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## Contaminated Sites

**State of São Paulo.** As from February 2, 2011 the environmental agency of the State of São Paulo (the *Companhia Ambiental do Estado de São Paulo*, or "CETESB") has made the draft regulation of State Law No. 13,577/2009 (directives for the protection of the soil quality and management of contaminated sites) available for **public consultation**. In the proposal presented by CETESB, emphasis must be given to the creation of the concept of **critical contaminated site** for those areas that, due to the damages or risks involved, cause apprehension to the population or conflicts among the stakeholders, demanding a differentiated procedure in connection with the respective remediation, the communication of the risk and the management of information.

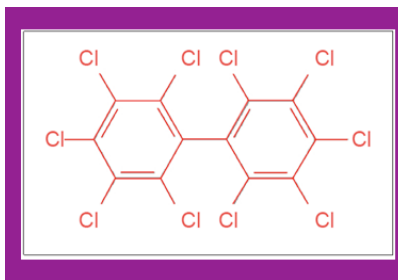
The draft regulation also specifies the activities that represent potential contamination sources to which the maintenance of a **monitoring program** of the area and its surroundings must be required by CETESB, including the areas (i) where the release of effluents or wastes into the soil occur as part of the treatment or final disposal systems, (ii) where

there is or has been the use of halogen solvents, or (iii) where there is or has been the secondary smelting or the recovery of lead or mercury, in addition to others to be defined by CETESB. The draft also provides for the definition of what is deemed a *contamination evidence or suspicion*, for the purpose of requiring the communication of the fact to CETESB and to the competent health authority, as well as the performance of a confirmatory investigation.

Other important aspects are related to the **mandatory guarantees** to be presented for the implementation of remediation plans

(the proposal has established the amount of such guarantees in 125% of the estimated cost of the total remediation), as well as the **environmental compensations** that must be paid by the entrepreneur in the licensing of activities that can potentially cause contamination of soil and groundwater.

The text proposed for the regulation is available at CETESB's webpage, in the following address: [www.cetesb.sp.gov.br](http://www.cetesb.sp.gov.br). Suggestions can be sent by March 15, 2011 to the following e-mail: [pd@cetesbnet.sp.gov.br](mailto:pd@cetesbnet.sp.gov.br). ■



## Product Stewardship

**Lifecycle analysis.** Resolution No. 4/2010 of the Brazilian Council of Metrology, Normalization and Industrial Quality (the *Conselho Nacional de Metrologia, Normalização e Qualidade Industrial*, or “CONMETRO”) has been published on January 4, 2011, approving the **Brazilian Program of Lifecycle Evaluation** (“PBACV”, in Portuguese). The PBACV has been adopted aiming to support sustainable development and environmental competitiveness of the Brazilian industrial production and to promote the access to the internal and external markets. In general terms, the Program will quantitatively evaluate the environmental

effects originated from the whole **Brazilian industrial production chain**, which means the effects verified as from the acquisition of raw materials, or its generation from existing natural resources, until the final disposal of wastes generated in the productive process and in the post-consumption phase of the product. Therefore, the following surveys will be performed: (i) identification and quantification of used energy and materials and generated waste; (ii) the identification and evaluation of the extraction and processing of raw materials and of the phases involving manufacturing, transportation, distribution, use, reuse, maintenance, recycling and final

destination. Based on the information gathered in such phase, **lifecycle inventories** will be prepared to form a database of inventories. Such database will be used to enhance environmental impact assessments and to promote the interaction among federative entities aiming the disclosure of the PBACV. The Program will be coordinated by a Management Committee comprised by representatives of the government, academy, production sectors, organizations related to the theme and representatives of CONMETRO’s guidance committees with interest in this matter. ■

**Incandescent lamps.** The Inter-Ministerial Regulation No. 1.007/2010 of the Ministries of Mines and Energy, Science and Technology and Development, Industry and Foreign Trade has been published on January 6, 2011, approving minimum standards of **energy efficiency** for incandescent lamps.

The Regulation is applicable to national or imported 127 V or 220 V incandescent lamps destined to general use in Brazil, excluding halogen incandescent lamps and those of

automotive use, among other types.

