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Specially Protected Areas

Forestry Code. According to a decision adopted by the Chamber of Deputies on May 18, 2011 the vote on the proposal of a New Forestry Code (Bill No. 1,876/1999) has been postponed to May 24, 2011. The most controversial aspects in connection with this matter continue to be the characterization and size of **permanent preservation areas** (“APP”, in Portuguese), as well as the applicability and reach of the **forestry legal reserve**.

Pursuant to the current Code, APPs are those areas that, being or not covered by native vegetation, are located along water courses, around lakes, lagoons or artificial reservoirs, around natural springs, at the top of mountains, on hillsides having more than 45° of declivity, among other cases. On such areas **no interventions are allowed**, except when previously authorized by the state environmental agency and provided that such interventions are justified by public utility or social interest reasons, or in the case of casual and low impact interventions. Those areas play a fundamental role not only in the maintenance of local biodiversity, but also in the rendering of **envi-**

ronmental services, such as the stabilization of the soil, the protection of water resources, the maintenance of shelter for pollination and seed dispersing agents and natural enemies against pests.

The current legislation also imposes the obligation to keep, as forestry legal reserve, areas covered by forests and other types of

native vegetation in the interior of **rural properties**, with the purpose to conserve and rehabilitate the ecological processes, to protect local biodiversity and serve as

shelter for native fauna and flora. In such areas the total suppression is forbidden, but economic exploitation is allowed subject to a **management plan** previously approved by the competent environmental agency. The size of the forestry legal reserve ranges in terms of percentage over the total area of the property, in accordance with the region in which the real estate is located. In the Legal Amazon, for areas of forest, the legal reserve must encompass 80% of the area of the property, whereas in areas of *cerrado* (the Brazilian savannah), such number drops to 35%. Outside the Legal Amazon, the forestry reserve →



➡ must correspond to 20% of the total area of the real estate. In all such cases, it is currently not possible to use **the APP in the formation of the forestry legal reserve**, except when the APP covers a material part of the total area of the property and provided that this does not result in the deforestation of new areas of the real estate.

In order to provide technical arguments for the discussions about this matter, on April 25, 2011 the Brazilian Society for the Progress of Science (“SBPC”, in Portuguese) and the Brazilian Academy of Sciences (“ABC”, in Portuguese) launched the publication “**Forestry Code and Science: a contribution for the dialogue**”, which analyses the potential amendments to the Forestry Code that are under debate in the Chamber of Deputies and its potential impacts on the environment and human activities. The download of the publication can be performed through the following address: <http://bit.ly/fzdq6c>. ■

Access to information. The Second Chamber of the Superior Court of Justice, by unanimous vote, confirmed the preliminary ruling that determined the record, in the real estate registry, of the existence of a Civil Public Action challenging the environmental compliance of a **real estate undertaking** built in a permanent preservation area. As declared by the *rapporteur*, Judge

Antônio Herman Benjamin, the record itself would not create any restriction against the intrepeneur, serving just to inform potential buyers about the pending lawsuit (Special Appeal No. 1,161,300 – State of Santa Catarina, published on May 11, 2011). ■

Recovery of degraded areas.

On March 14, 2011 the Brazilian Institute for the Environment and Renewable Natural Resources (the *Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*, or “IBAMA”) published its Instruction Rule No. 04, which establishes minimum requirements and guidance for the preparation of Recovery Projects for Degraded or Changed Areas (“PRAD”, in Portuguese). Pursuant to the Instruction Rule, the PRAD must assemble information, diagnoses, surveys and studies that allow the evaluation of the degradation or change and the consequential definition of adequate measures for the recovery of the area, observing the specifications of the Terms of Reference defined by IBAMA in Annexes I and II of the same regulation. Depending on the conditions of the area to be recovered and on the other conditions indicated by the technical analysis, the Instruction Rule admits the use of the **stimulation and conduction of natural generation technique as a recovery method**. ■

Atlantic Forest. On March 25, IBAMA published its Instruction Rule No. 05, which establishes criteria and procedures for the analysis of requests of previous approval for the **suppression of vegetation** of primary or secondary Atlantic Forest at medium or advanced regeneration stage. In order to allow such analysis, among other information, certain documents must be presented characterizing the succession/conservation stage of the vegetation that one intends to suppress as well as the local fauna. ■



State of Mato Grosso. On April 20, 2011 State Law No. 9,523 has been published, establishing the Territorial Planning and Organization of the State of Mato Grosso. The purposes of such Law are to discipline the use of natural resources and soil and the conservation of biodiversity, assuring the socio-economic function of the property. Among the instruments that were established in order to achieve such purposes is the **Socio-economic and Ecologic Zoning** (“ZSEE”, in Portuguese), pursuant to which the state geographic space will be divided in different **categories of use**. ■

