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Environmental Licensing

Environmental Compensation I. Instruction Rule No. 8 of the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA, in Portuguese), enacted on July 14, 2011, addresses, in the realm of such autarky, the **procedures for the calculation** and the indication of a proposal of Conservation Areas to be benefited by the resources of the environmental compensation.

The payment of the environmental compensation is required from the entrepreneur as a condition for the environmental licensing of **activities and undertakings that cause significant environmental impact**, pursuant to Federal Law No. 9,985/2000 (the Law that created the National System of Conservation Areas, or "SNUC", in Portuguese). The resources originated from the compensation must be used in the establishment or maintenance of Conservation Areas belonging to the thorough protection group.

Pursuant to the Instruction Rule, the environmental compensation is calculated through multiplication of the *reference value*

(investments necessary to the establishment of the undertaking, excluding those related to plans, projects, programs and conditions required in the environmental licensing procedure for the mitigation of the impacts of the undertaking, as well as other costs) by the *level of impact* (0 to 0.5%) attributed to the undertaking. The *level of impact* is established based on the information provided in the Environmental Impact Assessment ("EIA") and its respective Report ("RIMA", in Portuguese) prepared for the undertaking. ■

Environmental Compensation II. On July 1, 2011 the Ministry of the Environment, IBAMA, and the Chico Mendes Institute for Conservation of Biodiversity ("ICMBio", in Portuguese) published Joint Rule No. 225, which creates the **Federal Committee on Environmental Compensation** ("CCAF", in Portuguese). CCAF's main task is to deliberate about the **distribution and purpose of the resources** originated from the federal environmental compensation to the benefited conservation areas ➔



➤or to the creation of new ones, including activities necessary to the strengthening of the National System of Conservation Areas. ■

State of Minas Gerais. State Decree No. 45,629, of July 6, 2011 amends the methodologies and procedures for the establishment and billing of the **environmental compensation** in the State of Minas Gerais, in order to make it compatible with the existing federal legislation on this matter. Among the amendments established by the new Decree is the exclusion of investments re-

lated to mitigation measures in connection with the impacts of the undertaking, as well as other costs, from the calculation of the *reference value* used to establish the amount of the compensation. ■

State of Ceará. State Law No. 14,882/2011, which addresses the **simplified procedures for the environmental licensing** of undertakings and activities of micro size with low degradation potential, is being challenged by means of Direct Unconstitution-

ality Lawsuit (“ADI”, in Portuguese) No. 4615, which was recently filed by the Attorney General of the Republic, Roberto Gurgel Santos, with the Federal Supreme Court (“STF”, in Portuguese). The central issue of the lawsuit is the alleged substantial change, by the State Law, of the environmental licensing model established by federal legislation, with the possibility of exemption from the environmental licensing through a mere unilateral declaration by the entrepreneur itself. ■

Gaseous Emissions



PROMOT. On July 14, 2011 the Brazilian Council of the Environment (“CONAMA”, in Portuguese) published its Resolution No. 432, which establishes new phases for the polluting gases emissions from new **cyclemotors, motorbikes and similar vehicles**, in the realm of the Air Pollution Control Program for Cyclemotors, Motorbikes and Similar Vehicles (“PROMOT”, in Portuguese), established in 2002. The new phase of emissions control (“PROMOT M4”) establishes **maximum limits for pollutant emissions** originated from the exhaust system of such vehicles, which will enter into force as from January 1, 2014. The regulation also established the Report

on Production Emission Levels (“RVEP”, in Portuguese), a document that must be provided to the Brazilian Institute of the Environment and Renewable Natural Resources (“IBAMA”, in Portuguese), as from July 1, 2011, for all new cyclemotors, motorbikes, tricycles and quadricycles, with production or importation for commercialization in Brazil larger than 1,000 units per semester. The RVEP must contain the identification of the laboratory, the configuration of the verified vehicle, date and number of verifications, with the respective emission levels. ■

PROCONVE. CONAMA Resolution No. 433, of July 13, 2011 establishes **maximum pollutant emission limits** for Diesel motors destined to new **agriculture and roadway machines**, either national or imported, under the Air Pollution Control Pro-

gram for Automobiles (“PROCONVE”, in Portuguese), created in 1986. The reach of the maximum pollutant emission limits increases progressively according to the Power of the motors as from January 1, 2015 until January 1, 2017, for roadway machines, and as from January 1, 2017 until January 1, 2019, for agriculture machines. Only the



models of agriculture and roadway machines that obtained from IBAMA the re-

spective **License for the Use of Vehicle or Motor Configuration** (“LCVM”, in Portuguese) will be allowed for commercialization.

