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Solid Waste

Regulation of the National Policy. Federal Decree No. 12,305/2010 has been published on December 23, 2010 regulating Federal Law No. 12,305/2010 (the Brazilian Policy on Solid Waste, or “PNRS”).

First of all, it is worth pointing out the creation of the two following collegiate bodies: the Interministerial Committee of the Brazilian Policy on Solid Waste, which main task is to elaborate and evaluate the implementation of the National Plan on Solid Waste, and the Orientation Committee for the Implementation of Reverse Logistics Systems, which, among other duties, shall provide the strategic orientation to implement reverse logistics systems and settle schedules for its establishment.

As a general rule, the Decree provides that, pursuant to the **shared responsibility** regime, the Public Power, the entrepreneurial sector and the society as a whole are responsible for the effectiveness of the PNRS. Therefore, the Decree presents the **selective collection** system as an essential instrument, which shall be gradually implemented by the provider of the urban cleaning and solid waste management public service. The Decree also

regulates aspects of the **reverse logistics**, which encompasses the collection and environmentally adequate final destination of certain solid wastes by the productive sector itself, at the post-consumption phase.

Pursuant to the Decree, the reverse logistics systems will be implemented and operated by means of **sectoral agreements, regulations** enacted by the Public Power and **commitment agreements**. The Decree also creates the Brazilian System of Information on Solid Waste Management (“SINIR”, in Portuguese), which shall be implemented within two years and has as main function the collection, systematization and release of **data and statistics** in connection with public and private services associated with the management of solid waste and with the reverse logistics systems that were already implemented.

Finally, a new set of **administrative violations** related to the management of solid waste was defined, including, among others, the non-compliance with an obligation established under the reverse logistics system and the importation of hazardous solid waste or residues, as well as the



➤ **the importation of solid waste having characteristics that cause harm to the environment, public and animal health and vegetal sanity**, even when treatment, restoration, reuse, reutilization or recovery are concerned. ■

Waste collection. Federal Decree No. 7,405 has been published on December 23, 2010 creating the Pro-Collector Program. The Program aims to promote the **social and economic inclusion of collectors** of reusable and recyclable materials. Therefore, the Public Power shall promote the organization of collectors, the improvement of their

State of Pernambuco. State Law No. 14,236, of December 13, 2010 establishes the State Policy of Solid Waste in Pernambuco. In the same direction of the Brazilian Policy of Solid Waste, the State Law establishes the **reverse logistics** as a means of returning to the productive sector its **shared responsibility** in the lifecycle of the product, at the post-consumption phase. ■

State of São Paulo. On December 31, 2010 State Secretariat of the Environment (the *Secretaria de Estado do Meio Ambiente*, or “SMA”) has published its Resolution No. 131, amending certain articles of SMA Resolution No. 24/2010 (mentioned in the April 13, 2010 issue of this Bulletin). The amendment modi-

labor conditions, the enlargement of their socio-economic inclusion opportunities, as well as the expansion of the selective collection of solid waste by the collectors. The coordination, structuring and monitoring of the Program will be subject to the Interministerial Committee for Social and Economic Inclusion of Collectors of Reusable and Recyclable Materials. ■

Tax benefit. Federal Law No. 12,375 has been published on December 31, 2010 introducing amendments to tax legislation, among other provisions. The amendments include the concession of **presumed credit of Industrialized Products Tax**

fies the list of **products that originate waste with significant environmental impact**, which are expressly subject to post-consumption liability in the State of São Paulo. The amendment includes the specification of the types of fluorescent lamps and electronic products and its components that are reached by the regulation. Automobile batteries were excluded from the list. SMA Resolution No. 131/2010 also provides that the establishment of **collection goals** for solid waste in the context of the **reverse logistics** for manufacturers, distributors or importers may observe factors such as demographic density and its spatial distribution, as well as priority environmental issues, among other aspects. ■

(“IPI”, in Portuguese) to the **industrial establishments** that use **recyclable solid waste** as raw material in the manufacturing of its products or in intermediate processes of the production chain. The concession of the benefit also requires the waste to be acquired directly from associations of collectors of recyclable materials and it will be valid until December 31, 2014. The Executive Branch must specify what materials acquired as solid waste will be considered in the concession of the credit, as well as the percentage to be used in its calculation. ■

