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## Brazil Legal Highlights (Volume II, 2013)

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**Latin American Region Environmental Report, Second Quarter, 2013**

### NATIONAL DEVELOPMENTS

#### Brazil Establishes Registry of Environmental Service Providers

Continuing a series of revisions to its environmental registries, Brazil's environmental enforcement agency, IBAMA, recently expanded the Federal Technical Registry of Potentially Polluting or Environmental Protection Activities and Instruments (*Cadastro Técnico Federal de Atividades e Instrumentos de Defesa Ambiental*; "CTF/AIDA"). IBAMA Normative Instruction No. 10 ("NI 10"), published May 28, 2013, requires companies and professionals that provide specified environmental services to register as providers in the federal listing. Although the CTF/AIDA has existed since approximately 2009, it previously lacked a formal regulation. With the publication of NI 10, registration in the CTF/AIDA is mandatory and failure to comply is subject to a fine of R\$ 50 for an individual and up to R\$ 9,000 for a company. In covered fields, registration will soon be a minimum qualification needed to operate.

Under NI 10, companies must register if they: (1) manufacture, sell or maintain monitoring, test and control equipment; (2) manage solid wastes; or (3) generate, manage, transport, store or dispose of hazardous wastes. (See Annex I.) The list of professions included in the CTF/AIDA is long, and includes many trades that are not principally environmental, such as architects, economists, pharmacists and physicians, in addition to those who work in more clearly environmental fields such as civil engineering, industrial chemistry and meteorology. (See Annex II.) For such professionals, the registration requirement is triggered by work in an environmental field. Registration in the CTF/AIDA is free online (through [www.ibama.gov.br](http://www.ibama.gov.br)), and primarily consists of providing personal or corporate identification along with a declaration of the covered activities engaged in.

Reference Sources (in Portuguese):

- [IBAMA Normative Instruction No. 10/2013](#)

#### Brazilian Government Proposes New Mining Law and Regulatory Agencies

Brazil's executive branch has introduced a bill (No. 5807/2013; the "Bill") that would restructure the regulatory oversight of its mining industry. The Bill would replace the National Department of Mineral Production (*Departamento Nacional de Produção Mineral*; "DNPM") with a new National Mining Agency (*Agência Nacional de Mineração*; "ANM") and National Mineral Policy Council (*Conselho Nacional de Política Mineral*; "CNPM"). Unlike the existing DNPM, the proposed ANM would be an independent agency with broad authority over industry standards of practice. The Bill would move the DNPM's current role in auctioning lease blocks, supervising mining activities, and enforcing concession contracts to a Concession Authority (*Poder Concedente*)—an entity that the Bill does not clearly define, and which may be an office within the proposed ANM. As in many other spheres of Brazilian administrative law, the CNPM would be a policy-making body with representation from various government agencies, the regulated industry, and interested segments of society, although the Bill does not propose a specific composition for this body.



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The Bill would establish a set of obligations to be incorporated in concession contracts, including deadlines for conducting each of the basic phases of mining activity (i.e., research, exploration, development and commercial production), financial guarantees, and environmental criteria for the restoration of mine sites upon closure. Violations of concession contracts would be subject to penalties of R\$ 10 million to 100 million (approximately US\$ 5 million to 50 million). The Bill would significantly increase the governments' potential mining income by raising the maximum royalty rate from 2% of a mine's net sales to 4% of its gross sales. Collected royalties would be divided among the three levels of government: 12% federal, 23% state, and 65% municipal.

*Reference Sources (in Portuguese):*

- [Brazil Chamber Bill No. 5807/2013](#)

### **Brazil Sets Standards for Alternative Aviation Fuels**

On June 25, 2013, Brazil's National Petroleum Agency (*Agência Nacional do Petróleo*; "ANP"), published Resolution No. 20 establishing specifications for alternative aviation kerosenes (*querosenes de aviação alternativos*), allowing for the sale and use of fuels comprised of mixtures of traditional, oil-based kerosene and up to 50% alternative kerosenes. Alternative kerosenes include those derived from biomass or from non-renewable sources other than oil, such as coal and natural gas. The commercially allowed mixed fuels may be sold only by producers authorized by ANP, only when certified as meeting certain minimum quality standards, and may not be imported into Brazil. Resolution 20 includes as an annex ANP Technical Regulation No. 1/2013, which defines the criteria that alternative aviation kerosenes must meet.

*Reference Sources (in Portuguese):*

- [ANP Decree No. 20/2013](#)

## **BRAZILIAN STATE DEVELOPMENTS**

### **São Paulo Issues Implementing Regulation for Contaminated Site Law**

On June 6, 2013, São Paulo's environmental enforcement agency, CETESB, issued Decree No. 59263 (the "Decree") to implement its 2009 law (No. 13577; the "Law") on "standards and procedures for the protection of soil quality and management of contaminated sites" (*diretrizes e procedimentos para a proteção da qualidade do solo e gerenciamento de áreas contaminadas*). Certain aspects of the Law were evidently modeled on the U.S. Superfund law, in particular the State Fund for Prevention and Remediation of Contaminated Sites (*Fundo Estadual para Prevenção e Remediação de Áreas Contaminadas*; "FEPRAC"), which enables CETESB to step in and remediate sites, then sue to recover costs from the private parties deemed "legally responsible" for the contamination. Those who may be named as legally responsible parties, jointly liable under the Law, are: 1) those who caused the contamination and their successors; (2) owners; (3) operators; (4) those in effective control of the site; and (5) direct or indirect beneficiaries of the site.