The same Resolution also established maximum limits for the **generation of noise** by roadway machines, which will be enforced as from January 1, 2015. ■

Climate Change

ABNT Technical Rule. On June 16, 2011 the Technical Rule No. 1548 of the Brazilian Association of Technical Rules (“ABNT”, in Portuguese) entered into force, addressing the principles, requirements and guidelines to the commercialization of verified emission reductions (“VER”) in the realm of the **voluntary carbon market**. *Voluntary carbon market* is the system of VERs negotiation in which there is no legal obligation to reduce or remove greenhouse gases by the participants of such market. Among the principles adopted by such Rule, emphasis is given to the accountability and transparency of information related to the projects and transactions involving VERs. General requirements were also established for the eligibility of VERs in relation to the certification standards adopted in the respective projects. As for the

project and deed registration entities, independence must be assured, as well as the domain of technology capable of electronically managing the transactions involving VERs in the market, when VERs are used on a definitive basis to compensate emissions.



The Technical Rule, however, is not applicable to those activities of reducing emissions from deforestation and degradation jointly with conservation, sustainable forestry management and increase in forestry carbon stocks (REDD+), which will be addressed by a specific rule to be elaborated by ABNT. ■

State of Pernambuco. The purpose of the **State Plan for Combating Climate Change**, launched by the Government of Pernambuco on June 27, 2011 is to provide structure, access and guidance to the implementation of the State Policy for Combating Climate Change (State Law No. 14,090/2010), aiming an integrated action between the public power and civil society. The Plan contemplates the identification, measuring and stimulus to actions that enhance the resistance capacity of natural systems and cities to climate change, with emphasis on the population quality of life. Therefore, **goals** were established to be achieved within six years, divided among adaptation and mitigation actions, in addition to integration measures with the other environmental public and sectoral policies (for strategic sectors, such as energy, industry, mining, agribusiness, waste and civil construction). The Plan is available in the following link: <http://bit.ly/lvA2d>. ■

Biodiversity

Atlantic Forest. On June 30, 2011 the Ministry of the Environment (“MMA”, in Portuguese), through the Secretariat of Extractivism and Sustainable Rural Development, released the Public Announcement No. 11, involving the **financial support to conservation actions** related to



the Atlantic Forest. With such initiative, the MMA aims to provide incentives to projects that promote the chain of **sociobiodiversity products** in connection with the Atlantic Forest. The projects that will receive the support shall have the following objectives: (i) to organize information, identify and prioritise production practices and build directives to the sustainable management of the **juçara fruit** (*Euterpe edulis*); ➔

the Atlantic Forest. The projects that will receive the support shall have the following objectives: (i) to organize information, identify and prioritise production practices and build directives to the sustainable management of the **juçara fruit** (*Euterpe edulis*); ➔

➔(ii) to elaborate and divulge directives for the sustainable management of the **extractivist tea herb** (*Ilex paraguariensis*) and **Brazilian pine nut** (*Araucaria angustifolia*); and (iii) to promote the value chain of the Brazilian pine nut in the Center-South of the State of Paraná and in the metropolitan region of Curitiba. The proposals must be presented by July 30, 2011. The Announcement is available in the following link: <http://bit.ly/r5WrXA>. ■