Climate Change

State of Rio Grande do Sul. On December 30, 2010 the former Governess of the State of Rio Grande do Sul has signed State Law No. 13,594, which creates the **State Policy on Climate Change** (“PGMC”, in Portuguese). As reported in the December 13, 2010 issue of this Bulletin, the PGMC follows the spirit of the National Policy and other state policies on climate change and aims to ensure the compatibility of economic and social development with the protection of the climate system. Pursuant to the State Law, within a one-year term as from the date of its entry into force, the State of Rio Grande do Sul shall adopt a global emission reductions goal for greenhouse gases (“GHG”) ↓

➡ at the state level and **efficiency and sectoral emission reduction goals**, based on the emissions inventoried for each sector. In order to map and monitor GHG emissions and its reductions and to assure public access to the associated information, the State of Rio Grande do Sul will create a public emissions registry, to which **companies may adhere voluntarily**. With the purpose to encourage the adhesion to such registry, the Public Power may, among other measures, extend the term for the renewal of environmental licenses and prioritize the concession of public credit under better conditions of term and interest rates. ■

State of Paraná. On December 22, 2010, the State Secretariat of the Environment and Water Resources (“SEMA”, in Portuguese) has published its Resolution No. 78/2010, which addresses the **gradual elimination of the controlled burning** as a preparatory method for the **harvest of sugarcane**. Due to its negative environmental impacts, the burning must be gradually eliminated by sugarcane producers. Pursuant to the Resolution, the burning has to stop completely as from 2025, for mechanizable areas, and as from 2030, provided that there is

State of São Paulo. State Decree No. 56,571 has been published on December 23, 2010 regulating provisions of State Law No. 10,547/2000 that are allusive to the use of fire in agriculture, pasture and forestry activities, and to the State System for Prevention and Combat against Forestry Fires. Pursuant to the State Decree, the use of fire is exceptionally admitted in areas with vegetal coverage only in the modality of **controlled burning**, as a factor for agriculture, pasture and forestry production and management and for scientific and technological purposes, in areas with previously defined physical limits. In the State of São Paulo, the controlled burning requires a prior authorization from the State Environmental Agency (“CETESB”). The authorization must be issued by

a viable technology for its substitution, for non-mechanizable areas. In order to know the maximum percentages of the controlled burning in each case, producers must present to the Environmental Institute of Paraná (“IAP”, in Portuguese) a form containing a set of information not later than 30 days before the start of every harvest. ■

State of São Paulo – dismissal from environmental licensing. On December 23, 2010 the State Secretariat of the Environment and the State Secretariat of Agriculture and Sup-

CETESB up to 15 days as from the request filing date, provided that all applicable legal and regulatory requirements were fulfilled. The authorization will be issued with a validity term that shall be enough to the performance of the burning, but must be suspended for a specified region or Municipality if any of the following are identified: (i) life risks, environmental damages or unfavorable meteorological conditions; (ii) when the quality of the air achieves levels that are harmful against human health; or (iii) when the levels of smoke provoked by burnings surpass the minimum visibility levels, jeopardizing the operations of transportation means in general. It is worth pointing out that State Decree No. 56,571/2010 is **not applicable to the burning of sugarcane straw**. ■

ply have published its Joint Resolution No. 06, which addresses the **simplified procedure for the dismissal from licensing for agriculture and cattle raising activities** in the State of São Paulo. Such dismissal will require an evaluation about the compliance with specifications established by legislation in connection with the **use and conservation of soil and agrochemicals**, as well as the verification about the adoption of **good practices of agriculture production and cattle raising** and provided that such activities do not result in the ↓

Energy Sector

➤ suppression of native vegetation or interventions in permanent preservation areas. The Resolution brings a list of undertakings that will benefit from the dismissal, including, among others, bee raising and the construction of water reservoirs with up to 50 thousand square meters destined to agriculture and cattle raising activities, provided that other specifications are met. Regardless of its nature, agriculture and cattle raising projects that are implemented in areas with more than 1 thousand ha must be subject to the licensing before the State Environmental Agency (“CETESB”). ■

State of Mato Grosso. Certain provisions of the **Environmental Code of the State of Mato Grosso** (State Complementary Law No. Lei 38/1995, as amended by State Complementary Laws No. 70/2000 and No. 189/2004) are being challenged before the Brazilian Supreme Court by means of a Direct Unconstitutionality Lawsuit (“ADI”, in Portuguese) No. 4529, filed on December 27, 2010 by the Republic General Attorney, Mr. Roberto Gurgel Santos.