The Decree elaborates on the remediation process set forth in the Law, under which potentially contaminated sites are identified and entered in the Registry of Contaminated Sites (*Cadastro de Áreas Contaminadas*), then investigated, classified and remediated. Once a site has been listed, the legally responsible parties are named and must bear the costs of shepherding the site through various stages of evaluation and recovery, measuring contaminant concentrations against a set of reference values, until the site ultimately qualifies as an Area Rehabilitated for its Declared Use (*Área Reabilitada para o Uso Declarado*). The Decree directs the State Secretary of Environment to determine which types of activities have the potential to generate contaminated sites. Facilities that conduct these activities will then be required at the time of licensing, or license renewal, to pay a one-time "environmental compensation" (*compensação ambiental*) fee, in an amount to be determined by CETESB, to contribute to the FEPRAC. The Decree provides that such fees can be reduced or eliminated if the licensee adopts measures to mitigate the risk of contamination.

*Reference Sources (in Portuguese):*

- [São Paulo Decree No. 59263/2013](#)
- [São Paulo Law No. 13577/2009](#)

### **São Paulo Revises Its State Air Quality Standards and Stationary Source Regulations**

São Paulo has taken another step toward tighter regulation of air emissions with the publication, on April 24, 2013, of Decree No. 59113 (the "Decree"), establishing new air quality standards (*estabelece novos padrões de qualidade do ar*). The Decree is largely based on a June 2012 regulation of the State Environmental Council

(*Conselho Estadual do Meio Ambiente*; “CONSEMA”), Deliberation No. 25, but issued by the higher authority of the governor’s office. The Decree adopts the same basic structure as the CONSEMA regulation, setting statewide air quality standards (*Padrões de Qualidade do Ar*; “PQARs”) for several pollutants, and emissions control requirements for stationary and mobile sources in areas that do not meet the PQARs. The state environmental enforcement agency, CETESB, which administers existing air regulations, has one year to develop detailed plans to implement Decree.

The pollutants regulated by the Decree are sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone, lead, volatile organic compounds, and four classes of particulate matter: large (PM<sub>10</sub>), small (PM<sub>2.5</sub>), total, and smoke (*fumaça*). PQARs for each pollutant will begin with a Stage 1 Intermediate Target (*Meta Intermediária Etapa 1*; “MI1”), then progress through successively stricter stages to a Final Standard (*Padrão Final*; “PF”). The PQARs will apply to all the state’s Air Quality Control Regions (*Regiões de Controle de Qualidade do Ar*), and subregions that have at least one air quality monitoring station. Subregions classified as having low air quality will be issued emissions control plans for both mobile and stationary sources (*Plano de Redução de Emissão de Fontes Estacionárias*; “PREFE”). Stationary sources located in subregions that exceed an applicable standard will be classified on an “ABC Curve,” with “Class A” sources being the highest emitters. To renew their operating licenses, Class A sources will be required to install emissions control systems that meet the “best available practical technology” (*melhor tecnologia prática disponível*) standard. Non-Class A sources may ultimately be required to reduce emissions as well, if the subregion continues to exceed an applicable air quality standard. For subregions that do not meet air quality targets, the Decree establishes a system of credits to be issued to sources, including vehicle fleets, that reduce their emissions. Proposed new and modified stationary sources will be required to obtain emissions credits to offset their projected emissions before the issuance of the construction permit (*Licença de Instalação*), and to implement the “most efficient emissions control technology” (*tecnologia mais eficiente no controle das emissões*).

*Reference Sources (in Portuguese):*

- [São Paulo Decree No. 59133/2013](#)
- [São Paulo CONSEMA Deliberation No. 25/2012](#)

### **São Paulo Requires Use of Biofuels in Government Vehicles and Emergency Generators**

On April 3, 2013, Governor Geraldo Alckmin signed Decree No. 59038 (the “Decree”), establishing the São Paulo State Biofuels Program (*Programa Paulista de Biocombustíveis*). The Decree establishes procurement rules requiring in most cases that the vehicles purchased or leased by state agencies be capable of running on biofuels, and that the fuels used have at least a certain minimum biofuel content. The majority of passenger vehicles sold in Brazil are “flexible,” meaning that their engines will run on gasoline and/or ethanol in any proportion. For such vehicles in the state government fleet, the Decree requires that ethanol be used exclusively. For diesel vehicles, the Decree requires use of diesel with at least 20% biodiesel content. State-owned emergency generators are also required to operate on diesel with at least 20% biodiesel content. Government contractors are required to observe the same biofuel requirements that apply to state agencies. Each of the Decree’s principal requirements is subject to exceptions in case of unavailability of the required vehicle- or fuel-type, or other written justification. The Decree goes into effect 180 days after its publication, or October 1, 2013.

*Reference Sources (in Portuguese):*

- [São Paulo Decree No. 59038/2013](#)

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