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34 ENVIRONMENTAL LAW

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SOLID WASTE

Decree 7404 of December 23, 2010 – National Solid Waste Policy Regulations

Decree 7404/2010 issues regulations under Law 12,305/2010, which established the National Solid Waste Policy (NSWP).

The Decree creates the NSWP Joint Ministerial Committee icy and a Guiding Committee for Implementation of Take-Back Systems.

The new regulations reaffirm that manufacturers, importers, distributors and sellers which use public urban cleaning and solid waste handling services have shared liability for the life cycle of their products.

Law 12,305/2010 imposes a take-back obligation on manufacturers, importers, distributers and sellers of i) herbicides, pesticides and other hazardous products, ii) batteries, iii) tires, iv) lubricating oils and their residues and packaging, v) fluorescent, sodium or mercury vapor and mixed light bulbs and tubes, and vi) electronic products and their components, by requiring them to provide for the "return of products after use by the consumer, without recourse to public urban cleaning and solid waste handling services".

The new regulations also provide that the take-back obligation will be extended to products sold in plastic, metal or glass packaging, and to other products and packaging, according to the degree of impact the waste generated by such products and packaging has on public health and the environment. In broadening the take-back obligation, the Guiding Committee is required to determine the technical and economic viability of imposing the obligation.

Under the Decree, procedures for the purchase of used products and packaging may be adopted, and centers for delivery of reusable and recyclable waste may be created. In the case of post-consumer packaging, priority is to be given to the participation of cooperatives and other associations of individuals who salvage recyclable and reusable material.

The Decree highlights three instruments for implementing the take-back obligation: sector agreements, government regulations and commitments entered into with the public authorities.

Sector agreements can be initiated by either the government or by manufacturers, importers, distributers or sellers of the products and packaging. The Decree establishes the minimum requirements for such agreements, and the procedure for their approval.

The issuing of government regulations on the take-back obligation must be preceded by public consultation, and the technical and economic viability of the obligation must be assessed by the Guiding Committee.

Take-back commitment agreements can be used to implement take-back systems when there is no sector agreement or specific regulations that apply, or to establish commitments and targets that are stricter than those provided for in the applicable sector agreement or regulations.

In addition to provisions on take-back obligations, the Decree establishes directives for management of solid waste. In order of priority, they are: (i) non-generation, (ii) reduction, (iii) reuse, (iv) recycling, (v) treatment of solid waste and (vi) environmentally-sound disposal.

The Decree also confirms that **packaging** should be manufactured with materials that facilitate reuse or recycling, but excepts packaging for products that will be exported, in which case the manufacturer must meet the packaging requirements of the importing country.

The regulations provide that the selective waste collection system must provide at least for the separation of wet from dry waste, and progressively separate dry waste into different types. Solid waste producers are required to separate waste and make it available for collection in the manner established by the operator of the urban cleaning and waste handling service.

Under Law 12,305/2010, a management plan is required for the following types of solid waste, among others: a) industrial waste; b) health services-related waste; c) mining-related waste; d) hazardous waste; e) non-hazardous waste that is not treated as equivalent to domestic waste, as determined by municipal governments; f) waste generated by civil construction companies; and g) if required by the relevant authority, waste generated by agriculture and forestry.

The Decree provides that, under certain conditions, businesses can prepare a collective waste management plan. A collective plan case it must contain a separate inventory report of each business's activity and solid wastes, and identify the actions and responsibilities attributed to waste generator. Furthermore, small and very small businesses that generate only household or household-equivalent waste-generating companies are exempted from the solid waste management plan requirement, as long as they do not generate any hazardous waste.

The Decree also requires that companies which deal with hazardous waste in any phase of their operations must enroll in the National Hazardous Waste Operators Register, and appoint a duly qualified technical officer to be in charge of the company's hazardous waste management.

Failure to comply with any of the provisions of Law 12,305/2010 or Decree 7,404/2010 is subject to a penalty ranging from R$ 5,000 to R$ 50 million.