Energy Sector

State of Paraná. On April 19, 2011 the Environmental Institute of Paraná (the *Instituto Ambiental do Paraná*, or “IAP”) enacted Regulation No. 79, which established, in the environmental licensing procedures under IAP’s authority, the **waiver from performing the previous record of the forestry legal reserve** as a condition to issue environmental licenses for potentially polluting activities in rural properties. Pursuant to such Regulation, however, the environmental licenses that are issued under such circumstances will have a maximum validity term of two years and its renewal will depend on the formalization of the request for recording the forestry legal reserve before IAP or on the execution of a Commitment Agreement, as the case may be. ■



State of Bahia. On May 5, 2011 the State Council for the Environment (“CEPRAM”, in Portuguese) published its Resolution No. 4,180, which approves the Technical Rule NT-01/2011. Such Rule addresses the **environmental licensing procedure of electric energy generation** undertakings using **renewable sources**. One of the highlights of the Resolution is related to the unification of licensing procedures for the same undertaker in contiguous areas that are subject to a request for obtaining the Localization License. ■

Air Emissions

On May 4, 2011 the Commission of Economic Development, Industry and Trade of the Chamber of Deputies approved Bill No. 3,108/2008, written by Deputy Antonio Mendes Thame, which establishes **emission limits** for pollutants originated from motors of **off-road movable machines and similar vehicles**, which are used, for instance, in agriculture, civil construction, mining and forestry activities. Currently, the Bill is waiting for the analysis of the Commissions of Environment and Sustainable Development and also Constitution, Justice and Citizenship. ■



Solid Waste



National Policy. On May 5, 2011 the Ministry of the Environment announced the start-up of the process for the installation of **reverse logistics** in connection with **electric and electronic products, medicines, packaging, lubricant oil wastes and packaging and fluorescent lamps**. The total of five working groups were installed with the task of discussing and debating about the products under its responsibility that will be subject to the reverse logistics

at post-consumption phase, the costs of the whole process and the entities responsible for its implementation and maintenance. The working groups must also prepare a technical-economic viability study for the chains of products that are subject to reverse logistics, in order to allow the publication of the announcements through which the Federal Government will invite companies to execute **sectoral agreements**. ■

State of São Paulo. On April 21, 2011 the Secretariat of the Environment of the State of São Paulo

published its Resolution No. 15, addressing the creation of a Working Group that will study the viability of the extinction of the use of **plastic bags** in supermarkets established in the State of São Paulo. ■

Municipality of Belo Horizonte, MG. Municipal Decree No. 14,367 has been published on April 13, 2011 regulating Municipal Law No. 9,529/2008, which addresses the substitution of the use of **plastic garbage bags and plastic bags in general for ecological garbage bags** (biodegradable or recyclable) and ➔

Environmental Licensing

➔ **ecological bags** (biodegradable or returnable) in Belo Horizonte. Pursuant to the Municipal Law, the non-substitution of the traditional bags will result in the imposition of one of the following sanctions, depending on the occurrence of backsliding and aggravating circumstances: (i) notice; (ii) fine; (iii) interdiction of the establishment; (iv) cancellation of the Municipal Operating Permit of the establishment. ■

State of São Paulo. Since May 4, 2011 the environmental agency of the State of São Paulo (the *Companhia Ambiental do Estado de São Paulo*, or “CETESB”), through a partnership with the Federation of Industries of the State of São Paulo (“FIESP”, in Portuguese) and the Center of Industries of the State of São Paulo (“CIESP”, in Portuguese) released the **Guidebook for Environmental Licensing of Industrial Activities in the Metropolitan Region of São Paulo**. The Guidebook discriminates the peculiarities of the re-

gion that differentiate the environmental licensing in the State in comparison with other regions. The Guidebook can be downloaded through the following address in the Internet: <http://bit.ly/jbPDaC>. ■

Municipality of Sumaré, SP. On April 29, 2011 the Municipal Government of Sumaré executed a covenant with CETESB aiming the local performance of the the environmental licensing for **undertakings with lower impact** to the environment. ■

Hazardous Products



New POP. The 5th Conference of the Parties (“COP5”) of the Stockholm Convention on Persistent Organic Pollutants (“POPs”) was held on April 25-29, 2011, in Geneva, Switzerland. On such occasion, it was decided to include the pesticide **Endosul-**

fan in Annex A to the Convention, in order to ban such product as from 2012.

The Brazilian Sanitary Agency (“ANVISA”, in Portuguese), by means of its Resolution No. 28/2010, already had established the **prohibition against the commercialization** of such product as from July 31, 2013.

