

## In this issue:

- **Specially Protected Areas** - Forestry Code / registration of forestry legal reserve / adjustment plan in Bahia / Capivari-Monos Environmental Protection Area in São Paulo
- **Biodiversity** - access to the genetic heritage / National Report
- **Forestry Resources** - transportation of products in Mato Grosso
- **Agribusiness** - sugar cane in São Paulo / deforestation in Maranhão / bovine and ovine cattle raising in Rio Grande do Sul
- **Climate Change** - National REDD+ / REDD+ in Mato Grosso
- **Solid Waste** - Inter-Ministerial Committee / plastic bags in São Paulo
- **Water Resources** - effluent standards / information guidebook / clean-up of basins / selection of projects in Espírito Santo
- **Electrical Sector** - licensing of Belo Monte Hydropower Plant
- **Oil, Gas and Biofuels** - periodically restricted areas
- **Urban Environment** - C40 / sound and visual pollution in the Municipality of Osasco / single-rail train in the Municipality of São Paulo
- **Environmental Damage** - compensation X indemnity
- **Fauna Protection** - bee protection / bee raising in the Municipality of Porto Alegre
- **Payment for Environmental Services** - conservation in rural areas
- **Environmental Crimes** - authority
- **Environmental Governance** - ISE / OECD guidelines / legal aspects of sustainability
- **Green Marketing** - Self-Regulation Code
- **Rio+20** - supporting bodies
- **RIELA** - conference and General Meeting in Porto Rico
- **Global Links** - South Africa

## Specially Protected Areas

**Forestry Code.** On May 24, 2011, the Chamber of Deputies approved the Bill of the New Forestry Code (Plenary Global Substitutive Amendment of Federal Bill No. 1,876/1999).

As informed in the issue of this Bulletin dated May 20, 2011 one of the controversial aspects that was approved is related to the possibility of regularization of the use of **permanent preservation areas** ("APP", in Portuguese) that were already occupied with agribusiness-related activities, ecotourism and rural tourism established until July 22, 2008.



As far as protected areas along watercourses are concerned, there are no changes in connection with the current required size of the APP. However, such areas would be **measured as from the regular watercourse bed** and not from the largest one anymore. Another controversial aspect that was approved is related to the APPs along watercourses with up to ten meters of width. In such case, in areas with already consolidated agribusiness activities, the recovery of just half of the width of the APP (15 meters, instead of the 30 meters required by current legislation) would be deemed

enough.

The Bill also establishes that, for rural properties with up to four *tax modules* (measurement unit, expressed in hectares, used as a reference to charge the Rural Territorial Tax, which ranges for each Municipality from 5 to 110 ha), just the reminiscent native vegetation existing on July 22, 2008 would be considered for the purpose of establishing the **forestry legal reserve** in such properties, even when the area occupied with

such vegetation represents a percentage that is lower than the minimum required by legisla-

tion.

The approved text also encompasses the possibility to use the APP in the formation of the forestry legal reserve of rural properties. Currently, the forestry legislation limits such possibility to just exceptional cases.

Now, the Bill follows to the appreciation and deliberation of the Senate. If there is any amendment in the Senate, the text returns to the Chamber of Deputies for approval or rejection of the amended issues. Only then it will follow to presidential approval or veto. ■

**Forestry Legal Reserve.** The date for the entering into force of the provision of Federal Decree No. 6,514/2008 that characterizes as administrative violation the **lack of registration** of the forestry legal reserve in the official records of the **rural property** was postponed again. Pursuant to Federal Decree No. 7,497, published on June 10, 2011 the final date of the term was scheduled for **December 11, 2011.** ■

**State of Bahia.** State Decree No. 12,920 was published on June 1, 2011, amending the regulation of the **State Plan for Adjustment and Regularization of Rural Properties.** The Decree inserted in the existing regulation the **possibility of extending** for up to 120 days the initial 360-day term, as from the filing date of the respective Adhesion Instrument, for rural landowners and possessors that adhere to the Plan to present their **Environmental Adjustment and Regularization Project** to the competent environmental agency, by means of a prior and justified request. The Project must contemplate the measures that will be imple-

mented to solve the declared environmental non-compliances and the respective implementation Schedule, pursuant to the term of reference presented by the environmental agency. The non-compliance with the term for presenting the Project will result in the dismissal of the respective adhesion process and the immediate imposition of the sanctions corresponding to the administrative violations related to the declared environmental non-compliances. The **term for adhering** to the Adjustment Plan will end on December 11, 2011. ■

