

Newsletter

Environment and Climate Change

Retrospective 2022 - Outlook for 2023

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The National Plan for Environmental Regularization of Rural Properties and the changes in the deadline to join the Environmental Regularization Program

On December 26, 2022, Provisional Measure No. 1150/2022 was published, changing the deadline for those enrolled in the Rural Environmental Registry (CAR) to join the Environmental Regularization Program (PRA). According to the modification instituted by the Provisional Measure, the property owner or holder of rural properties will have now 180 days to join the PRA after being summoned by the competent environmental agency.

The Provisional Measure must be voted on by April 2, 2023, and the deadline for submitting amendments will end on February 3, 2023.

Furthermore, with the objective of promoting the implementation of the Forest Code, the National Plan for Environmental Regularization of Rural Properties (RegularizAgro) and its Steering Committee were instituted in 2022, by means of Decree 11.015/2022. Among the objectives of RegularizAgro, are the promotion and improvement of the integration of information systems and databases to enhance the CAR's application; the coordination to ensure the institutional and organizational alignment required to implement the PRA; the updating and improvement of the National Rural Environmental Registration System (Sicar); as well as the promotion of actions aimed at the productive environmental recovery of rural properties.



The regulation of Green Hydrogen

On June 23, 2022, the National Energy Policy Council published Resolution No. 6 that instituted the National Hydrogen Program and created the Committee of the National Hydrogen Program. As stated in article one, the Resolution aims at strengthening the hydrogen market and industry as an energy vector in Brazil.

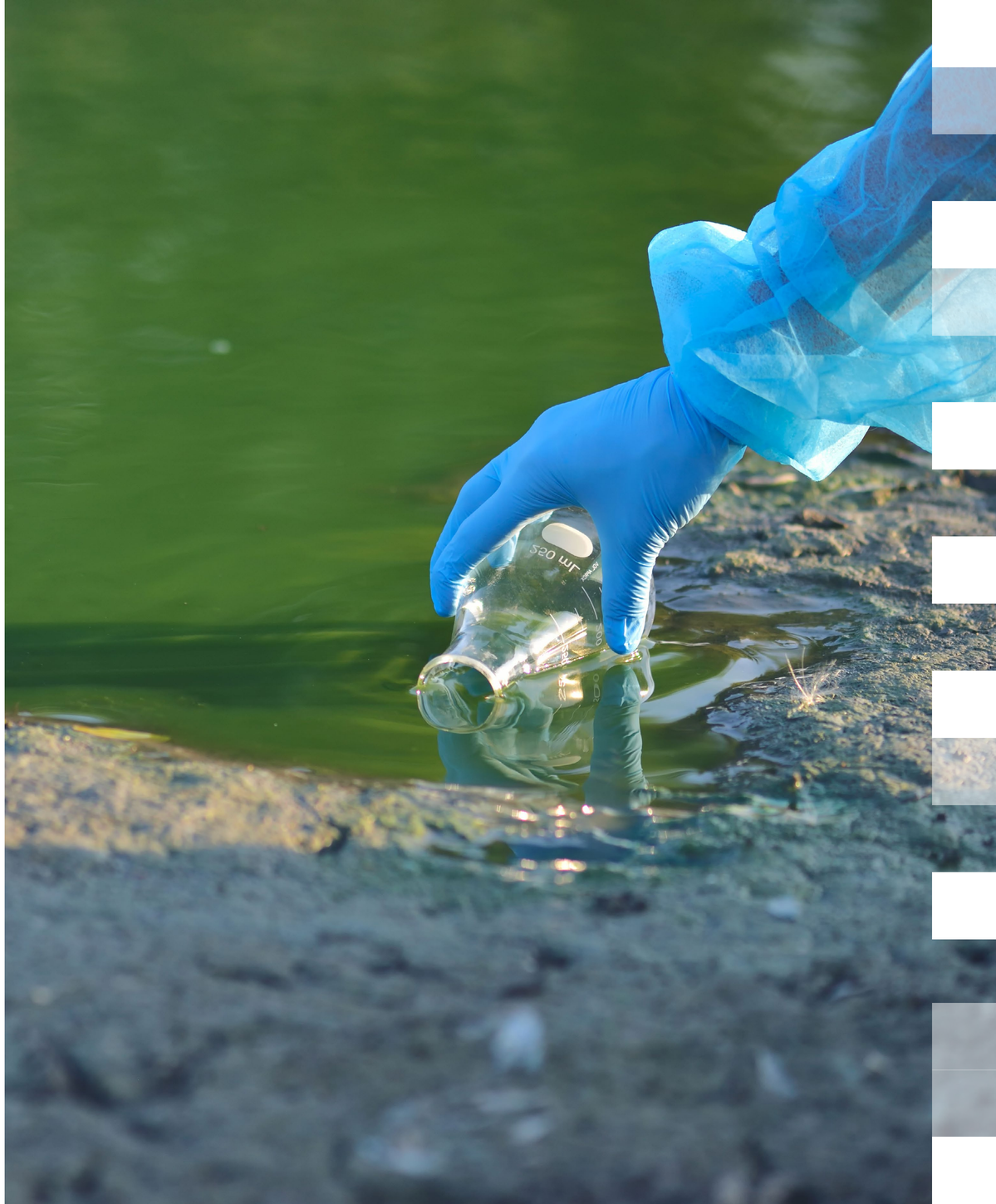
Besides the creation of the National Hydrogen Program, there is currently a Bill of Law in progress in the Senate (Bill No. 725/2020) that aims at introducing hydrogen as an energy source in Brasil in order to encourage its sustainable use. Considering that the climate change and decarbonization agenda has been gaining momentum, regulations on green hydrogen may have new developments throughout 2023.



