) whether the area overlaps with areas containing species of fauna or flora under threat of extinction; (iv) any land use restrictions or recommendations in a legally instituted ecological/economic zone.

Within 60 days of receiving the AMP opinions, the MME and MMA will issue a joint decision, valid for five years, on any blocks offered that have not undergone a Sedimentary Area Environmental Assessment (“AAAS”) to indicate areas that could be auctioned, provide information on any overlap with Environmental Protection Areas (“APAs”), settlements of traditional populations, listed areas, archaeological or paleontological sites, areas posing geological risks, but excluding, where justified, areas overlapping with Conservation Units and Indigenous Lands certified by presidential decree.

For further information, MME/MMA Interministerial Directive 01/2022 is available [here](#).

Solid Waste

New Federal Decrees Approve the National Solid Waste Plan and Institute Recycling Credit Certificates - Recicla+

The federal government published Decree 11,044/2022 on April 14, 2022, which instituted Recycling Credit Certificates - Recicla+ as part of the reverse logistics system created by article 33 in Law 12,305, dated August 2, 2010 (the National Solid Waste Policy) and Decree 11,043/2022, approving the National Solid Waste Plan (“Planares”).

Recicla+ certificates can be acquired voluntarily, but are being issued to build a more collaborative approach to improving efforts to avoid and reduce solid waste. Recicla+ certificates will require managing entities that have obtained authorization to implement reverse logistics systems to register with the National Solid Waste Management Information System (“Sinir”)

and provide proof a mass equivalent to the products subject to reverse logistics has been reverted to the production cycle.

Manufacturers, importers, distributors and merchants can acquire Recicla+ certificates to prove they have complied with reverse logistics targets and certificates will be issued for (i) products subject to reverse logistics; (ii) recyclable packaging; and (iii) fuel made from waste obtained from urban or equivalent solid waste.

Recicla+ will be based on the final disposal certificate issued via the Sinir Waste Shipping Manifest (“MTR”) and electronic invoices for product or packaging sales, provided there is evidence they have been returned to the manufacturer or company responsible for recycling them or used for energy recovery. An independent adjudicator will ensure the invoices used to apply for a certificate are, true authenticate and separate from other invoices.

A performance monitoring group will be set up for each reverse logistics system to provide governance and will be responsible for monitoring adoption and deployment of the respective reverse logistics system, verifying its efficiency and ongoing compliance with the respective reverse logistics targets, equalizing the weight of products or packaging disposed of by management entities, individual systems or operators and provide a global accounting and financial offsetting; it will also provide the MMA with report on the reverse logistics system’s results.

The Planares will offer an overview of the solid waste situation in Brazil and defined targets, guidelines, projects, programs and actions to comply with National Solid Waste Policy objective over the next 20 years.

For further information, Federal Decree 11,044/2022 is available [here](#) and the Planares [here](#).

STATES

Ceará

Dam Safety

Ceará publishers rules setting parameters for dam safety plans

On March 27, the Ceará state government published Normative Instruction (“NI”) 01 from the Hydro Resources Secretariat (“SRH”) setting, as per the National Dam Safety Policy, the frequency of refresher courses for technical supervisors, the minimum level of detail and information required in dam safety plans, the frequency of normal and special safety inspections and periodic dam safety reviews, as well as emergency action plans for dams the SRH supervises.

The NI provisions apply to dams located in the state that accumulate water, for any purpose, except dams used for hydroelectric power, which match at least four of the characteristics listed below and are required to register by completing the Registration Form available on the SRH website. The characteristics are:

- 1. *where the height of the dam itself, measured from the point where the*

foot of the downstream face meets ground level up to the parapet crest, is greater than or equal to 15 meters;

- II. the reservoir's total capacity is greater than or equal to 3,000,000m³;*
- III. potential economic, social or environmental harm or potential loss of human life is medium or high, as defined in article 7 of Law 12,334, dated September 20, 2010. and*
- IV. at the discretion of the oversight body, it is in the high risk category, as defined in article 7 of Law 12,334/2020.*

The regulations also list a range of essential plans and reports required to prove the safety of any dams being built or refurbished, including:

- i. Dam Safety Plan ("PSB"): This plan must be produced before the reservoir is filled for the first time and applies to new dams and/or older dams built within two years of the NI's publication. The details and minimum content the PSB is expected to provide vary depending on the size, risk category and potential harm associated with the dam; the Plan update frequency can vary from 5 years for class A dams and 12 years for class C dams.
- ii. Normal and Special Safety Inspection Report: The first report must comply with the requirements listed in article 14, I to IX, and the Dam and Anomaly Danger Level classification ("NP"). The second report must comply with the requirements in article 20, I to VII, one of which is its classification as "Alert" or "Emergency" and must contain "a conclusive report on dam

safety conditions with detailed measures and recommendations for mitigating and resolving any problems found and/or preventing future events".