ECOLOGICAL-ECONOMIC MACRO-ZONING IN THE LEGAL AMAZON

Decree 7,378 was published on 1 December 2010, presenting the Legal Amazon Ecological-Economic Macro-Zoning Regulations (Legal Amazon MacroZEE). The "Legal Amazon" is the area designated by Provisional Measure 2,166-67/2001, which encompasses "the States of Acre, Pará, Amazonas, Roraima, Rondônia, Amapá and Mato Grosso and the regions located north of 13th parallel south in the States of Tocantins and Goiás, and west of the 44th meridian west in the State of Maranhão."

MacroZEE divides the Legal Amazon into ten territorial units, with a view to : "I – strengthening the Amazon-Caribbean Integration Corridor; II – strengthening the coastal capitals, regulating mining and supporting the diversification of other production chains; III – strengthening polycentrism in the Pará-Tocantins-Maranhão junction; IV – re-adapting productive systems in Araguaia-Tocantins; V – regulating and promoting innovation in the implementation of the agro-industrial complex; VI – organizing and consolidating the logistics hub integration with the Pacific; VII – diversifying the forestry and agricultural frontier; VIII – containing expansion into protected areas and promoting alternative uses; IX – defending of the forest core, based on sustainable productive activities; and X – defending the Pantanal by promoting the local culture, traditional activities and tourism". (art. 6)

Although the territorial units established by MacroZEE take into account natural, social and economic characteristics rather than state borders, the general strategic plan outlined for each territorial unit must be consistent with the objectives and aims set out under state Ecological and Economic Zoning.

The general strategies presented under the plan include land title regularization (currently governed by Law 11,952/2009), creation and strengthening of Conservation Units, confirmation and implementation of land rights of indigenous and "quilombola" communities, creation of industrial parks for complete production chains, reduction of greenhouse gas emissions arising out of land use change and deforestation.

The full version of the plan and accompanying maps is accessible at
http://www.mma.gov.br/sitio/index.php?ido=conteudo.monta&idEstrutura=225.

COLLECTION OF ENVIRONMENTAL PENALTIES TIME-BARRED IN FIVE YEARS

Restatement of Precedents 467, published on October 25, 2010 by the Superior Court of Justice, provides that: "Government claims to collect penalties for environmental violations become time-barred five years from the end of the administrative proceeding in which the penalty was imposed".

For the purposes of counting the limitation period applicable to environmental penalties, the important question is to determine the end of the administrative proceeding that imposed the penalty.

An administrative proceeding can be said to have ended only after the right to a full defense has been respected, and all possible administrative defenses and appeals have been exhausted, or, alternatively, the time period for filing a defense or appeal expires without a defense or appeal being filed.

At the federal level, an administrative proceeding has three instances. Under article 6-A of Decree 6792/2009, the Special Chamber of Appeals is the third and last administrative instance of CONAMA (National Council for the Environment) and is responsible for making a final decision on fines and other administrative penalties imposed by IBAMA (the Brazilian Institute of Environment and Renewable National Resources).

At the state level, the number of administrative instances varies. São Paulo and Rio de Janeiro have two administrative instances, and therefore the limitation period after the appeal of the notice of violation has been decided at the second instance.

ENVIRONMENTAL LICENSING

São Paulo: Municipalities enter into agreements for the licensing of businesses with local environmental impact.

On October 14, 2010, 14 municipalities entered into agreements with the Environmental Sanitation Technology Company (CETESB) to assume responsibility for the licensing and monitoring of businesses with local environmental impact. The municipalities are Nadai, Americana, Barretos, Cajamar, Caraguatatuba, Descalvado, Franca, Hortolândia, Igaratá, Indaiatuba, Itatiba, Mogi-Mirim, Piracicaba and São Bernardo do Campo.

These 14 municipalities were joined by Mogi das Cruzes, on November 17, 2010, and Olímpia and Monte Mor on November 24, 2010. The next municipalities that will assume responsibility for licensing and overseeing local impact undertakings are the Vale do Paranapanema municipalities, an intermunicipal consortium of 19 cities.

The agreements originate in CETESB's Environmental Management Decentralization Program, which was created in 2009 and currently comprises 38 municipalities. After the program has been fully implemented, CETESB will be able to concentrate its efforts on monitoring and licensing large undertakings that affect more than one municipality or even entire regions in the state of São Paulo.