**Municipality of São Paulo, SP.** Since May/2011, the Secretariat of Green and Environment of the Municipality of São Paulo (“SVMA”, in Portuguese) has released, in its webpage, the **Management Plan of the Capivari-Monos Municipal Environmental Protection Area** (“APA”, in Portuguese), which contains a diagnosis of the APA and establishes guidelines for its use and conservation. The Management Plan was approved by the APA’s Management Board on February 2, 2011 and contem-

plates the definition of specific actions with the indication of the respective priorities and schedules, as well as the entities responsible for the respective implementation and the potential partners for the performance of the tasks. The actions are assembled in the following main topics: (i) environmental education; (ii) economic activities (agriculture, tourism, handicrafts and cultural manifestations); (iii) protection of natural resources and historical heritage; (iv) scientific research; and (v) environmental sanitation, recovery of transportation means and degraded areas. The complete Management Plan is available through the following link: <http://bit.ly/kbLukS>. ■



## Biodiversity

On May 23, 2011 the Ministry of the Environment published its Resolution No. 35, which addresses the **regularization of activities involving the access to genetic heritage and/or to the associated traditional knowledge** and its economic exploitation that were performed in violation to Provisional Measure

No. 2,186-16/2001. Pursuant to the Resolution, the regularization is not applicable to those activities involving the access to a component of the genetic heritage and/or associated traditional knowledge, for purposes of scientific research, bioprospection or technological development concluded before June 30, 2000.

As far as **benefit sharing** is concerned, the regularization will be applicable to those activities involving the economic exploitation of components of the genetic heritage and/or associated traditional knowledge that were initiated as from June 30, 2000 without having the respective mandatory agreement by the Public Power ➔

## Forestry Resources

**State of Mato Grosso.** State Decree No. 370, published on May 25, 2011 changes the filling of the Forestry Document (“GF”, in Portuguese) for the **transportation of forestry-originated products and/or by-products** in the State of Mato Grosso. With the amendments that were established, the GF-3 and GF-4 forms that are made available by the State Secretariat of the Environment (“SEMA”, in Portuguese) now require the description of the route of the cargo until its final destination and, within sales outside the State of Mato Grosso, the discrimination of the states that are going to be crossed. ■



➔ to the Agreement on the Use of Genetic Heritage and Benefit Sharing (“CURB”, in Portuguese).

Pursuant to the Resolution, the party having interest to regularize its activities must file a request for such purpose before the Genetic Heritage Management Council (“CGEN”, in Portuguese), with the attachments listed in the Resolution. Such procedure, though, will not prevent the verification, by the competent authorities, of the applicable **civil, criminal and administrative liabilities** in connection with the period before the regularization of the activity. ■

**National Report.** On May 19, 2011 the Ministry of the Environment has launched the **4th National Report for the Convention on Biodiversity**, which presents the results and improvements of Brazil in connection with the compliance with the established global goals and the current

situation of Brazilian biodiversity and ecosystems. The first chapter of the Report brings an evaluation of Brazilian biodiversity and ecosystems, emphasizing the current situation, trends and main threats, such as agriculture expansion, exotic invader species, deforestation, fire, pollution and climate change. The second chapter evaluates the implementation of the National Strategy and Action Plan for Biodiversity in Brazil (“EPANB”, in Portuguese), also informing the **initiatives of the private sector** in this field. The third chapter makes considerations about the integration of biodiversity issues with other sectors. Finally, the Report analyses specifically the improvements achieved for each national goal in connection with biodiversity for 2010, as well as the improvements obtained concerning global objectives and goals. The Report is available in the following link: <http://bit.ly/mgMgbB>. ■