The center of the discussion is about the dismissal from the performance of a Prior Environmental Impact Assessment (“EIA”) for the environmental licensing of **hydroelectric undertakings** with capacity between 10 and 30 MW, as established pursuant to the State Law.

Strategic governmental group. On December 20, 2010 the Ministry of Mines and Energy and the Ministry of the Environment have published its Interministerial Rule No. 494, which creates the **Strategic Group to the Follow-up of Structuring Energetic Undertakings**. The main purposes of the Strategic Group are the proposal of strategies and actions and the definition of working schedules for the implementation of electric energy generation undertakings and its associated transmission systems. Pursuant to the Rule, the planning studies

The thesis argued in the ADI is that the Environmental Code of Mato Grosso violates the Federal Constitution, which requires an EIA for undertakings or activities that potentially cause significant degradation to the environment. As adopted by the Federal Constitution, Federal Law No. 6,938/1981 (Brazilian Environmental Policy), grants to the Brazilian Council for the Environment (the *Conselho Nacional do Meio Ambiente*, or “CONAMA”) the authority to enact rules on environmental standards. In this sense, CONAMA Resolution No. 1/1986 requires an EIA for hydroelectric undertakings with capacity greater than 10 MW. Therefore, the State Law reduce the level of restriction established under CONAMA Resolution No. 1/1986. Finally, the ADI

in connection with the energy undertakings must consider the **environmental and socio-economic aspects** potentially associated with its establishment in order to support the selection of hydroelectric potentials. ■

emphasizes the unrecoverable damages arising from the compulsory relocation of local communities due to the floods caused with the hydroelectric undertakings. ■

State of Minas Gerais. On December 16, 2010 the Environmental Policy Council (*Conselho de Política Ambiental*, or “COPAM”) has published its Rule No. 159, which addresses the **simplified environmental regularization** of undertakings that produce **energy from sugarcane bagasse**. In addition to the stimulus to the reuse of waste generated by sugarcane and alcohol industry, the purpose of Rule No. 159/2010 is to enhance the use of **alternative sources of energy** in the State of Minas Gerais. ■

Oil, Gas and Biofuels

Pre-salt layer. Federal Law No. 12,351, of December 22, 2010 addresses the exploitation and production of oil, natural gas and other fluid hydrocarbons, under the production sharing regime, in areas of the pre-salt layer and strategic areas, and creates the Social Fund (“FS”, in Portuguese). Pursuant to the Federal Law, the **production sharing agreement must contemplate the following essential clauses**, among others: (i) the mandatory **presentation of a periodic inventory of greenhouse gases emissions**, which must be publicly accessible; (ii) the presentation of a **contingency plan for accidents** involving spills of oil, natural gas and other fluid hydrocarbons and its byproducts; and (iii) the mandatory performance of **environmental audits** on the whole process of extracting and distributing oil and gas originated from the pre-salt layer. Finally, the FS is a financial fund destined to social and regional development, which proceeds will be originated, among others, from part of the royalties paid to the Federal Government with the exploitation of the pre-salt layer and will be used to bear the costs of programs in several areas, including the **environment and mitigation and adaptation to climate change**. ■

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Product Stewardship

Automobile labeling. In order to improve consumer-oriented environmental information and consciousness tools and to promote the sustainability of the automobile sector, on December 16, 2010 the Brazilian Institute of Metrology, Normalization and Industrial Quality (the “INMETRO”) and the Brazilian Institute for the Environment and Renewable Natural Resources (the “IBAMA”) have signed the Joint Rule No. 2, which unifies the environmental indicators and the classification of vehicles in connection with its levels of **pollutant emissions** (IBAMA’s methodology known as “Green Grade”) and concerning its **energy efficiency** (INMETRO’s Brazilian Program of Automobile Labeling). ■

Environmental Licensing

Conservation areas. On December 20, 2010 the Brazilian Council for the Environment (the *Conselho Nacional do Meio Ambiente*, or “CONAMA”) has published its Resolution No. 428, which addresses the environmental licensing of undertakings with significant environmental impact that affect determined conservation areas (“UC”, in Portuguese) or its buffering zones. With the enactment of such Resolution, all undertakings that may generate a direct environmental impact against the UC must obtain, for purposes of prior environmental licensing, a **prior authorization** to the entity responsible for the administration UC or, in the case of Pri-

vate Reserves of the Natural Heritage (“RPPN”, in Portuguese), from the entity responsible for its creation. Pursuant to the CONAMA Resolution, until 2015, except for the RPPN, the Environmental Protection Areas (“APA”, in Portuguese) and the Consolidated Urban Areas, the undertakings that are subject to such special procedure are all those with significant environmental impact that are located within a distance of 3 thousand meters from the UC that still does not have a specified buffering zone. ■