The Prosecutor's Office, nevertheless, has challenged the legality of these agreements between CETESB and some city councils. In São Carlos and Lins, for instance, injunctions in public civil actions have suspended municipal licensing arrangements established under earlier agreements.

CONSERVATION UNITS

São Paulo: The State Environmental Council (CONSEMA) is in favor of the creation of two conservation units: the **Restinga de Bertioga State Park** and the **Pedra do Baú Natural Monument**.

State Decree 46,500 of November 9, 2010 created the Restinga de Bertioga State Park. Since March 2010, the Park has been under temporary administrative restriction, which forbids potentially polluting activities, forest extraction and single-species reforestation for business purposes within the Park's boundaries. The creation of the Park will lead to the expropriation of privately-owned areas located inside the Park by the State of São Paulo Foundation for Forest Conservation and Production. Private property situated within the limits of the Restinga de Bertioga State Park may also be acquired by donation made as a form of environmental compensation in environmental licensing proceedings.

The State Decree that creates the Pedra do Baú Natural Monument was published on December 27, 2010. The monument is situated in two Environmental Protection Areas – "APAs", Serra da Mantiqueira, a federal area, and São Bento do Sapucaí, a state area.

Conservation units, which are governed by Law 9985/2000 and Decree 4320/2002, are especially protected areas of significant ecological, landscape or scientific interest, created to protect the environment and biological diversity as well as the sustainable use of their natural resources. The "national park" type belongs to the group of full protection conservation units. Under Article 7 of Law 9985/2000, only indirect use of national park resources is permitted. The privately-owned areas located in the National Park are expropriated for their public possession and domain nature. The "natural monument" type, in turn, also belongs to the group of full protection units, but, in this case, privately-owned areas are permitted to coexist as long as their use does not conflict with the purposes of the unit.

CONAMA Resolution 428 of 17 December 2010 – Involvement of agencies responsible for the stewardship of Conservation Units in the environmental licensing process.

CONAMA Resolution 428 provides that environmental licenses for undertakings that may have a significant environmental impact on a specific Conservation Unit ("CU") or its buffer zone cannot be granted before the undertaking has been authorized by the agency responsible for the stewardship of the CU or, in the case of Private Natural Heritage Reserves, by the agency that created the reserve. The Chico Mendes Institute and IBAMA are responsible for managing CUs, and the state and municipal environmental agencies have secondary responsibility.

Before the first license (normally, the Preliminary License) is granted, the licensing authority must request authorization from the CU agency, no more than 15 days after the environmental assessment report (EIA/RIMA) has been accepted. The CU agency is then required to issue its final opinion within 60 days.

The Resolution also establishes that, for a five-year period, in the case of CUs that are not surrounded by a buffer zone, undertakings that may significantly impact the environment and that located within a 3000 meter-long strip from the border of the CU can only be licensed after approval has been given by the CU's managing agency. However, this rule does not apply to Private Natural Heritage Reserves, Environmental Protection Areas and Consolidated Urban Areas.

Concerning the environmental licensing of undertakings which are not subject to EIA/RIMA, the environmental licensing authority will notify the agency responsible for the management of the CU, where the undertaking: (i) may directly impact the UC; (ii) is situated in its buffer zone; or (iii) is situated within 2000 meters from the CU, if the CU's buffer zone has not been set up within a five-year period. Here again, this rule also does not apply to Private Natural Heritage Reserves, Environmental Protection Areas and Consolidated Urban Areas.

The new Resolution repeals CONAMA Resolution 13/1990, which provided that the buffer zone surrounding the CUs was required to be 10 km deep. The National Conservation Units System Law, Law 9985/2000, later established that the buffer zone was to be demarcated by the CU Management Plan. However, environmental agencies interpreted CONAMA Resolution 13/1990 to mean that if the buffer zone was not provided for in the CU Management Plan, it was deemed to be 10 km. The controversy generated by this interpretation has now been settled by the new provisions of CONAMA Resolution 428/2010.

CLIMATE CHANGE

Cancún: UN Climate Change Conference (COP 16)

The 16th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the 6th Session of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP) were held in Cancún, Mexico, from November 29 to December 12, 2010.