## Agribusiness

**State of São Paulo.** Resolution No. 22 of the State Secretariat of the Environment (“SMA”, in Portuguese), published on May 31, 2011 addresses the procedures for the suspension of the **burning of sugarcane straw** as a harvest facilitating method. Pursuant to the Resolution, the burning of sugarcane straw is forbidden from June 1st to November 30, 2011, from 6:00 a.m. to 8:00 p.m. The suspension can be established in other periods, when the **relative humidity of the air** is not lower

than 20%. Whenever the humidity of the air is below 20%, the burning of the sugarcane straw will be suspended during the whole day. The Resolution also establishes that, as from November 30, 2011 new suspension procedures will be adopted, when humidity is below the specified minimum level. ■

**State of Maranhão.** The State Secretariat of the Environment and Natural Resources performed, between June 8-10 and 15-17, 2011, respectively in São Luís and Im-

peratriz, the 1st and the 2nd Public Consultation for the **Preparation of the Action Plan for Deforesting and Fire Prevention and Control in the State of Maranhão** (the “PPCD-MA”, in Portuguese). On such occasion, the components, programs and actions of the PPCD-MA were discussed with the civil society, municipal public managers and the productive sector. The list of programs of the PPCD-MA are available in the following link: <http://bit.ly/jMi8sJ>. ■

## Climate Change

**State of Rio Grande do Sul.** Regulation No. 48 of the State Foundation for Environmental Protection of Rio Grande do Sul (“FEPAM”, in Portuguese), published on May 25, 2011 establishes the **exemption** from environmental licensing for the extensive field system of beef **bovine and ovine cattle raising** in the State of Rio Grande do Sul. ■



**REDD+.** On June 8, 2011 the Commission of Environment and Sustainable Development (“CMADS”, in Portuguese) of the Chamber of Deputies unanimously approved Federal Bill No. 195/2011, written by Deputy Rebecca Garcia, which creates the National System for the **Reduction of Emissions from Deforestation and Degradation**, Conservation, Sustainable Forestry Management, Maintenance and Increase of Forestry Carbon Stocks (“REDD+”). Yet, the Bill will follow to the analysis of other Commissions of the Chamber, including the Commission on Constitution, Justice and Citizenship. ■

**State of Mato Grosso.** The Draft Bill that creates the System for Reducing Emissions from Deforestation and Forest Degradation, Conservation, Sustainable

Forestry Management and Increase of Forestry Stocks (“**REDD+**”) in the State of Mato Grosso will be available for public consultation until July 20, 2011. The characteristics of the State REDD+ System can be summarized as follows: (i) aims the integration with the proposals under discussion for a national REDD+ system or regime; (ii) contemplates all biomes of Mato Grosso; (iii) defines **eligibility criteria** and applicability requirements for REDD+ actions in private properties, conservation areas, indigenous territories and land reform settlements; (iv) creates an emissions registration system, a REDD+ Certificate and a REDD+ actions registry. The Draft Bill is available in the following link: <http://bit.ly/iMLsFo>. Suggestions and criticisms can be sent by July 20, 2011 to the following e-mail: [gtredd@sema.mt.gov.br](mailto:gtredd@sema.mt.gov.br). ■

## Solid Waste



**National Policy.** On May 31, 2011 the Ministry of the Environment published its Regulation No. 177, which establishes the Internal Regiment of the Inter-Ministerial Committee of the National Policy of Solid Waste, which main function is to promote the **articulation among governmental bodies and entities** for the structuring and implementation of the National Policy. The Committee shall meet

on an ordinary basis every two months and shall be responsible, among other duties: (i) to establish the procedures for the preparation of the Solid Waste National Plan; (ii) to define complementary information to the Hazardous Solid Waste Management Plan; (iii) to propose measures aiming the **taxation reduction on recyclable and reusable products**; (iv) to incentive the research and development of activities involving solid waste recycling, recovery and treatment. ■

**Municipality of São Paulo, SP.** Municipal Law No. 15,374, published on May 19, 2011 establishes the prohibition against free distribution or sale of **plastic bags** to consumers for the packaging and transportation of goods acquired in all **commercial establishments** in the Municipality of São Paulo. Therefore, commercial establishments must stimulate, as provided by the Law, the use of **returnable bags**. As from December 31, 2011 the ➡