- iii. Dam Safety Periodic Review ("RPSB"): This report is divided into a Report and Executive Summary that are required to comply with article 10 of Law 12,334/2010. The frequency of RPSBs will be based on the dam classification and will vary between 5 years for class A dams and 12 years for class C dams.
- iv. Emergency Action Plan ("PAE"): This is required for dams classified as posing medium to high potential for harm or high risk; the plan is produced before the dam is first filled and then revised annually, except where otherwise provided in the NI. The PAE's minimum content will be defined by the regulator in accordance with the National Dam Safety Plan and subject to the criteria in article 26, I to XIII of the NI.

Finally, if a situation is detected that could compromise dam safety or the safety of the surrounding area, steps must be taken to prevent and/or reduce any harm that could be caused by a possible dam collapse. An Emergency Conclusion Report must also be emailed to the SRH within 60 days once the risk has ended.

SRH Normative Instruction No. 01/2022 is available [here](#).

Minas Gerais

Environmental Offsetting

Minas Gerais regulates offsetting measures for producing/reviewing master plans for cities in areas directly influenced by projects that have a significant regional environmental impact

On March 25, 2022, the Minas Gerais state government issued Decree 48,387/2022 to regulate offsetting measures and procedure referred to in § 1, article 41 of Federal Law 9995/2001 in areas under the direct influence of projects or activities that have significant regional environmental impacts.

According to the Decree, offsetting measures adopted in environmental licensing processes for projects that have a significant regional environmental impact will include technical and financial resources to produce a master plan for cities impacted in the following circumstances:

- i. if a municipality directly impacted by a project or activity that has a significant regional environmental impact does not have a master plan; and
- ii. if the current master plan needs to be amended in light of new urban and social dynamics resulting from the project or activity's deployment or operation.

Importantly, if the affected municipality already has a master plan and the project

impact studies indicate no change to current land distribution, the project owner can be exempted from offsetting.

The decree states the municipality and project owner are required to sign a Consent Decree to implement these offsetting measures. This decree will set out the amounts involved and how the project owner will pay them, either via (i) depositing the funds into a specific municipal account; (ii) signing technical cooperation agreements with technical, teaching, research or other institutions to produce a master plan; or (iii) entering into specialist service agreements to produce the master plan.

The decree also stipulates that offsetting will be required in environmental licensing processes as per the terms of the Provisional License (studies on the social and environmental impacts affecting municipal land distribution) and the Construction License (Consent Decree).

For further information, State Decree 48,387/2022 is available [here](#).

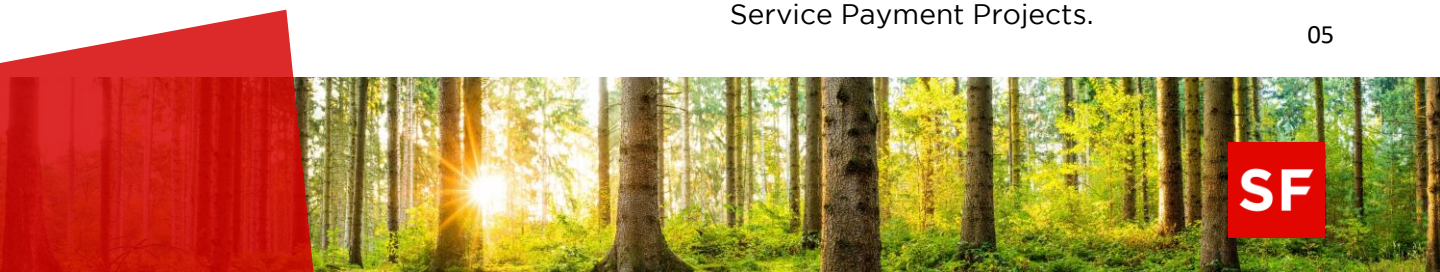
São Paulo

Environmental Financial Instruments

The government of São Paulo institutes the State Environmental Service Payment Policy

The São Paulo state government published State Decree 66,549/2022 on March 8, 2022 regulating application of Federal Law 14,119/2021, which instituted

the State Environmental Service Payment Policy ("PEPSA"), the State Environmental Service Payment Program ("PPSA") and State Registration of Environmental Service Payment Projects.



According to the decree, the public policy in question will be governed by PPSA implementation, which will incentivize State action to help maintain, recuperate or improve ecosystemic services. The decree includes a list of 18 actions intended to achieve this objective, such as (i) restoring native vegetation; (ii) sustainably managing multifunction forests and farming, forest farming and pasture farming systems; and (iii) fixing carbon in biomass and the soil in rural, urban and related areas.

The PPSA will be implemented using Environmental Services Payment Projects (PSA Projects). Based on this, the Decree determines that PSA Projects are allowed to incorporate the following environmental service payment methods: (i) direct monetary payments; (ii) directly supplying or paying for seeds, seedlings, consumables, material, equipment and services to protect and recuperate native vegetation and recover degraded areas; (iii) tax subsidies and incentives, which will be regulated by law; (iv) providing social improvements to rural and urban communities; (v) providing technical, operational and financial support for

environmental management; (vi) conservation and supervision of Nature Conservation Units; (vii) partial or full equalization of interest rates and longer deadlines for PEPSA financing grace periods and repayment terms.

Individuals or legal entities wishing to participate in PSA Projects must prove they are lawfully using and occupying the property in question and that it complies with environmental law.