The more than 190 countries that attended COP 16 approved, by consensus, a decision package to combat global warming.

The Cancún Agreement includes:

- Creation of the Climate Green Fund, an operational entity for financing projects, programs and policies in developing countries for the reduction of their CO2 emissions. A transition committee composed of 40 members (15 developed countries and 25 developing countries) will be responsible for structuring the fund. Later, the Fund will have a management committee composed of 24 members (12 developed countries and 12 developing countries).
- A US$ 30 billion investment by developed countries between 2010 and 2012 ("fast-start climate financing"). The money will be divided between climate change adaptation and mitigation. Investment in adaptation will be prioritized for more vulnerable developing countries, such as those with lowest relative development, small islands and countries in Africa. In addition, the Agreement provides for a US$ 100 billion yearly outlay by industrialized countries until 2020 ("long-term financing"). Part of this financing will fund the Green Fund.
- Implementation of the Reducing Emissions from Deforestation and Forest Degradation Plus (REDD +) mechanism, which establishes financial compensation for countries that reduce the devastation or degradation of their forests.
- Creation of a Technology Executive Committee that will foster transmission of techniques and technologies from developed to developing countries, to support actions for climate change adaptation and mitigation.
- Presentation of a report on national climate change mitigation actions by developed countries, as a condition for such countries to benefit from multilateral agreements. Developing countries are also expected to submit GHG emissions inventory reports.

In spite of pessimism and opposition at the beginning of the negotiations in Mexico's easternmost state, mainly due to the Copenhagen flop in 2009, the Conference has advanced considerably with the Cancún Agreement. COP 16 also represents another step along the way to a new global accord on climate change that will replace the targets for reduction established by the Kyoto Protocol.

Decree 7,343 of 26 October 2010 – Regulations on the National Fund on Climate Change

Decree 7,343/2010 issues regulations on the National Fund on Climate Change (NFCC), created by Law N. 12,114/2009.

The decree creates the NFCC Management Committee, to be put in place by the Ministry of the Environment by January 25, 2011. The Committee will be in charge of approving its in-

ternal rules and regulations, the budget proposal and the annual plan for allocation of the NFCC's financial resources, and will establish guidelines and priorities for the allocation of financial resources, and approve climate change projects, among other duties.

The Ministry of the Environment will prepare the annual plan for allocation of the NFCC's financial resources and, after the Management Committee has approved the plan, publish it within 60 days after publication of the annual budget legislation. The plan will contain information on projects in progress, identify priority areas, themes and regions for implementation, and set out the means of selection, manner of allocation and amount of financial resources.

Under Law 12,114/2009 the objectives of the NFCC are to secure funding for plans and research and to finance projects for adaptation to climate change and its effects. The funding may be allocated to activities aimed at reducing Greenhouse Gas Emissions (GEE), such as combating desertification and deforestation, actions for education and training, development and dissemination of technologies, creation of public policies, support for sustainable productive chains, payment for environmental services, and recovery of degraded areas.

Decree 7,390 of 09 December 2010 – Regulations on the National Policy on Climate Change.

Decree 7,390/2010 issues regulations under Law 12,187/2009, which establishes the National Policy on Climate Change (NPCC).

The Decree establishes that the NPCC will be formed by plans of action for the prevention and control of the deforestation of biomes and sector plans for climate change adaptation and mitigation. The plans covered by the NPCC are the Plan of Action for Protection and Control of Deforestation in the Legal Amazon, the Plan of Action for the Prevention and Control of Deforestation and Wildfires in the Cerrado, the 10-Year Energy Expansion Plan, the Plan for the Consolidation of a Low-Carbon Economy in Agriculture, and the Plan for Carbon Reduction in the Steelmaking Sector.

The Decree provides that sector plans for other areas of economic activity will be created by December 2011 and will contain gradual emission reduction targets for 2020. The NPCC provides for the creation of sector plans for climate change adaptation and mitigation aiming at an economy that fosters low carbon consumption in the generation and distribution of electric energy, public urban transport, interstate cargo and passenger transport, mining, health services, farming, transformation industries, production of durable consumer goods, the fine and basic chemical industry, the paper and cellulose industry, and civil construction.