➔ establishments that violate the provisions of the Municipal Law will be subject to **criminal**

**and administrative sanctions** described by Federal Law No. 9,605/1998. ■

## Water Resources



**Effluents.** Resolution No. 430 of the Brazilian Council for the Environment (“CONAMA”, in Portuguese) was published on May 16, 2011, addressing the requirements and **standards for the release** of effluents, complementing and amending CONAMA Resolution No. 357/2005. More information on such Resolution can be found in the issue of this Bulletin dated April 15, 2011. ■

**Clean-up of water basins.** The National Agency of Waters (“ANA”, in Portuguese) has postponed until June 24, 2011 the term for enrolments to the **Program for the Clean-up of Water Basins** (“PRODES”, in Portuguese). PRODES will provide financial resources, in the form of payments for treated sewage, to **service suppliers** that invest in the treatment of sanitary sewage, specially for undertakings that represent a larger reduction of the organic level, pursuant to ANA Resolution No. 71/2011. The documents required for the enrolment of projects and further information are available in the following link: <http://bit.ly/jFqTCD>. ■

**State of Espírito Santo.** On May 3, 2011, the State Secretariat of the Environment and Water Resources (“SEAMA”, in Portuguese) and the State Institute of Environment and Water Resources (“IEMA”, in Portuguese) released the FUNDÁGUA/SEAMA General Announcement No. 1/2011, which establishes requirements for the selection of **proposals and projects in the realm of rationalization of the use and improvement of water resources** that can be benefitted by financial resources of the State Fund for Water Resources of Espírito Santo (“FUNDÁGUA”, in Portuguese). Federal, state and municipal public administration institutions, public education, research and extension institutions, associations of municipalities, inter-municipal consortiums and other private Brazilian non-for-profit institutions can participate in the selection process. The proposals and projects must be presented by July 29, 2011, observing the guidebook established pursuant to Annex III of the Announcement, which is available through the following link: <http://bit.ly/jJdRl5>. ■

## Electrical Sector

**Environmental licensing.** On June 1, 2011 the Brazilian Institute for the Environment and Renewable Natural Resources (“IBAMA”, in Portuguese) issued to the company Norte Energia S.A. – NESA the Installation License (“LI”, in Portuguese), which authorizes the construction of the **Belo Monte Hydroelectric Plant**. According to IBAMA, the requirements established in the Prior License for the issuance of the LI were fulfilled. Among the requirements established for the maintenance of the LI and the next phase of the licensing process (obtaining the Operating License) is the payment of almost R\$ 100 million, as environmental compensation, to be invested in conservation areas at the Xingu River Basin. In opposition to the decision adopted by IBAMA, on June 6, 2011 the Federal Prosecution Office filed a new Public Civil Action in connection with the project, through which the LI’s suspension has been requested, under the allegation that certain requirements of the Prior License would not have been fulfilled. ■



## Oil, Gas and Biofuels

**Periodically Restricted Areas.** On May 27, 2011 the Brazilian Institute for the Environment and Renewable Natural Resources (“IBAMA”, in Portuguese) and the Chico Mendes Institute for Biodiversity Conservation (“ICMbio”, in Portuguese) approved the Joint Instruction Rule No. 1, which establishes areas that are subject to periodical restrictions for activi-

ties involving **oil and gas exploitation and production** in areas with priority for the conservation of **marine turtles** along the Brazilian coast. The activities that are subject to restriction include the following: (i) seismic data survey; (ii) oil drilling (iii) the installation of oil and gas pipelines or the release of production water; (iv) the installation of oil, gas and produc-

tion water re-pumping unit; (v) marine geotechnical surveys. ■



## Urban Environment



**C40.** From May 31 to June 3, 2011, the City of São Paulo hosted the 4th C40 Summit (Large Cities Climate Leadership Group), an initiative that congregates the largest cities of the world, represented by companies, public administrations and the civil society, which was established to discuss strategies to **fight global warming** and to **adapt to climate change**.