In order to support PSA Project management, the Decree also created the State Register for Environmental Services Payment Projects, which will oversee and monitor ongoing projects across the state of São Paulo. PSA Projects involving state government agencies or entities or which are financed using state taxpayer funds are required to register, although registration is optional for PSA Projects carried out by the private sector or civil society organizations.

For further information, State Decree 66,549/2022 is available [here](#).

BILLS

Solid Waste

Bill of Law creates national reverse logistics system for textile waste

Bill of Law 270/22 was forwarded to the Lower House Environment and Sustainable Development Committee on April 11, 2022. As part of environmental protection efforts, the Bill plans to institute a national reverse logistics system for post-disposal textile waste. Manufacturers, importers, distributors, merchants and consumers will be encouraged to participate.

The bill plans to amend article 33 and 34 of Law 12,305/2010 to include textile and

textile packaging waste on the list of products subject to reverse logistics.

If the bill is regulated, merchants will be obliged to provide permanent locations where textile waste can be deposited (primary storage), and distributors will be obliged to finance the collection of waste recipients (primary storage) and transfer it to a secondary storage point; manufacturers and importers will be responsible for collecting waste from the secondary storage sites and transporting

it for environmentally appropriate disposal, as well as the associated costs.

According to the Bill, textile consumers will also be obliged to properly dispose of any textile waste, in exchange for incentives.

The Bill also includes the possibility of up to 2.0 % in tax rebates on manufacturer or

importer corporate earnings calculated during the annual adjustment of the annual costs and operational expenses for reverse logistics involving these products.

For further information, Bill 270/2022 is available [here](#) and the report can be accessed [here](#).

Environmental Crimes

Bill increasing fines and penalties for environmental crimes goes to the CCJ

The Environment Committee has approved Bill 1304/2019, which amends Law 9605, 1998, regulating administrative and criminal sanctions for environmental crimes (the Environmental Crimes Act).

The Bill introduces a range of measures that will increase the fines and penalties applied in cases involving environmental crimes. Harsher punishments will include an increase in sanctions for environmental crimes that harm human health, kill animals or destroy flora: (i) custodial sentences for the crime of pollution was 6 months to 1 year and will rise to 2 to 5 years; and (ii) custodial sentences if the crime impedes human occupation, water consumption, the use of beaches or

requires people to leave the affected area were 1 to 5 years and will now rise to 3 to 8 years.

In its efforts to tighten sanctions under the Environmental Crimes Act, the Bill will also allow the courts to increase fines from 30 to 200 times based on the extent of harm caused and the offender's financial capabilities.

The Bill now moves on to the Constitution, Justice and Citizenship Committee, which will have the final decision.

For further information, Bill 1,304/2019 is available [here](#) and the report can be accessed [here](#).

NEWS

Climate Change

The final volume of the most recent Intergovernmental Panel on Climate Change (IPCC) reports has been published

The Intergovernmental Panel on Climate Change (IPCC) published the third volume of its Sixth Assessment Report on April 4, 2022. This volume specifically addressed

mitigation (steps intended to reduce greenhouse gas emissions) to help support and assist public policy decisions intended to combat climate change.

The Report's latest volume highlights that:

- i. We have seen emissions rise faster than ever over the past decade;
- ii. Global greenhouse gas emissions need to peak between 2020 in 2025 and drop 43 % by 2030 for humanity to have at least a 50 % chance of stabilizing global warming at 1.5° C above preindustrial levels. They have risen 12 % since 2010;
- iii. The current public policy scenario for reducing the advance of climate change will result in the Earth heating 3.2° C, which is more than twice the limit in the Paris Agreement;
- iv. Today, higher emissions follow a regional and social pattern in which 10 % of homes worldwide represent between 35 % and 45 % of greenhouse gas emissions, while 50 % of homes represent 13 % to 15 %;
- v. Compared with 2019, the world is currently in a position to cut emissions by half in 2030 using mitigation technologies and strategies;
- vi. Taking into account the costs of climate impacts and adaptation measures, cutting emissions will not significantly impact global GDP.

Article available [here](#).

CASE AUTHORITY

Environmental Crimes

TJ-SP rejects request to reverse the burden of proof in environmental damages lawsuit

The São Paulo State Court of Appeals' 5th Chamber of Public Law affirmed an Interlocutory Appeal overturning a trial court decision that had reversed the burden of proof in an environmental lawsuit.

According to the appeal ruling, the case, which involves sound pollution, was not an exceptional situation that would warrant shifting the burden of proof. The Rapporteur's opinion also held that unlike other forms of environmental harm sound pollution does not, in principle, leave any permanent traces and the defendant was unable to prove what harm the plaintiff would therefore be responsible for.

Commenting on STJ Precedent 618 (*"the burden of proof can be shifted in environmental degradation lawsuits"*), the court noted that this rule should be

applied with caution. In this case, the defendant was not required to produce negative evidence because the evidence could be produced by plaintiff, who had in fact filed documents produced during the course of a Civil Inquiry to theoretically prove the alleged harm.

The decision is not yet final and could still be appealed.

The case law article can be read [here](#) and the appeal ruling can be accessed [here](#).

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