ENVIRONMENT

CLIENT ALERT

JANUARY/2019

ENVIRONMENTAL, RIO DE JANEIRO – WATER DAM SAFETY PLAN

On January 22, 2019, the Resolution of the State Environmental Institute (INEA) No. 165, dated December 26, 2018, was published on the Official Gazette of the State of Rio de Janeiro, establishing guidelines for drafting the Dam Safety Plan (PSB), regulating national and state dam's security policies within its jurisdiction.

INEA's authority to inspect the dams located in state rivers licensed by the environmental body itself is based on Article 17 of Complementary Law No 140/2011.

It should be noted that the Resolution in question applies only to dams inspected by INEA, classified according to the Risk Category Matrix and Associated Potential Damage. The Dam Safety Plan (PSB) should be composed of up to 5 (five) volumes, detailed in the Annex of the Resolution[1], which encompasses:

I. General Information and Technical Documentation of the enterprise;
II. Plans, Procedures, Records and Controls;
III. Periodic Review of Dam Safety;
IV. Emergency Action Plan;
V. Executive Summary of the Dam Safety Plan.

The authorization for intervention must be submitted before the environmental agency of São Paulo ("CETESB"), that will analyze on a case-by-case basis.

The regularization might be performed through environmental compensation once the authorization is granted.

The PSB must be prepared and submitted to INEA before the first filling begins. However, in cases where the first filling of the dam has already occurred, the PSB must be prepared within a maximum period of 01 (one) year from the publication of this normative act2. Regarding the periodicity and deadline for the preparation of the Regular Security Inspection (ISR) report, this must be carried out by the entrepreneur, at least once a year,

[1] Resolution Inea nº 165, December, 26 of 2018, Articles 2, 4 and 5.
[2] Article 7.

PRACTICE AREA
Environment

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and INEA may, by means of a duly motivated act, require complementary ISR whenever justified[3].

In the scope of the Special Security Inspection (ISE) and its ISE report, the inspection must be elaborated during the construction, deactivation and in cases of incidents and accidents[4]. The circumstances that oblige the entrepreneur to carry out the ISE are foreseen in article 24 of the Resolution, highlighting, among the eight hypotheses, in the case of fast drawdown of the reservoir, as well as in situations of decommissioning or abandonment of the dam.

The Resolution also establishes periodicity and timeframe for the preparation of the Periodic Safety Review of the Dam (RPSB), in addition to providing for the Emergency Action Plan (PAE) for all dams in Federal Law No 12.344/2010 (establishes the National Safety Policy for the Security of Dams).

Ten measures were envisaged to be taken by the entrepreneur in the scope of the Security Plan, including the provision of PAE, internal training and participation in simulations of emergency situations, together with municipal governments, Civil Defense and potentially affected population.

It should be noted that existing dam projects that do not yet have the right to use water resources for the purpose of reservation must submit a request for grant to INEA within a maximum period of 90 (ninety) days. The same deadline is granted for the opening of a process for environmental regularization with INEA, in cases where existing dam entrepreneurs do not yet have their structures regularized.

Finally, it is worth noting that non-compliance with the provisions of the Resolution subjects' violators to the penalties established in the pertinent legislation.

The environmental team of Veirano is highly specialized in the subject and is available to answer questions and advise on the subject.

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[3] Article. 17, §2º.
[4] Article 20, Sole Paragraph.