The Summit addressed the following issues: (i) emissions measuring; (ii) climate and health in megacities; (iii) education for sustainable development; (iv) investments for the green industry; (v) urban adaptation and planning; (vi) urban design and planning in the climate change era; (vii) energy challenges for sustainable development. More information about the event is available in the following link: <http://bit.ly/LLTIOg>. ■

**Municipality of Osasco, SP.** Complementary Law No. 206, published on May 13, 2011, known as “Clean City Law”, addresses the ordination of the landscape and noise control at the urban environment in the Municipality of Osasco. With the purpose to minimize visual and sound pollution that affects the City, the following activities have been subject to restrictions: the installation of outdoors, the circulation of sound vehicles, the hanging of signs, the

advertisements at the façades of commercial establishments and the use of public sidewalks. The enforcement of the Law will start depending on the type of activity, as follows: (i) for **sound pollution** – immediate enforcement, by means of notifications and fines, in the case of violations; (ii) for **visual pollution** – enforcement as from 90 days after the date of publication of the Law; (iii) for **advertisements** used to identify the location of the activity, the establishments and/or its professionals – enforcement as from January 1st, 2012. The fines were established based on the Municipal Taxation Unit of Osasco (“UFMO”, in Portuguese) and range from R\$ 2,020.00 to R\$ 10,100.00. Sanctions may also include the cancellation of publicity announcements, the removal of the advertisement and its structure, the cancellation of the municipal operating permit and the interdiction of the establishment. ■

## Environmental Damage

**Compensation and indemnity.** In a recent ruling (Appeal No. 896863, published on June 2, 2011), the Second Group of the Superior Tribunal of Justice, by unanimous vote, recognized that cumulating both the compensation and the condemnation to indemnify for environmental damages caused by the same undertaking does not generate the occurrence of *bis in idem*, once both institutes have a distinct nature, provided that the indemnity is not included in the compensation that was required before, during the installation phase of the undertaking. ■

mentary Law No. 12/1975 (municipal rules) in connection with the general prohibition against bee raising in the Capital of the State of Rio Grande do Sul. Pursuant to the amendments inserted by the Bill, the raising of bees of the *Apis* gender in barely occupied areas became exceptionally permitted. There are no restrictions for native bees generically known as 'bees without stingers'. ■

**Municipality of São Paulo, SP.** On June 8, 2011 the Municipal Board for the Environment and Sustainable Development ("CADES", in Portuguese) issued the Prior Environmental License for **line No. 17-Gold of the Underground** of the City of São Paulo, which intends to connect,

through a **single rail** system, the Morumbi Stadium to Congonhas Airport. The Environmental Impact Assessment and its Report ("EIA/RIMA", in Portuguese) in connection with the project is available for consultation in the following link: <http://bit.ly/asfGNf>. ■

## Fauna Protection

**Bees.** On June 8, 2011 the Commission of Constitution, Justice and Citizenship of the Chamber of Deputies approved Federal Bill No. 08/2006, written by Deputy João Dado, which establishes **special protection** to pollinating bee species. The Bill contemplates the obligation of bee raisers to furnish information to the creation of a **database** about the population dynamic of bees identified as pollinators of vegetal species used in agriculture or that have a relevant function in the recovery of degraded areas and in the maintenance or recovery of ecosystems. The Bill also establishes an increase of penalties for

crimes committed against specially protected species, such as the bees. ■



**Municipality of Porto Alegre, RS.** On June 6, 2011 the Municipal Chamber of Porto Alegre approved the Municipal Bill No. 3,926/2009, written by Local Deputy Adeli Sell (PT-RS), which amends the Municipal Comple-

## Payment for Environmental Services

Provisional Measure No. 535, published on June 3, 2011 creates the **Environmental Conservation Supporting Program** and the Rural Productive Activities Incentive Program. The first Program, specifically, aims to promote the conservation of ecosystems by means of its maintenance

and sustainable use, with the transfer of financial resources from the Federal Treasury to families under extreme poverty situation that perform activities for the conservation of natural resources in rural areas. ■