State of Pernambuco. A new Law concerning environmental licensing process and adminis-

trative penalties has entered into force. State Law No. 14,249, published on December 18, 2010 addresses the **procedures and phases** of the environmental licensing, the **costs for submitting requests** for the issuance of licenses and authorizations and its respective **validity terms**. The State Environmental Agency (the *Agência Estadual do Meio Ambiente*, or “CPRH”) must conclude the analysis of the request within 90 days, or, in the case of procedures that depend on the elaboration of an Environmental Impact Assessment or a public hearing, within 12 months. The State Law also provides that real estates, undertakings and activities that are ↓

➤ subject to the environmental licensing and that do not have required licenses and authorizations must provide its regularization. The State Law in Pernambuco, following the trend of other states, establishes the decentralization of the licensing process, allowing municipalities do issue licenses and authorizations to undertakings and activities that have local impact. In addition, the Law also addresses **environmental violations** and its respective sanctions. ■

State of São Paulo. On December 23, 2010 the State Secretariat of the Environment has published its Resolution No. 121,

establishing criteria and procedures for the prior environmental licensing of **ethanol distilleries and sugarcane mills**. Pursuant to the Resolution, the environmental impact evaluation will be performed by means of the presentation of an Environmental Impact Assessment (“EIA”) before the State Environmental Agency (the *Companhia Ambiental do Estado de São Paulo*, or “CETESB”), for the following activities and undertakings related to the production of sugar and/or ethanol: (i) installation of **new undertakings** with crushing capacity greater than 1.5 mil-

lion tons/year; and (ii) **recovery or enlargement of building, or enlargement, modification or substitution of equipment** to increase the production resulting in a total crushing capacity greater than 1.5 million tons/year. For undertakings that involve a crushing capacity greater than 400 thousand and smaller than 1.5 million tons/year, the environmental licensing will, in principle, depend only on the presentation of a Preliminary Environmental Report (“RAP”, in Portuguese), for purposes of evaluation of impacts. ■

Specially Protected Areas

State of São Paulo. State Decree No. 56,572, published on December 23, 2010 establishes the **expansion of the Sea Mountain Range (Serra do Mar) State Park in areas of public domain**. The Sea Mountain Range (extending itself through the Southeastern coast of Brazil) has 315 thousand ha and encompasses the largest continuous portion of preserved Atlantic Forest (*Mata Atlântica*). In São Paulo, the State Park includes 15 municipalities and has 115 thousand ha of areas with natural vegetation. With the enactment of the Decree, **5,027** a of several areas of the State have been incorporated into the State Park. ■

State of Piauí. The non-numbered Federal Decree that has established the **enlargement of the Confusions (Confusões) Mountain Range** has been published on December 30, 2010. The Park is located in the Semi-Desert (*Catinga*) region of the State of Piauí, with **great natural, scientific, historic and cultural** importance, due to its primitive conservation condition. Notwithstanding such enlargement, the Decree allows the following activities in the buffering zone: the alternative use of the soil (substitution of forests and successor formations by other soil coverage, such as rural reform development projects, agriculture and cattle raising, industrial, energy generation and transmis-

sion, mining and transportation); the exploitation of forests and successor formations under the sustainable forestry management regime; mineral research and exploitation activities authorized by the Brazilian Department of Mineral Production (“DNPM”, in Portuguese); and the use of the aeolic energy potential – provided that such activities are previously licensed by the competent environmental agency and authorized by the Chico Mendes Biodiversity Conservation Institute (“ICMBio”). ■

State of Maranhão. The Preliminary Bill on the State System of Natural Conservation Areas (the *Sistema Estadual de Unidades de Conservação da Natureza*, or “SEUC”) ↓

➔ which aims to establish standards for the creation, implementation and management of conservation areas, is under public consultation. According to the Bill, which reproduces most of the rules of Federal Law No. 9,985/2000 (the *National System of Natural Conservation Areas*), an **Environmental Compensation Chamber** will be created to establish **guidelines for the use of proceeds from environmental compensations** and to audit the calculation of environmental compensations. The Preliminary Bill also establishes the priority loca-

tions for the creation of conservation areas, such as those specified in the State Constitution and those that are indicated by technical studies for having rare ecosystems, for being in danger of elimination, or for containing ecosystems that are still not adequately represented in the SEUC, as well as the areas that are deemed necessary to the protection of water resources. The Preliminary Bill can be accessed at <http://ow.ly/3Bduo> and suggestions can be sent to the email seuc@sema.ma.gov.br. ■

