Environmental licensing and climate move on the new regulatory playing field

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Brazil's regulatory landscape is shifting fast. With the General Environmental Licensing Law, the Brazilian Greenhouse Gas Emissions Trading System (SBCE), and COP30 in Belém all converging, climate issues have moved from the sidelines to the heart of the debate.

The rules of the game have become more complex

There's broad agreement on the need to cut greenhouse gas (GHG) emissions—but what's the real role of environmental licensing in this equation? Our firm's survey of eight jurisdictions reveals that GHG mitigation is usually handled by dedicated climate regulation. When licensing does come into play, it's typically through environmental impact assessments, without mandatory emissions reduction targets set by the licensing authority.

The European yardstick and the domino effect

On the international stage, the European Union has raised the bar for climate regulation. The European Climate Law, enacted four years ago, made net-zero by 2050 and a minimum 55% reduction in emissions by 2030 legally binding targets. To protect its internal competitiveness, the EU introduced the Carbon Border Adjustment Mechanism (CBAM)—essentially, a carbon price for imports. The CBAM is already in transition: until 2025, importers must report embedded emissions but pay no fees; starting in 2026, certificates linked to the European carbon price (EU ETS) will be required for sectors like steel, cement, aluminum, fertilizers, electricity, and hydrogen.

The global scoreboard for climate compliance

Countries around the world are taking different approaches to integrating climate considerations into environmental regulation. In California, environmental studies must include emissions analysis (under CEQA), and the state has been operating a regulated carbon market since 2013. Canada combines a carbon tax with an intensity-based pricing system (OBPS), both of which are integrated into impact assessments for major projects. Germany links climate targets to licensing through its Emissions Control Act, requiring mitigation and monitoring plans. Australia's Safeguard Mechanism sets declining limits for large emitters, with mandatory reporting and offset

credits.

The common thread? Climate disclosure is required, but environmental licensing isn't overloaded with targets that are better addressed by national climate policy.

Brazil's playbook

Environmental licensing in Brazil is broad in scope, covering environmental, social, and economic impacts. Legally, there's room to interpret "climate" as part of the "environment", drawing on the Federal Constitution, the National Environmental Policy, and the National Climate Change Policy, all reinforced by Brazil's commitments under the Paris Agreement. However, there's still no explicit rule requiring climate analysis in licensing, and national climate laws don't delegate emissions control to environmental agencies.

São Paulo and Rio de Janeiro are exceptions. Their State Climate Change Policies require licensing to address climate objectives. In São Paulo, environmental licensing is integrated with other climate management tools, including the state's Climate Reporting system, Strategic Environmental Assessment, and Public Emissions Registry. The reduction of GHG emissions should not be treated in isolation but incorporated into pollution control and air and water quality management, as part of the state's contaminant control strategy. In Rio de Janeiro, installation and operation licenses for activities with significant GHG emissions can only be issued if an emissions inventory and mitigation or compensation plan are presented.

Both states require annual GHG inventories for certain sectors, covering Scopes 1 and 2 (mandatory, covering direct and indirect emissions within the organization) and Scope 3 (voluntary, for indirect emissions in the organization's value chain), using recognized methodologies like ISO 14064-1 and the GHG Protocol, with fixed deadlines and the possibility of independent verification.

Adaptation: The next phase of the game

If until now the focus has been on mitigation, adaptation is moving into the spotlight. Terms of reference in environmental licensing increasingly require climate vulnerability analyses, assessments of extreme event scenarios, and measures to boost resilience, such as water management, urban drainage, and protection of critical infrastructure.

This shift aligns with Brazil's Sustainable Taxonomy, approved in early September, which sets climate criteria for access to green finance, including both mitigation and adaptation indicators. In practical terms, concession contracts and financial transactions are beginning to include climate performance and risk allocation clauses, directly affecting capital costs and eligibility for sustainable credit lines. Raising the bar means more robust licenses, containing technical requirements for adaptation, integration with sector plans, and auditable data.

As environmental licensing, the SBCE, and international climate standards

converge, the priorities must be legal certainty, regulatory predictability, and competitiveness, while avoiding conflicts and overlaps in regulatory authorities. Each one of these elements is essential to ensuring effective climate policy. The challenge is significant—but those who move early on climate compliance can turn obligation into competitive advantage, opening doors to new capital and markets.

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