Under the NPCC, Brazil has voluntarily committed itself to reduce greenhouse gas emissions of between 36.1% to 38.9% by 2020. According to this target, the country's projected GHG emissions in 2020 are 3,236 million tonCO2eq.

To fulfill this national commitment, the NPCC provides for the following actions: (i) an 80%reduction in the yearly deforestation rates in the Legal Amazon, compared with the average reported between the years 1996 and 2005; (ii) a 40% reduction in the yearly deforestation rates in the Cerrado biome, compared with the average reported between the years 1999 and 2008; (iii) increased supply of hydroelectric power, and power for alternative renewable sources, especially wind farms, small hydroelectric and bioelectricity plants and biofuels, and enhanced energy efficiency; (iv) recovery of 15 million hectares of

degraded pasture; (v) a 4 million hectare increase in the integrated forestry and farming system; (vi) an 8 million hectare increase of no-till planting; (vii) a 5.5 million hectare increase in biological nitrogen fixation to replace the use of nitrogen fertilizers; (viii) a 3 million hectare increase in forest plantation; (ix) enhanced use of technologies for the treatment of 4.4 million m3 of animal waste; and (x) increased use of charcoal from planted forests in steelmaking and enhanced efficiency in the charcoal-making process.

Additional mitigation actions will be set out in further sector plans, Action Plans for the Prevention and Control of Biome Deforestation, the NPCC and governmental plans.

São Paulo: SMA Resolution 100 of October 14, 2010

SMA Resolution 100/2010 creates the framework for enforcement of the regulations under the State Policy on Climate Change ("SPCC").

The Resolution establishes the Executive Group for Compliance with the State Policy on Climate Change, whose aim is to offer technical support to the Environment Secretariat (SMA), to the Climate Change State Council, and to the State Policy on Climate Change Management Committee, as well as to promote actions by the Secretariat for the enforcement of the SPCC.

The SMA Planning Office is responsible for the SPCC provisions on Strategic Environmental Assessment, Ecologic-Economic Zoning, SPCC Assessment Indicators, Standards for Environmental Performance of Products, Sustainable Bidding Model, State Program for Sustainable Civil Construction, Strategic Plan for Emergency Actions and Risk Area Mapping, Incentives for Adaptation Actions, and the Green Economy.

The Office of Environmental Education, in turn, is in charge of establishing the content of the Program for Environmental Education on Climate Change. The Office of Biodiversity and Natural Resources will deal with matters related to the Remaining Forest Program, Payment for Environmental Services and multi-sector actions for the protection of biodiversity.

BIODIVERSITY

Nagoya: 10th Meeting of the Conference of the Parties to the Convention on Biological Diversity – COP 10

COP 10 was held in Nagoya, Japan, from October 18 to 29, 2010. The most important outcome of the meeting was the approval of the Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.

The result of six years of negotiation, the Nagoya Protocol establishes how the Conference Parties will allow access to their genetic resources and how the benefits resulting from the use of genetic resources will be shared. It also provides for mutual cooperation in scientific and technological matters.

The Protocol emphasizes the contribution of traditional knowledge held by indigenous and local communities to the Parties' genetic resources, and recognizes the sovereignty of the Parties with respect to genetic resources and the role of domestic legislation in defining access to genetic resources and the sharing of benefits arising from their use.

The Nagoya Protocol will come into effect 90 days after it has been ratified by at least 50 countries that are party to the Convention on Biological Diversity.

The Convention Parties also adopted a new Strategic Plan, which establishes targets reducing loss of biodiversity to be achieved by 2020. The parties agreed to increase national parks and other protected land areas to 17% of the globe's surface (currently 12.5%) and to increase protected marine areas to 10% (currently 1%).

In Brazil, access to and use of genetic resources, and the sharing of benefits from use of genetic resources, is governed by Provisional Measure 2186-16/01. The Provisional Measure also created the Genetic Heritage Management Council (CGen), the regulatory authority responsible for authorizing access to and remittance of genetic resources. There are currently nine bills before the National Congress that deal with access to genetic resources. The draft legislation includes penal sanctions for crimes against the country's genetic heritage, in order to fight biopiracy in Brazil.