Pursuant to the Regulation, as from 2012, such type of lamp will be gradually banned from the market until 2016. ■



## Climate Change

**Municipality of Rio de Janeiro, RJ.** Municipal Law No. 5,248, published on January 28, 2011, created the **Municipal Policy of Climate Change and Sustainable Development**. Pursuant to such Law, greenhouse gases (GHG) reduction goals have been established in the Municipality of Rio de Janeiro, as follows: 8%, 16% and 20%, respectively, for years 2012, 2016 and 2020, based on the emission levels of 2005. The GHG emissions originated from the **Western Zone Steel Industry Complex** will be considered separately and will be subject to differentiated reduction goals. The Municipal Law also ↴

## Environmental Police Power

➤ establishes directives for sustainable development in the activities of waste management, transportation and energy generation and use, as well as in the scientific research and development field. As far as **adaptation measures** are concerned, the Law provides for the adoption, by the Municipality, of a permanent program of civil defence oriented to the prevention of damages, to the aid to the population and to the reconstruction of areas that were impacted by extreme climate events. Among the instruments established by the Municipal Policy is the concession of tax, financial and economic incentives to stimulate mitigation and adaptation actions in connection with climate change. As far as the environmental licensing is concerned, for undertakings with a significant GHG emission, the presentation of an emissions mitigation plan and compensatory measures became mandatory. ■

**State of Rio de Janeiro.** Resolution No. 28/2010 of the state environmental agency (the *Instituto Estadual do Ambiente*, or “INEA”) has been published on January 24, 2011. Such Resolution addresses the **administrative procedure for the investigation of environmental violations** and defines the administrative acts used in the control actions adopted by INEA. Among other provisions, the Resolution confirms INEA’s authority to adopt, by means of a duly motivated decision, **precautionary measures** (confiscation or destruction of product, embargo of undertaking and partial or total suspension of activities, for example) in situations of significant risk to the health of the population or involving environmental degradation with low recovery possibility. Pursuant to the Resolution, the administrative processes will be registered with INEA’s database system for statistical and consultative purposes and to demonstrate the performance in the control of environmental vio-

lations. As far as **statutes of limitation for punitive action** are concerned, the Resolution reemphasizes the maximum term of five years given to the Public Administration to impose penalties to the environmental violator, as from the date of the occurrence of the violation. In the case of continuing or permanent violations, however, the term of the statutes of limitation will only start running after the violation has been stopped. It has also been pointed out that the statutes of limitation during the administrative process will be verified whenever the process remains without any manifestation from the Public Administration for more than three years, and, if this occurs, the process must be closed upon decision adopted by the Administration itself or as requested by the interested party. Once an Environmental Assessment has been issued by the environmental agency, the defendant may file an **administrative defence** no later than fifteen days after the knowledge of the Assessment. ■

## Environmental Licensing

**State of Ceará.** State Law No. 14,882 has been published on February 1, 2011. Such Law addresses **simplified procedures** for the environmental licensing of the installation and operation of **micro-sized undertakings and/or activities with low degradation potential**. For those undertakings and/or activities that fulfil such characteristics and that promote

the life quality of the population, the environmental licensing before the state environmental agency (the *Superintendência Estadual do Meio Ambiente*, or “SEMACE”) will be self-declaratory and will not substitute the municipal licensing. Among the undertakings and activities subject to the self-declaratory simplified environ-

mental licensing that were listed by the State Law are the following: (i) water treatment facilities or supply systems using simple disinfection; (ii) wet passages through watercourses not having dams, with extension of up to 50 meters; (iii) recovery of roads and highways; (iv) traditional fishery; and (v) agriforestry systems. ■

## Forestry Resources

**State of Rio de Janeiro.** On January 12, 2011 Resolution No. 25 of the state environmental agency (“INEA”, in Portuguese) has been published. Such Resolution establishes specific procedures for the request of environmental licenses for activities related to the **recycling production chain**, which are deemed to have small or medium polluting potential.

The list of such activities includes collection, road-, rail- and waterway transportation, segregation, storage and processing of metallic and non-metallic wastes. Activities that use equipment contaminated with hazardous chemical products (askarel, in

particular), accumulators, batteries and oil-based motors, however, are expressly excluded from such list. The environmental licensing described in the Resolution will be performed before the municipal environmental agency, when there is a formal agreement between the state and the relevant municipality addressing the delegation of the state environmental licensing authority, or, in the absence of such an agreement, before INEA itself. ■

**State of Rondônia.** Pursuant to Regulation No. 2, of January 12, 2011 of the State Secretariat of Environmental Development (the *Secretaria de Estado do Desenvolvimento Ambiental*, or “SEDAM”), as from January 17, 2011 the State of Rondônia has adopted the Forestry Origin Document (“DOF”, in Portuguese), which substitutes the Forestry Products Trade and Transportation System (“SISFLORA”, in Portuguese), as the system used to obtain the mandatory license for the **transportation and storage of forestry products and by-products**. With the new regulation in Rondônia, the States of Pará, Mato Grosso and Minas Gerais became the only ones in Brazil not to use the DOF system. ■