State of São Paulo. Resolution No. 123 of the State Secretariat of the Environment, published on December 25, 2010 establishes directives for the implementation of the **Mina D'Água Project** in the context of the Forestry Reminiscent Program. The Mina D'Água Project was conceived in the concept of Payment for Environmental Services and oriented to Municipalities, granting financial attractiveness to the preservation of riparian forests and other types of forestry fragments, as well as the planting of native species seedlings that can be found regionally. ■

Biosafety

State of São Paulo. State Law No. 14,274, published on December 17, 2010, establishes rules for the **labeling of products containing transgenics** in the State of São Paulo. The issue was already regulated by Federal Decree No. 4,680/2003, which parameters were observed by the State Law.



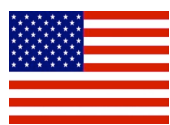
In this sense, transgenic products and seeds that are commercialized either in packaging or in bulk and that are destined to human and animal consumption, as well as those used in agriculture, whenever having a transgenic proportion equal or greater than 1% must contain the symbol of transgenics ("T") de-

finied by the Ministry of Justice. It is also clear in the Law that consumers have the right to know about the **species that donated the gene** verified in transgenic ingredients. The State Law will enter into force 180 days after the date of its publication. ■

Cultural Heritage

Listed buildings. The Institute for the National Historic and Artistic Heritage ("IPHAN", in Portuguese) enacted Rule No. 420, published on December 24, 2010. Such Rule addresses the procedures for the issuance of authorizations to the performance of **interventions in listed buildings** and in its respective surrounding areas. The Rule, which regulates procedural aspects related to the listing process, aims to protect the integrity of cultural assets in a way to hinder its fragmentation, mischaracterization, degradation and physical or authenticity loss. ■

Global Links



USA – GHG Cap and Trade Program in California.

On December 16, 2010, the California Air Resources Board (ARB) approved rules that will implement a greenhouse gas (GHG) cap and trade program for the State of California in the United States. The regulation provides a key mechanism by which California plans to meet the GHG reduction goals of the California Global Warming Solutions Act of 2006 (AB 32), the climate change law signed by Governor Schwarzenegger. The regulation sets a statewide limit on GHG emissions from sources responsible

addressing carbon accounting rules for offset credits in forestry management, urban forestry, dairy methane digesters, and the destruction of existing banks of ozone-depleting substances in the United States.

In addition, the rules contain a framework for accepting **sector-based offset credits from developing countries**. California signed a memorandum of understanding to develop an offset program related to reducing emissions from deforestation and forest degradation (called REDD) with Chiapas, Mexico and Acre, Brazil at the Governors' Global Climate Summit 3 held in November 2010 (for more information about such

for approximately 80 percent of California's GHG emissions. The program is divided into two main phases. An initial phase will begin in 2012 and will apply to all **major industrial sources and utilities**. In 2015, the second phase will begin and **distributors of transportation fuels, natural gas, and other fuels** will become subject to the cap and trade requirements.

Companies subject to the regulation must supply allowances (expressed as one metric ton of carbon dioxide equivalent) sufficient to cover their annual emissions of GHG. By the end of

document please see the December 13, 2010 issue of this Bulletin). While currently the rules provide that sector-based credits only may be generated from REDD plans, the rules contain a placeholder for adding other sources of sector-based credits. California is currently working with strategic international partners in the **cement sector** to explore the creation of **offset credit programs** from that sector as well.

The cap and trade regulations can be found at: <http://ow.ly/3Chb9>.

(by Jennifer Keane, from the firm Baker Botts, LLP - Austin, USA)

2020, a **15% reduction in GHG emissions** from current levels is expected so that emissions will equal 1990 GHG emissions levels. From 2012-2014, ARB will distribute a large amount of allowances for free to industrial sources and utilities. Additional allowances will be available by quarterly auction or can be purchased on the open market. Over time, the program will move more to an auction-based system with fewer allowances provided by distribution.

Credits generated from compliance-grade offset projects can be used to offset 8 percent of a company's emissions. The regulation includes four protocols (systems of rules)

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