Municipality of Rio de Janeiro, RJ. Resolution No. 492, published on July 6, 2011 by the Secretariat of Environment of the Municipality of Rio de Janeiro,

regulates the Municipal **Programme for the Control of Exotic Invader Vegetal Species**. Pursuant to the Resolution, the purpose of the control of invader species (as listed in the Sole Annex to the Resolution) is to restore the conditions of environmental conditions that allow the recovery of native vegetation. Therefore, the Resolution establishes that the **environmental recovery and public arborisation projects** in the Municipality must prioritise the use of native vegetal species, whereas the removal of invader species at private properties will be authorized by means of a **simplified administrative procedure**. ■

Fishery

Fishery Resources. Rule No. 10 of the Ministries of Fishery and Aquaculture and of the Environment, published on June 13, 2011 establishes general norms and the organization of the permission system in connection with fishery vessels for the **access to and sustainable use** of fishery resources, with the definition of fishery modalities, species allowed for capture and permitted fishery zones. ■



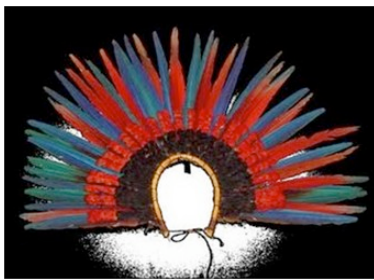
Specially Protected Areas

Non-buildable area. Pursuant to a recent ruling (Special Appeal No. 769753 – State of Santa Catarina), the Second Chamber of the Superior Court of Justice (“STJ”, in Portuguese), by unanimous vote, denied the appeal presented by an entrepreneur against a ruling of the Federal Regional Tribunal of the 4th Region (“TRF4”, in Portuguese), which ordered the **demolition of a hotel installed in a special protection area** (in this case, um a cape formed by high cliffs) and a **permanent preservation zone**, which are deemed non-buildable, respectively by the legislation of the State of Santa Catarina and of the Municipality of Porto Belo. Nevertheless, the relevant undertak-

ing was provided with an environmental license issued by the state environmental agency, the *Fundação do Meio Ambiente*, or “FATMA”, and with an authorization issued by the Municipality of Porto Belo. However, pursuant to the rapporteur, Minister Herman Benjamin, “the urbanistic-environmental authorization or license that ignores or violates requirements established by federal, state or municipal laws and regulations is invalid *ex tunc* [with retroactive effect], due to absolute nullity resulting from congenital defect, and does not generate the respective effects that would be ordinarily expected (...), nor does it admit confirmation or convalidation”. ■

Management Plans. Rules Nos. 39 and 40 of the Chico Mendes Institute for Conservation of Biodiversity (“ICMBio”, in Portuguese) were published on June 17, 2011, approving, respectively (i) the Management Plan of the **Amazon Fields National Park**, located in the States of Amazonas, Rondônia and Mato Grosso, encompassing one of the most representative fragments of the Cerrado (Brazilian Savannah) biome in the interior of the Amazon Region and occupying an area of 873,570 ha, and (ii) the Management Plan of the **Jacundá National Forest**, located in the State of Rondônia, with an area of 220,644 ha and classified as having extremely high biological importance for conservation. ■

State of Mato Grosso. State Law No. 9,564, of June 27, 2011 authorizes the Government of the State of Mato Grosso to perform an **exchange** with the Federal Power, through the National Foundation for Indigenous People (“FUNAI”, in Portuguese), of the area corresponding to the Araguaia State Park homologated area of the Marawaitsede Indigenous Reserve. The purpose of the Exchange is to perform the **relocation of the indigenous community** to the State Park and to promote the real estate regularization of third parties that occupy the Indigenous Reserve. ■



Electrical Sector



Guarani Aquifer. The Brazilian Agency of Waters (“ANA”, in Portuguese) released an

Announcement for the **retaining of a study** with the purpose regionally evaluate the Guarani Aquifer System’s **vulnerability to contamination**, with the establishment of a technical basis for the planning of protection and control actions and measures in connection with underground waters. In addition to the **identification of potential pollution sources**, the study must propose strategies for the use and protection of the waters of the Aquifer. The bidding will be performed on