## Environmental Crimes

**Authority.** In a recent ruling (Authority Conflict No. 116447, published on June 2, 2011), the Third Section of the Superior Court of Justice (“STJ”, in Portuguese) recognized, by unanimous

vote, the authority of the Federal Justice to judge crimes involving the extraction of gravel without the required authorization from the environmental agency in a private area. The STJ understood that

the Federal Justice has the authority to judge crimes related to **mineral resources**, as such resources are deemed **assets of federal domain**. ■

## Environmental Governance



**ISE.** The 2011 version of the questionnaire of the **Entrepreneurial Sustainability Index** (“ISE”, in Portuguese) adopted by BM&FBOVESPA will be under **public consultation** by June 24, 2011 and is available in the following link: <http://bit.ly/lC6nQL>. The ISE was created in 2005 and serve as a reference for the establishment of a portfolio of shares of companies that are recognized for its entrepreneurial sustainability and socio-environmental compromise. ■

**OECD.** During its Ministerial Meeting held on May 25, 2011 the Organization for Economic Cooperation and Development – OECD approved a new revised version of its **Guidelines for Multinational Enterprises**. The purpose of the Guidelines is to address and prevent the irresponsible behaviour of multinational companies, including in the realm of the environment. Pursuant to the review, additional guidelines have been established

on responsibilities within the supply chain and on the respect to human rights. Despite the achieved improvements, there are still criticisms about the Guidelines, due to the lack of a firm complaint mechanism against violating companies. ■

**Sustainability practice.** On June 7, 2011, in the City of São Paulo, the consulting firm **Finanças Sustentáveis** will promote the course: “**Legal Aspects of Sustainability in the Environmental Field**”, which will feature special participation, as invited speakers, of Fernando Tabet and Lucas Baruzzi, from the firm Tabet Advogados.

The course aims to provide the participants with an overview, in the environmental field, of the inclusion of the concept of sustainability in the corporate routine, from the analysis of the basic premises (legislation) and reflexes (liabilities) of sustainability management in the legal sphere. More information and registration form can be obtained through the following webpage: [www.financassustentaveis.com.br](http://www.financassustentaveis.com.br). ■

## Green Marketing

On June 7, 2011 the National Council for Publicity Self-Regulation (“CONAR”, in Portuguese) approved an amendment to the Brazilian Publicity Self-Regulation Code related to **publicity that contains sustainability appeals**.

Pursuant to Annex U of the Code, the advertisements must only contain **verifiable and provable information** that is exact and precise, excluding, therefore, generic and vague references. The Code, as amended, is available at <http://bit.ly/aroaaF> and the amendments will enter into force as from August 1, 2011, being applicable to all **communication vehicles**, including the Internet. ■



## Rio+20

Pursuant to Federal Decree No. 7,495, published on June 8, 2011 and with the purpose to promote the necessary organization to host the United Nations Conference on Sustainable Development ("Rio+20"), to be held in June/2012 in the City of Rio de Janeiro, two collegiate bodies were created under the Ministry of Foreign Relations, as follows: (i) the **National Commission** for Rio+20, which task is to promote the intercommunication among federal, state and municipal bodies and entities and the civil society; and (ii) the **National Organizational Committee**, which will plan and adopt the necessary measures to

host Rio+20, including the management of resources and contracts related to the official events. A third body, the **Extraordinary Assistance**, was established to directly assist the Minister of the Environment, with the duty to perform, among others, the coordination and preparation of studies that will subsidise the formation of the Brazilian positions in connection with the main topics of Rio+20. ■



## Global Links



### **South Africa - Waste Regulation.**

The primary statute regulating waste management in South Africa is the National Environmental Management: **Waste Act**, No. 59 of 2008 ("the Waste Act"). The Waste Act was enacted, inter alia, to reform the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development.

The Waste Act defines a 'holder of waste' as any person who imports, generates, stores, accumulates, transports, processes, treats, or exports waste or disposes of waste. The scope of this definition is ar-

guably extensive: it includes virtually every business venture that can produce waste.