Pursuant to ANVISA’s Resolution, the pesticide must not be imported as from July 31, 2011 and its **manufacturing will be prohibited** as from July 31, 2012. ■

Rio+20

Since May 1st, 2011 an **explanatory roadmap** has been made available by the Bureau of the UN Conference on Sustainable Development (“Rio+20”) in order to guide **stakeholders** - especially civil society and major groups - to collaborate and participate in the

preparation of the **agenda** of the Conference. The document can be accessed through the following link: <http://bit.ly/jfLbQl>. ■



RIO United Nations
2012 Conference on
Sustainable
Development

Agribusiness

On April 27, 2011 the Commission of Agriculture, Cattle Raising, Supply and Rural Development of the Chamber of Deputies approved Bill No. 708/2007, written by Senator Rodrigo Rollemberg, which extends the **special incentives** established by Federal Law No. 8,171/1991 (Agriculture Policy Law) to the rural producer that adopts specific techniques in his property, aiming the **recovery of de-**

graded areas or areas subject to degradation process. If the Bill is definitely approved, it will facilitate the obtaining, by rural producers, of **bank loans** from public financial institutions, as well as benefits associated to rural infrastructure programs, among others. Currently, the Bill is subject to analysis by the Commission of Constitution, Justice and Citizenship. ■

Fauna Protection

On April 19, 2011 the Ministries of Fishery and Aquaculture and of the Environment have published its Joint Instruction Rule No. 04, which establishes measures for the reduction of the **accidental capture of seabirds by fishery boats** that use surface long line system. Pursuant to the Instruction Rule, the boats that operate in waters under Brazilian jurisdiction to the South of the latitude 20° S must necessarily have a *toriline* on board. The non-compliance with such obligation will characterize **forbidden fishery**. The annex to the Instruction Rule brings provisions about the size, characteristics and use of the equipment. ■



well as inquiries on grounds of usurpation of forest land without informing the authorities and for not obtaining the **mandatory clearances**. For other environmental reasons, several projects have also been given conditional approvals. including the South Korean-origin company →

Global Links



India. Indian environmental jurisprudence has seen considerable development since the last two decades. It began in the mid-seventies, when the Indian Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974. It soon developed exponentially with the amendment of the Constitution in 1976, which incorporated Article 48-A4 into the erstwhile Directive Principles of State Policy and Article 51-A (g) in terms of the 'Fundamental Duties' of every citizen of India, both of which provide for protection and improvement of the environment. The passing of the **Environmental Protection Act, 1986** ("EPA"), was aimed at fulfilling the obligations under the Stockholm Conference (1972) and the aforesaid Directive Principles of the Constitution.

With the rapid growth of the Indian economy over the last two decades, environment management and preservation has gained special importance. New challenges have been opened up before the courts and the legislature and management strategies as well as policing techniques are evident in the legislative and quasi-legislative measures.

The Ministry of Environment and Forests has taken an active role in environment management recently. Jairam Ramesh, the incumbent Minister of State for Environment and Forests since May 2009 believes the "*biggest challenge is to send a signal that we mean business about protecting the environment and forests*" and that "*balance is key*". The Ministry made headlines throughout 2010 for taking on certain large projects that became controversial and mired in court cases as

➡ Posco's steel project in Orissa and the New Mumbai International Airport.

The Ministry has also taken several initiatives to make environment a serious business in India. Recently, the Ministry of Environment and Forests notified the Wetlands (Conservation and Management) Rules, 2010 which, for the first time, sets out legally enforceable provisions for the **conservation and management of wetlands**. In order to ensure there is no further degradation of wetlands, the Rules specify activities which are harmful to wetlands such as industrialisation, construction, dumping of untreated waste, reclamation etc. and prohibits these activities in the wetlands. Additionally, the Ministry published the CRZ Notification No. S.O. 19 (E) dated January 6, 2011 ("2011 Notification") which supercedes the earlier CRZ Notification No. S.O. 114(E) dated February 19, 1991. The 2011 Notification prohibits certain activities in **coastal regulation zones** (which includes the coastal areas up to the territorial waters) such as setting up of new industries, expansion projects, oil storage and haz-

ardous management, mining of sand, reclamation of land, ports and airports in high erosion zones etc.

In addition to the legislature, the judiciary is also playing a pro-active role with respect to the environment. The Supreme Court, in its interpretation of Article 21 (Right to Life), has facilitated the emergence of an environmental jurisprudence in India. Most recently, the Supreme Court has established a "green bench" within the Court and Chief Justice S. H. Kapadia has created a second **forest bench** to ensure that the projects stuck in legal battles due to green issues are handled quickly.

Environmental awareness and consciousness is gaining ground in India and along with the economic strides made by the country the business of environment is likely to receive significant focus in the coming years. ■

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