August 2, 2011 and the interested parties must comply with all requirements of the Announcement, which is available in the following link: <http://bit.ly/ou3Djq>. ■

State of Pernambuco. On June 23, 2011 the State Council for Water Resources (“CRH”, in Portuguese) published its Resolution No. 1, which addresses the mandatory performance of production and aquifer tests, with the preparation and presentation of a Technical Report, as a condition to the obtaining and renewal of the **authorization to impound groundwater**. ■



Hazardous Products

Rotterdam Convention. The 5th Conference of the Parties (“COP5”) of the Rotterdam Convention on Prior Informed Consent Procedure (“PIC”) for Certain Hazardous Chemicals and Pesticides in International Trade, held from June 20 to 24, 2011, in Geneva, Switzerland, adopted the decision to include the pesticides **Alachlor, Aldicarb** and **Endosulfan** in Annex III to the Convention. This results in the use of the PIC procedure for such prod-



ucts, providing the countries the right to be informed about the **health and environmental risks** associated to such products before its importation. There also was a proposal in the agenda to consider the inclusion of **Chrysotile asbestos** in the same Annex III, but there was no consensus on this matter. As informed in the May 20, 2011 issue of this Bulletin, **Endosulfan** has already been included in Annex A to the Stockholm Convention on Persistent Organic Pollut-

ants (“POPs”), so that it shall be banned as from 2012. In Brazil, **Aldicarb** and **Endosulfan** already are in the ban process. **Alachlor**, however, is still under evaluation by the Brazilian Agency of Sanitary Surveillance (“ANVISA”, in Portuguese). ■

State of Mato Grosso. After overcoming the veto issued by the Governor of the State, on July 5, 2011 State Law No. 9.583 has been finally published, establishing the **prohibition against the use** of products, materials or artefacts that contain any types ➔

of **asbestos** or other minerals that have asbestos fibers in its composition. As a result of the prohibition, such products, materials or artefacts that are currently in use or installed must be definitely substituted, pursuant to regulation that shall be approved. The non-compliance with the State Law will be deemed a **sanitary infraction**, subjecting the violator to penalties that may include: (i) the destruction of the product; (ii) the total or partial interdiction of the establishment, activity or product; (iii) the cancellation of the operating permit; and (iv) a fine. ■



Agribusiness

Animal Welfare. Rule No. 524 of the Ministry of Agriculture, Cattle Raising and Supply was published on June 22, 2011 creating the **Permanent Technical Commission on Animal Welfare** (“CTBA”, in Portuguese). The main activities of the Commission are the following: (i) to propose rules and technical recommendations on good practices for animal welfare; (ii) to stimulate and promote events related to the purpose of the Commission; and (iii) to enhance the capacity building of the various stakeholders involved in the cattle raising chain. ■

State of Mato Grosso. State Law No. 9,584, of July 4, 2011

defines procedures and establishes prohibitions, performance rules and precautionary measures to be observed in the **use of fire** at agricultural, pasture and forestry practices. The possibility to perform **controlled burning** in delimited areas and supported by prior authorization from the State Secretariat of the Environment (“SEMA”, in Portuguese) or other entity officially designated by SEMA, pursuant to State Complementary Law No. 220/2005, is still maintained. ■



Electrical Sector



Angra 2. Based on safety evaluations and the respective Technical Opinions, the Brazilian Commission of Nuclear Energy (“CNEN”, in Portuguese) concluded that the operation of the Nuclear Power Plant Angra 2, located in the Municipality of Angra dos Reis, State of Rio de Janeiro, can be conducted without an *improper risk* against the health of workers, of the population and the environment. Therefore, pursuant to its Resolution No. 106, of June 15, 2011, CNEN issued the **Authorization for Permanent Operation** (“AOP”, in Portuguese) for the undertaking, establishing a set of requirements that include,

among others, the always up-to-date maintenance of a Local Emergency Plan (“PEL”, in Portuguese). The AOP is valid for 30 years and is subject to the Periodical Safety Re-evaluation (“RPS”, in Portuguese) every 10 years. ■