Pursuant to the Waste Act, 'waste' is defined as any substance, whether or not that substance can be reduced, re-used, recycled and recovered: (a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of; (b) which the generator has no further use of for the purposes of production; (c) that must be treated or disposed of; or (d) that is identified as a waste by the Minister of Water and Environmental Affairs by notice in the *Gazette*. Nevertheless, a by-product is not considered waste and any portion of waste, once re-used, recycled and recovered, ceases to be waste.

## RIELA



On June 2, 2011, under the organization of the Puerto Rican firm **Goldman Antonetti & Córdova**, the city of San Juan, Puerto Rico, hosted the International Conference of **RIELA - Red Interamericana de Especialistas en Legislación Ambiental** (the Inter-American Network of Specialists in Environmental Legislation), which congregated several professionals of the environmental practice from law firms and companies from different countries of all the Americas. On such occasion, Fernando Tabet, from the firm Tabet Advogados, participated, as a speaker, in the discussion panel on self-police tools for environmental legal compliance. RIELA's General Meeting was held on the following day, performing, among other deliberations, the election of the members of its Executive Committee. Fernando Tabet was elected RIELA's Co-Chair. The next General Meeting will be held in June/2012, in the city of Rio de Janeiro, under the organization of the firm Tabet Advogados. ■



It appears from this definition of waste that whether a particular substance will qualify as waste depends, to a certain extent, on the intentions of the generator ➡

➔ and/or other persons who find themselves possessing the waste.

In terms of section 16(1) of the Waste Act, a holder of waste must, within the holder's power, take all **reasonable measures** to (a) avoid the generation of waste and where such generation cannot be avoided to minimise the toxicity and amounts of waste that are generated; (b) reduce, re-use, recycle and recover waste; (c) where waste must be disposed of, ensure that the waste is treated and disposed of in an environmentally sound manner; (d) manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts; (e) prevent any employee or any person under his or her supervision from contravening the Waste Act; and (f) prevent the waste from being used for an unauthorised purpose.

In seeking to understand the importance of the above-mentioned obligations and to what would be deemed 'reasonable measures', note must be taken of section 5 of the Waste Act which provides that the Waste Act must be read with the National Environmental Management Act, No. 107 of 1998 ("NEMA") unless the context of the Waste Act indicates that NEMA does not apply. The section continues to say that the interpretation and application of the Waste Act must be guided by the **national environmental management principles** set out in section 2 of NEMA.

One of the national environmental management principles is the '**cradle to grave**' principle. The effect of this principle is that a holder of waste generally bears responsibility for the environmental, health and safety consequences of its services or products throughout their **life cycle**. The specific obligations that form part of this general responsibility include, for instance, those set out in section 16(1) of the Waste Act.

The obligations from the Waste Act are certainly significant and its violation may result in the imposition of **penalties**, including fines and/or imprisonment. Although the Waste Act has been in operation for about two years now, there does not seem to be clarity in the minds of certain business players as to its implications.

It is arguable from the foregoing that the South African legislature intended to regulate waste in a way that ensures that responsibility for the management and disposal of waste is placed on all persons or entities that had something to do with the waste. However, it is yet to be seen whether the South African courts will interpret the Waste Act in a similarly extensive fashion. ■

(by Justin Kalima, from the firm Webber Wentzel - Johannesburg, South Africa)

## Contact:

### Fernando Tabet

[fernando@tabet.com.br](mailto:fernando@tabet.com.br)

Tel. +55 (11) 2985 1070 (ext. 4)

### Lucas Baruzzi

[lucas@tabet.com.br](mailto:lucas@tabet.com.br)

Tel. +55 (11) 2985 1070 (ext. 6)

### Eduardo Leme

[eduardo@tabet.com.br](mailto:eduardo@tabet.com.br)

Tel. +55 (11) 2985 1070 (ext. 5)

### André Marchesin

[andre@tabet.com.br](mailto:andre@tabet.com.br)

Tel. +55 (11) 2985 1070 (ext. 7)

## Special collaboration (South-African Law):

### Justin Kalima

### Webber Wentzel

[justin.kalima@webberwentzel.com](mailto:justin.kalima@webberwentzel.com)

Tel. +27 (11) 530 5840