## Pesticides

Resolution No. 1/2011 of the Board of Executive Officers of the Brazilian Sanitary Agency (the *Agência Nacional de Vigilância Sanitária*, or “ANVISA”), published on January 17, 2011, addresses the toxicological reevaluation of products formulated with the active ingredient of **methamidophos**, due to its neurotoxic and immunotoxic characteristics. Pursuant to the Resolution, as from December 31, 2011 the active ingredient will have its **commercialization prohibited** in the Brazilian market. As from June 30, 2012 the **prohibition to use** reminiscent products with such ingredient in Brazil will be initiated. After the prohibition of the commercialization, the companies responsible for products having methamidophos

in Brazil will have to collect the reminiscent stocks kept by distributors and farmers. Currently, in Brazil, the use of products that contain methamidophos is allowed only for leaf spraying in **cotton, peanut, potato, bean, soy, tomato** and **wheat** fields.



## Agribusiness

**State of Minas Gerais.** On January 13, 2011 State Law No. 19,485 has been published, establishing the State Policy of Incentive to the Cultivation, Extraction, Trade, Consumption and Transformation of Macaúba and other oleaginous palm trees (the “**Pró-Macaúba**” Policy). The implementation of such Policy aims to promote the sustainable management of the Macaúba tree (*Acrocomia aculeata*) and other oleaginous palms in the regions where they are already traditionally exploited, in order to promote the family agriculture and the agribusiness. The main importance of the Macaúba is currently associated with its significant potential for the production of **bio-diesel**. ■

**State of Rio Grande do Sul.**

Pursuant to State Law No. 13,693, published on January 19, 2011, **vegetal sanitary measures** have been adopted in the State of Rio Grande do Sul. The State Law establishes that the monitoring, inspection and adoption of measures and actions necessary to control plagues and diseases in agriculture must be compatible with the rules addressing the protection of human health and environmental preservation and natural resources conservation. Such measures include, among others: (i) the **registration of agricultural properties** that perform activities subject to phytosanitary certification; (ii) the **registration of companies** that produce, manufacture, industrialize, process, package or commercialize vegetal specimen that are subject to peculiar interest of the State; and (iii) the **registration of laboratories** that perform the identification and diagnosis of plagues and diseases. ■

**State of Rio de Janeiro.**

State Law No. 5,887 has been published on January 17, 2011, establishing the Friends of Nature Program (“PAN”, in Portuguese), in the State of Rio de Janeiro. The objective of PAN is to enlarge the vegetal coverage of the State in at least 2%, within 10 years, for environmental conservation purposes. Natural resources conservation practices will be stimulated in **rural properties**, prioritizing water resources, as well as soil conservation practices. Therefore, the Public Power will render **financial support** to rural producers that meet the following requirements, among others: (i) to have spontaneously decided to join PAN; (ii) to evidence the existence of a water spring or watercourse in the property; and (iii) to formally undertake, by means of a Commitment Instrument, the responsibilities inherent to the areas that will be destined to environmental preservation. ■

**Municipality of Guarulhos, SP.**

Municipal Law No. 6,793 has been published on December 29, 2010, establishing the **Green Urban Building and Territorial Tax** in the City of Guarulhos, with the purpose to incentive sustainable environmental practices. Pursuant to the Municipal Law, as from 2012, a discount of up to 20% will be granted in connection with the Urban Building and Territorial Tax charged from owners that have implemented the following environmental practices: (i) rain-water collection system; (ii) water reuse system; (iii) sun heating system; (iv) hydraulic sun heating system; (v) constructions with sustainable materials; (vi) use of passive energy; (vii) wind energy utilization system; (viii) green roof installation; or (ix) solid waste segregation in condominiums. ■

## Specially Protected Areas

**State of Mato Grosso.** State Law No. 9,502 has been published on January 17, 2011. Such Law establishes the State System of Conservation Areas of Mato Grosso (“SEUC”, in Portuguese), addressing the creation, implementation and management of conservation areas at the state level.


Pursuant to the Law, conservation areas will be gathered in three different groups, as follows: (i) Total Protection Areas, which objective is to preserve nature and where only the indirect use of natural resources is allowed; (ii) Sustainable Use Ar-

eas, where the sustainable use of part of the natural resources is allowed; and (iii) Provisional Management Areas, where the partial exploitation of the natural resources will be allowed until technical-scientific studies indicate the best destination for the area.