Undertakings in Indigenous Reserves. On June 15, 2011 the Commission on Mines and Energy of the Chamber of Deputies approved, by unanimous vote, the Legislative Decree Project No. 2,540/2006, which authorizes

the **use of water resources**, including the energy potentials located at the Tamanduá Falls, in the region of the Contigo river, in the State of Roraima, which flux crosses the **Indigenous Reserve Raposa Serra do Sol**. Pursuant to the Project, the tribes that will be impacted must be heard through public hearings at the Legislative Assembly of the State of Roraima and protection measures must be adopted in connection with the indigenous cultural heritage by the National Foundation for Indigenous People (“FUNAI”, in Portuguese). The Project will follow now to the analysis of the Commission on Constitution, Justice and Citizenship. ■

Payment for Environmental Services

State of Amazonas. The term established by the State Secretariat of the Environment and Sustainable Development (“SDS”, in Portuguese) for the remittance of comments and suggestions about the draft Bill that creates the **Amazonas State Policy on**


Environmental Services, described in the June 17, 2011 issue of this Bulletin, was postponed to August 22, 2011. The draft Bill and the proper form to send comments and suggestions are available in the following link: <http://bit.ly/kLhqic>. ■

Environmental Administration

State of Bahia. Pursuant to Resolution No. 3,967/2009 of the State Council for the Environment (“CEPRAM”, in Portuguese), the State Secretariat of the Environment in Bahia is inviting non-for-profit entities that have as main purpose the environmental defence and protection and that operate its activities in the State of Bahia to perform the **registration, re-registra-**

tion and up-dating with the State Registry of Environmental Entities (“CEEA”, in Portuguese) until August 30, 2011. The list of documents necessary for such purpose is available in the following link: <http://bit.ly/qAdLh1>. Only entities that are duly registered with CEEA may candidate themselves to represent the category at CEPRAM. ■

Global Links

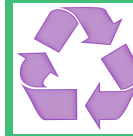
 **Russia.** The improvement of environmental legislation remains one of the top priorities for reforming the laws of the Russian Federation. Federal authorities have been actively involved in the law-making process and introduced a “package of environmental laws”, which includes incentives for waste management, recovery of environmental damages, preserving the marine environment and protecting it against oil contamination and raising the efficiency of gov-

ernmental environmental monitoring and control.

One of the most significant bills expected to pass into law shortly is aimed at improving the environmental quality level by setting and introducing measures that provide business activities with incentives to adopt the best available technologies.

The bill provides various measures to significantly strengthen the **liability for exceeding the limits of tolerable impacts** on the environment, and contains

Solid Waste



Energy Generation.

On July 26-28, 2011, the city of São Paulo will host the **National Forum on the Use of Waste for Energy Generation - ENERWASTE**, organized by the International Quality and Productivity Center - IQPC. The event will count on the participation of Fernando Tabet, from the firm Tabet Advogados, as an invited speaker. The purpose of the Forum is to discuss projects and possibilities about the use of waste for energy generation purposes, the implementation of the **National Policy on Solid Waste**, financing sources and obtaining resources for alternative energy projects. For more information and enrolments, please access the following link: <http://bit.ly/o5gU8j>. ■

provisions facilitating large companies to **shift to new technologies**.

In particular, the bill establishes taxation and non-taxation measures, such tax incentives and other forms of governmental support (provision of subsidies different-level budgets; a fee for adverse environmental impacts; assistance with investments for introducing the best available technologies, use of renewable energy sources, secondary resources, neutralization and utilization of waste; and other ➔

➔effective environmental protection measures).

Another bill that was submitted to the Russian Government for consideration also provides certain incentives to help the **recovery of environmental damages** resulting from former business activities, including the support in fundraising based on public-private partnerships and pro-

viding the pre-emptive right for the acquisition or rent of the relevant real estate owned by the public power to the company that performed such improvements at its own expense.

The bills do not yet specify how the support in connection with the introduction of best available technologies and public-private partnerships will be imple-

mented. However, if such provisions are incorporated into the laws, this will proportionate the expectation of future improvements in this field. ■

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