Brazilian legislation on the sharing of benefits from the use of genetic resources has been the subject of considerable debate recently, especially after the federal environmental agency, IBAMA, issued 64 fines totaling R$21 million against the cosmetics company Natura for using Brazilian biodiversity resources without CGen's authorization. The business community argues that CGen's authorization process is slow and incompatible with economic realities. Still, with the adoption of the Nagoya Protocol, the trend is to even stricter legislation on the use of genetic resources.

WATER RESOURCES

Federal Law 12,334 of September 20, 2010 – Dam Safety.

Federal Law 12,334/2010 establishes the National Dam Safety Policy (NDSP) and creates the National Dam Safety Information System (NDSIS).

The legislation applies to all water, tailings and industrial waste dams that meet at least one of the following criteria: (i) a height equal to or greater than 15m; (ii) a capacity equal to or greater than 3 million cubic meters; (iii) the dam reservoir contains hazardous waste; (iv) the potential damage associated with the dam, in economic, social or environmental terms, or to human life, is categorized as medium or high.

Under article 17 of the NDSP, the dam owner is required to: I – provide the resources necessary to ensure the safety of the dam; II – inform the appropriate regulatory agency of any change that may reduce the dam's discharge capacity or compromise the safety of the dam; III – maintain a specialized dam safety service; IV – prepare a Dam Safety Plan and keep the Plan up-to-date; V – carry out safety inspections and reviews; VI – prepare an Emergency Action Plan, if required; and VII – register the dam in the NDSIS and keep the dam's registration information up-to-date.

Dam owners are required to submit a Technical Report to the appropriate regulatory agency by September 21, 2012. The Report must specify the action to be taken to implement the Dam Safety Plan and establish a schedule for implementation.

Dams that do not meet safety requirements will be restored or deactivated.

CONTAMINATED AREAS

Minas Gerais: COPAM/CERH-MG Joint Resolution 02 of September 8, 2010 – Contaminated Areas.

The Joint Resolution adopted by Environmental Policy Council and the Water Resources Council of the State of Minas Gerais establishes the State Program for Management of Contaminated Areas, setting out rules and procedures for protection of soil quality and management of chemically-contaminated areas.

Under the Program, contaminated land or land at risk of contamination is classified as an Area at Risk of Contamination, a Suspected Contamination Area, a Contaminated Area under Investigation, a Contaminated Area under Intervention; a Monitored Area under Rehabilitation, or an Area Rehabilitated for Declared Use.

The State's List of Contaminated Areas is composed of all land classified as a Contaminated Area under Investigation, a Contaminated Area under Intervention, or a Monitored Area under Rehabilitation.

The status of land on the Contaminated Area List, and any restrictions on use of Rehabilitated Areas, are registered against the title to the property. In addition, since July 1, 2010, applications to renew environmental Operation Licenses for potentially contaminating activities must be accompanied by an Environmental Performance Assessment Report, containing information on the management of contaminated areas and areas suspected of contamination.

Land will be classified as an Area at Risk of Contamination when it is the site of activities that by their nature can lead to contamination of the soil or underground water and consequent damage to human health and the environment. Once classified as "at risk", the regulatory agency can ask the person responsible for the potentially contaminating activities to monitor the land and surrounding area.

If a Preliminary Assessment by the regulatory agency shows evidence of contamination, the land will be classified as a Suspected Contamination Area and the business owner will be required to carry out a Confirmatory Investigation. If contamination is confirmed, the land is classified as a Contaminated Area under Investigation and the area must be rehabilitated within six years.

If contamination is confirmed, a Detailed Investigation and Risk Assessment will be conducted. If the detailed investigation reveals chemical substances above acceptable limits, or risk to human health, the landowner must immediately initiate procedures to remove the contaminant, and notify the regulatory agency. The land will be classified as a Contaminated Area under Intervention and the landowner will be required to submit a Contaminated Area Rehabilitation Plan to the agency, and to carry out the plan.