The creation of conservation areas must be preceded by a **technical study** and **public consultation**. In order to protect the biomes verified in Mato Grosso, the State Secretariat of the Environment (the *Secretaria de Estado do Meio Ambiente*, or “SEMA”) will maintain a registry

with detailed information about all conservation areas in the State, such as data related to fauna, flora, climate, soil and other aspects. ■

**State of Minas Gerais.**

State Law No. 19,484, published on January 13, 2011, amended State Law No. 14,309/2002, which addresses the Forestry and Biodiversity Protection Policy of Minas Gerais. Pursuant to the amendments, Law No. 14,309/2002 does now consider **watershed protection areas** (aquifer recharge areas or areas with strategic watersheds to assure public water supply of ).

Urban and rural populations) as **sustainable use conservation areas**. Another amended aspect of Law No. 14,309/2002 is related to the procedures for the creation of conservation areas. With the new Law, the performance of a **prior technical study and public consultation** became mandatory, in order to allow the identification of the most adequate local, dimension and limits for the conservation area. In the case of Ecological Reserves, the performance of a prior public consultation is not required. ■

## Biodiversity

On February 2, 2011, at the headquarters of the United Nations Organization, in New York (USA), Brazil has signed the **Nagoya Protocol** on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. Adopted during the 10th Conference of the Parties (COP10) of the Convention on Biodiversity, held in October/2010 in Nagoya, Japan, the Protocol establishes the base for an international regime of **access and sharing of benefits** originated from the use of biodiversity and associated traditional knowledge (the “ABS Regime”). ■

## Cultural Heritage

**State of Rio Grande do Sul.** State Law No. 13,678 has been published on January 18, 2011, addressing the **immaterial cultural heritage** of the State of Rio Grande do Sul. Based on relevant historic and cultural identity aspects, the Law expressly considers the **traditional knowledge**, among others, as being part of the immaterial cultural heritage of the State. ■

## Environmental Education

**State of Bahia.** State Law No. 12,056 has been published on January 17, 2010, establishing the **Environmental Education Policy of the State of Bahia**. The purpose of the Law is to stimulate the **ecological consciousness** through environmental education programs, projects and actions. ■



## Global Links

**Italy - Ban on plastic bags.** On January 1, 2011, after heavy debates and several requests for an additional postponement, the ban of the sale of plastic shopping bags that do not meet the biodegradability criteria set forth by European laws and standards has entered into force, after a period of progressive reduction, pursuant to article 1, section 1130 of Law No. 296, of December 26, 2006 (the “Budget Law 2007”). The ban has occurred despite of the strong opposition of the associations representing the categories of **plastic manufacturers and traders** and a last minute attempt from the government to include the said provisions among several other ones which entry into force was postponed for some months (Law Decree No. 225 of December 29, 2010).

Thanks to the intervention of the Ministry of Environment, Stefania Prestigiacomo, and with the support of environmental groups and associations, the term for the ban was confirmed for January 1, 2011. In a note issued on December 30, 2010 the Ministry of Environment also pointed out that retailers are allowed to offer **existing stocks** exclusively to end consumers for free until depletion and that the authorities will monitor the situation and ensure that the ban is respected.

The issue here is that, at the moment, no sanctions have been specifically established yet in the event of violation of the said prohibition.

Italy is the first EU country to adopt such a ban, while other countries like Ireland, Denmark and Spain have introduced ↓

➔levies on bags charging either retailers or consumers. As the Italian Ministry of Environment said, this legislation is “a big innovation constituting a step forward in the fight against pollution and making us all more responsible in terms of recycling”.

Notwithstanding this, the **trade associations of plastic converters** (EuPc and Plastics Europe) have officially declared they will strongly oppose to this legislation and have filed a complaint with the European Commission alleging that the Italian ban on non-biodegradable bags is in violation of the European Law.

In particular, according to the plastic converters, the ban would be in breach of: (i) Directive 94/62 on packaging and packaging waste (1994/62/EC), where article 18 states specifically that Member States “shall not impede” the placement on the market “of packaging which satisfies the provisions of this Directive”. Since pursuant to article 3.1 (c) of the Directive, plastic shopping bags can be considered packaging and since, according to the claimant, plastic shopping bags used in Italy meet the criteria of the Directive, the ban should be considered illegal; (ii) Directive 2008/98/EC on waste, according to which recycling and reuse

must be the preferred waste management options (given that non-biodegradable shopping bags meet the criteria of recycling and reuse); and (iii) the general principle of proportionality of the measures with respect to the envisaged goal. ■

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