IBAMA's action in the remediation of contaminated areas

On December 30, 2022, IBAMA Ordinance No. 164/2022 was published with the purpose of establishing the thematic and conceptual scope of IBAMA'S actions in Remediation of Contaminated Areas. The Ordinance, which came into effect on January 2nd, 2023, establishes that the specific guidelines for the management of contaminated areas of enterprises licensed by IBAMA, as well as the technical references for the execution of investigation and remediation actions will be defined later, in specific publications from IBAMA's Environmental Quality Directorate.

The norm mentions as reference, among others, CONAMA Resolution 420/2009 and CETESB's Contaminated Areas Management Manual.



Alteration of Federal Decree No. 6,514/08, which provides for administrative infractions and sanctions

On January 2nd, 2023, Federal Decree No. 11,737/2023 was published, amending Federal Decree No. 6,514/08, which provides for administrative infractions and penalties to the environment, as well as establishes the federal administrative proceeding to investigate these infractions.

The main provisions that were altered refer to the federal administrative proceeding for the investigation of environmental violations and the rules that dealt with environmental conciliation were revoked. There was no change to the legal types or the amount of fined provided by the legislation.



The measures and results from STF's Green Package

The Green Package is the set of seven lawsuits that deal with socio-environmental issues, that concern acts of the Federal Government related to the Brazilian environmental laws, inspection actions by environmental agencies, and in particular deforestation in the Amazon.

In these actions, the STF determined, in summary (i) the resumption of social participation on the board of the National Environmental Fund, (ii) the adoption of the necessary administrative measures for the reactivation of the Amazon Fund, (iii) the unconstitutionality of the automatic granting of an environmental license for medium-risk companies, and (iv) the issue of a new CONAMA resolution related to air quality standards.

Regarding the status of the "Green Package", only the action for non-compliance with a fundamental precept nº 760 is pending trial.



Carbon Border Adjustment Mechanism – The European Union

In December 2022, the members of the European Union Parliament ("EU") signed a provisional agreement on the implementation of the Carbon Border Adjustment Mechanism ("CBAM").

This is a tax mechanism related to products exported to the EU, aiming to prevent so-called "carbon leakage", which occurs when emissions reduced by the European Union are offset by emissions from exporting countries whose decarbonization policies are less ambitious than the European ones.

Under CBAM, companies importing products into the EU will be required to purchase CBAM certificates to promote price equality. In this regard, such companies are expected to pay the difference between the price of carbon in the country of production and the price of carbon allowances under the EU Emissions Trading System ("ETS"). Thus, the expectation of the European Parliament is that only countries with the same climate change mitigation ambitions as the European Union will be able to export to the EU without having to purchase CBAM certificates.

Among the products covered by the scope of CBAM are: iron, steel, cement, fertilizers, electricity, hydrogen, and aluminum as well as their by-products such as screws and bolts.

The agreement must be formally validated by Parliament and its Council. If approved, the new regulation will come into force in October 2023, with a transition period during which importers' obligations will be limited to information reporting.



Resolution CVM 175/2022 – Greenwashing and Carbon Markets

In December 2022, Resolution No. 175 (“Resolution”) of the Brazilian Securities and Exchange Commission (“CVM”) was published.

The resolution aims to regulate the activities of constitution, operation and dissemination of information from investment funds, as well as regulate the provision of services related to them.

According to the Resolution, investment funds will be governed by their respective regulations. In this sense, the fund’s regulations and the descriptive annex of the class of shares whose denomination contains reference to environmental, social and governance factors, such as “ESG”, “ASG”, “environmental”, “green”, “social”, “sustainable” or any other terms related to sustainable finance, must observe specific requirements, such as specifying the environmental, social or governance benefits expected from such an initiative and how the investment policy seeks to originate them.

The Resolution prohibits the use of the mentioned terms, for purposes of qualifying such funds, if the investment policy integrates environmental, social and governance factors to the activities related to portfolio management but does not seek to originate social and environmental benefits.

In addition, Regulatory Annex I of the Resolution, which deals with the specific rules for equity, foreign exchange, multimarket and fixed-income investment funds, establishes that decabornization credits (“CBIOs”) and carbon credits are considered as financial assets, if they are registered in a registration and financial settlement system authorized by the CVM or the Brazilian Central Bank and/or traded in markets managed by an organized market entity authorized by the CVM.