Land is classified as a Monitored Area under Rehabilitation when the risk assessment investigation shows that contamination is within acceptable levels, or contamination has been reduced to acceptable levels. In this case the landowner is required to prepare a Rehabilitation Monitoring Plan, providing for monitoring for a period of at least two years, with inspections every six months.

If the monitoring program confirms the elimination of the hazard or the reduction of contamination to acceptable levels, the land will be classified as a Rehabilitated for Declared Use.

TAX BENEFITS

Bill 3470/2008 – Income tax deduction for environmental projects

On November 10, 2010, the House of Representatives' Commission on Economic Development, Industry and Commerce approved the text of Bill 3470/2008, dealing with the "Conscious Company" Program and income tax deductions.

Under the proposed Program, companies that pay income tax under the actual profit method will be entitled to deduct amounts spent on environmental projects (whether related to the ecology, architecture and sustainable urban planning or pollution reduction) and on projects directed to recognizing the value of workers and the human person. The deduction for each project is limited to 4% of tax owed, with an overall limit of 10% for all projects.

The bill will now be reviewed by the Commission on Finance and Taxation and the Commission on the Constitution, Justice and Citizenship.

ENVIRONMENTAL SERVICES

Acre: State Law 2308/2010 – Environmental Services

In October 2010, the State of Acre created the State System of Environmental Services Incentives, the Environmental Services Incentives Program (Carbon ESI) and other Environmental Services and Ecosystem Products Programs under State Law 2308/2010.

The legislation defines environmental services as "significant ecological functions and processes generated by ecosystems, in terms of maintaining, rehabilitating or improving environmental conditions, in the interest of the well-being of all human societies." Environmental services can be directed to supply (supply of goods and material products), support (maintaining soil quality, biodiversity and so on), regulation (carbon capture, maintaining the water cycle, erosion control, etc.) or cultural services.

The Carbon ESI was created to promote reductions in emissions of greenhouse gases resulting from deforestation and forest degradation, and to protect and maintain stocks of forest carbon. In other words, the Carbon ESI is a REDD+ program, as they are known internationally. The legislation also provides for regulations on programs to conserve socio-biological diversity, water resources and landscapes, and programs to make use of traditional knowledge of the ecosystem and to conserve and improve soil quality. Funding for the programs will be provided by the State Forest Fund, various types of incentives, the National Climate Change Fund and funds from the sale of credits generated by environmental services and funds.

At a recent meeting attended by the governors of the states of Acre, California (USA) and Chiapas (Mexico), held on November 16th, the governors signed a memorandum of understanding to create a working group that will meet in December 2010 and October 2001 to assess and issue recommendations on the viability of REDD+ projects and rules for the sale of carbon credits between the parties.

HAZARDOUS PRODUCTS

Bill 7173/2010 proposes an amendment to Law 11,442/2007 to create a National Register of Highway Transporters of Hazardous Products, to be maintained by the National Land Transportation Agency and the federal environmental agency. The Bill has been approved by the House of Representative's Commission on the Environment and Sustainable Development, and has been sent to the Transportation Commission.

NATURAL GAS

Decree 7382 of December 2, 2010 – Regulations under the Natural Gas Law

Decree 7382/2010 issues regulations under Law 11,909 (known as the "Natural Gas Law") governing the transportation, distribution, treatment, liquefaction, processing, storage and sale of natural gas.

In environmental matters, the Decree ratifies the provisions of Law 11,909 on the natural gas concessionholders' liability for environmental damage and their obligation to obtain the required environmental licenses. Article 24§1 of the Decree provides that concessionholders are required to pay for environmental damage that results from its business activities and, at the demand of environmental authorities, must carry out environmental recuperation measures. Concessionholders must also obtain the environmental licenses required for their business or activity (art. 27 (VI)), adopt measures to protect the environment and preserve natural resources (art. 32 (II)), obtain licenses, authorizations and approvals required for construction and operation of natural gas pipelines (art. 32 (VIII)). Businesses that were in the licensing process as of March 5, 2009 will be authorized by the National Petroleum, Natural Gas and Biofuels Agency (ANP), provided the requirements for the grant of authorization have been met, pursuant to art. 41§1 of the Decree.

This newsletter is merely informative, presenting only a general overview of the subjetcs. Thus, it is not a legal opinion.

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