

Legal Uncertainty Surrounding Final Waste Disposal: A Close Look at Brazil's STF Judgment in ADC 42

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The STF's decision in ADC 42 raises significant concerns within Brazilian environmental law. In 2018, the Court ruled the term "waste management" in Article 3, Section VIII(b) of the Forest Code—outlining an exceptional list of public utility activities allowed in EPAs—as unconstitutional. This decision sparked concerns about potential significant environmental impacts such as soil and water contamination, although the terms "waste management," "landfill/sanitary landfill," and "dump" were used interchangeably. Justices Gilmar Mendes and Alexandre de Moraes differentiated these terms, recognizing that landfills are essential infrastructure for sanitation and environmentally appropriate waste management.

Furthermore, the persistence of the term "sanitation" in the same legal provision has led to divergent interpretations of the ruling. Following these developments, motions for clarification were filed, and the Justices debated whether landfills should be equated with dumps and whether those already established in EPA could continue operating or would need to be decommissioned, setting a timeline of three to ten years for gradual compliance.

Notably, the judgment did not address other waste management activities, such as sorting centers, leaving a gap in their legal treatment, which could lead to varied interpretations by environmental licensing bodies and the public prosecutor's office.

In February 2024, Justice Gilmar Mendes requested that the case should be moved from virtual to in-person sessions, resulting in the dismissal of previously issued opinions, except for the one from the retired Justice Rosa Weber.

This shift opens the door for Justices to revisit their initial positions and allows for civil society entities to seek admission as *amicus curiae*.

Historically in Brazil, waste disposal has occurred in areas known as dumps, which lack environmental controls, causing severe environmental contamination and public health risks. With the introduction of the National Solid Waste and Basic Sanitation Policies, sustainable practices like waste reduction, reuse, and recycling have been promoted, aligning with responsible production and consumption. Proper management of urban solid waste includes collection, transportation, sorting, and final disposal in sanitary landfills—controlled, licensed sites adhering to strict environmental standards to prevent soil and groundwater contamination and treat gases from waste decomposition. Goals have been established to replace dumps with sanitary landfills for final waste disposal, a solution also shared with major private sector waste generators. Not only have sanitary landfills

become an environmentally suitable solution, but they also offer competitive advantages for the economy's decarbonization, such as generating power from the capture and processing of biomethane gas from organic waste decomposition.

The current scenario remains uncertain. The STF's final decision will carry significant implications, particularly since the country's main landfills is located in or impacts EPA.

Regardless of the outcome, the urgency to ensure legal certainty to encourage investments in sanitation and waste management infrastructure is evident, aiming to protect the environment and ensure the well-being of communities for present and future generations.

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