The Resolution will come into force on April 03, 2023.



The European Union and the Traceability of Products

In December 2022, the members of the European Union Parliament ("EU") reached an agreement on a new regulation related to the traceability and origin of products traded in the European Union market.

This is an initiative whose main objective is to prohibit the availability on the European market of commodities/products that (a) are not deforestation-free and (b) have not been produced in accordance with the relevant legislation of the producing country. According to the European Parliament, considering that the European Union is a major consumer of goods and products, the measure presents a significant potential impact.

The regulation covers the following products/commodities: palm oil, cattle, soy, coffee, cocoa, wood and rubber. With the approval of the regulation, all those interested in importing products to the European market will have to prove their production conditions and traceability, conducting due diligence in this regard.

Currently, the formal adoption of the regulation by the European Parliament and the Council of the European Union is awaited for it to enter into force. After that, stakeholders will have eighteen months to implement and adapt to the new provisions.



The effects of the Federal Decree that regulated the National Solid Waste Policy published in 2022 and the implications on reverse logistics (take back) systems throughout Brazil

On January 12, 2022 Federal Decree No. 10,936/2022 ("Decree") was published, which regulated the National Policy for Solid Waste ("PNRS"), established by Federal Law No. 12,305/2010. The provisions of the Decree are applicable to individuals or legal entities, of public or private law, and define manufacturers, importers, distributors, traders, consumers, and holders of public services for urban cleaning and solid waste management as responsible for the life cycle of the products.

Among the provisions of the Decree, we highlight:

- The obligation to issue the Waste Transport Manifest ("MTR"), a self-declaratory document valid in the national territory, also used for environmental monitoring purposes of the reverse logistics systems, in addition to the invoices.
- The obligation of hazardous waste with flammable characteristics to be sent to energy recovery when there is a licensed facility within a radius of up to 150km from the generator, including a prior listing of the types of waste (sludge, solvents, slurry, contaminated soil, etc.).
- The establishment of the National Program of Reverse Logistics.
- The provision of Solid Waste Management Plans ("PGRS") specific to micro and small companies.

In addition to state regulations governing the reverse logistics system in their respective states, as was the notorious case of Mato Grosso do Sul, promoted by the Decree No.10.936/2022, the Ministry of Environment opened public consultations at the end of 2022 for decrees that, if approved, will regulate the reverse logistics of metal packaging, paper, and cardboard, and reverse logistics of plastic packaging.

Regarding the decree of reverse logistics of plastic packaging, if approved, besides replacing the Sector Agreement signed in 2015, according to the current text proposal, it will establish regional and national minimum percentages of quantitative goals for the recycling rate of disposable plastic packaging in proportion to the amount of disposable plastic packaging circulated in the national market.

Furthermore, on December 22, 2022, Federal Decree No. 11,300/2022 was published, which established the reverse logistics system for glass packaging, defining criteria, implementation structuring, and its operation.

Finally, in a recent publication, the states of Paraíba and Pernambuco have regulated the reverse logistics systems for general packaging through Decrees No. 43,346/2022 and 54,222/2022, respectively. In the state of Paraíba, the reverse logistics system is self-declaratory and must be filed until June 30, 2023 (180 days from the publication of the Decree) by those who generate packaging in general as waste in this state.

Federal Decree No. 11,075/2022 - The institution of the National System for Greenhouse Gas Emission Reduction

The Federal Decree No. 11075/2022, published on May 19, 2022, established the procedures for the preparation of Sectoral Plans for Climate Change Mitigation in Brazil and established the National System for Greenhouse Gas Emissions Reduction ("Sinare"), becoming the legal milestone for the creation of a regulated Brazilian carbon market.

The Decree aimed to provide the legal basis for the regulation of the Brazilian carbon market in a cap-and-trade system, where greenhouse gas ("GHG") emission caps will be defined and must be observed by the sectors to be regulated by the system. The sectors are: (i) electric power generation and distribution; (ii) urban public transportation and interstate passenger and cargo transportation systems; (iii) manufacturing industry and durable consumer goods; (iv) chemical industries; (v) pulp and paper industry; (vi) mining; (vii) construction industry; (viii) health services; and (ix) agribusiness.

Sinare will work as a single central registry of GHG emissions, removals, reductions, and offsets, as well as a registry for trading, transfers, transactions, and retirement of certified emission reduction credits.

The Sectoral Mitigation Plans will establish GHG emission reduction targets and actions. These will be prepared by the Ministries of the Environment, Economy, and related sectoral ministries. The regulated sectors may present their proposals for the establishment of emission reduction curves.

On December 19, 2022, through the GM/MMA Directive nº 304/2022, the deadline for the presentation of the proposals, initially scheduled for 11/15/2022, was extended to 05/14/2023.



We are at your disposal in case of any questions or in the need of any additional information.

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