Brazil - Environment

This country-specific Q&A provides an overview of laws and regulations applicable in Brazil - Environment.

For a full list of jurisdictional Q&As visit [here](#)
1. **What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?**

The 1988 Federal Constitution has several sections and provisions governing environmental and environment-related matters, including, but not limited to, the following: powers to legislate on environmental matters and enforce environmental legislation; public ownership of natural resources such as water courses; Article 170 on economic activity; Article 255 on environmental protection; and Article 231 on indigenous peoples.

At the national level, Federal Law No. 6,938/1981 is the overarching piece of environmental legislation. It establishes Brazil’s National Environmental Policy, which is complemented by the following sectoral regulations (non-exhaustive list):

- Decree-Law No. 227/1967 on mining, as amended by Law No. 7,805/1989;
- Conama Resolution No. 1/1986 on environmental impact assessment;
- Law No. 9,433/1997 establishing the National Water Resources Policy;
- Conama Resolution No. 237/1997 on environmental permitting;
- Law No. 9,985/2000 establishing the National Conservation Units System;
- Law No. 10.357/2001 on chemicals controlled by the Federal Police;
- Law No. 11,428/2006 on the Atlantic Rainforest biome;
- Law No. 12.187/2009 establishing the National Climate Change Policy;
- Law No. 12,305/2010 establishing the National Solid Waste Policy;
- Supplementary Law No. 140/2011 on the distribution of powers to enforce environmental regulations;
- Law No. 12,651/2012 on the protection of native vegetation (‘Forest Code’);
- Law No. 13,123/2013 on access to genetic resources and benefit sharing;
- Law No. 13.576/2017 establishing the National Biofuels Policy;
- Decree No. 9,406/2018 implementing Decree-Law No. 227/196 on mining;
- Decree No. 9,493/2018 on chemicals controlled by the Brazilian Army.

Enforcement legislation includes:

- Law No. 7,347/1985 on public civil action;
- Law No. 9,605/1998 on environmental offences;
- Decree No. 6,514/2008 on environmental infractions;

2. **Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?**

Brazil is a Republic Federation comprised of the Union of all 26 Federal States, 5,570 Municipalities and the Federal District. Environmental authorities exist at all federative levels, namely federal, state, municipal and district.

Environmental authorities deal with nearly all environmental issues, except for mining and
water matters, which are handled by specific authorities respectively at the federal level and at both the federal and state levels. At the federal level and in some states, there are separate authorities for protected areas too.

At all levels, policy making, standard setting, and enforcement (including permitting) powers are distributed among the different authorities.

The table below summarises the organisation and structure of the Brazilian environmental administration and the powers vested in environmental authorities:

<table>
<thead>
<tr>
<th>Environment Policy making</th>
<th>Standard setting</th>
<th>Enforcement</th>
<th>Protected areas</th>
<th>Water</th>
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<tr>
<td>Federal</td>
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<td>National Environmental Council (Conama)</td>
<td>Brazilian Environment and Natural Resources Institute (Ibama)</td>
<td>Chico Mendes Institute</td>
<td>National Water Agency (ANA)</td>
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<tr>
<td>State</td>
<td>Secretaries of Environment of the States</td>
<td>Environmental Councils of the States (Consema)</td>
<td>State environmental agency (institute, foundation, public company etc.)</td>
<td>(in some States) Protected areas authorities of the States</td>
<td>Water authority of the States</td>
</tr>
<tr>
<td>Municipal</td>
<td>Municipal Secretaries of Environment</td>
<td>Municipal Environmental Councils</td>
<td>(usually) Municipal Secretaries of Environment</td>
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3. **What is the framework for the environmental permitting regime in your jurisdiction?**

Article 10 of Federal Law No. 6,938/1981 requires an environmental permit for the construction, modification/expansion, installation, and operation of public and private projects and activities (i.e. facilities) that potentially or effectively use natural resources or pollute the environment. State law, at times also municipal law, applies as well.

At the federal level, which concrete facilities and activities need an environmental permit are listed in Annex 1 to Resolution No. 237/1997 of Brazil’s National Environmental Council (Conama). States and municipalities may also establish their own lists of facilities requiring...
an environmental permit in addition to the federal list.

As a rule, there are three different, albeit consecutive, permits, namely the preliminary permit, which is granted at the planning stage and lays down the basic environmental guidelines for the subsequent stages; the installation permit, which authorises construction work; and the operation permit, which gives permission to operate. State law may require different types of permits.

Environmental impact assessments and environmental studies may be also required for the granting of a permit. See question 6.

Environmental permits usually have a set of technical conditions that must be satisfied for them to remain valid. In addition, fulfilment of the conditions set in the preceding permit is a prerequisite for approval of the subsequent permit.

Environmental permits are valid for a certain period and an application for renewal of operation permits must be made no later than 120 day prior to its expiration date. Timely applications render operation permits valid until the relevant authority decides to renew it.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Yes. Although not explicitly regulated, the transferring of environmental permits between entities is common practice in Brazil. The idea behind this possibility is that the permit requirement is imposed on projects and activities rather than entities. In other words, as long as a project or activity has the applicable environmental permit, it is irrelevant which entity holds the permit. The process of transferring varies depending on the permitting authority.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

All administrative acts, including decisions to grant environmental permits, are open to judicial review under the Federal Constitution. In this sense, anyone affected by a facility that has been granted an environmental permit and – more frequently – those to whom Federal Law No. 7,347/1985 grants legal standing to bring collective actions may challenge the decision to grant the permit in court.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

Under Article 225, paragraph 1, section IV, projects and activities considered by legislation or the permitting authority as having significant impacts on the environment require an
environmental impact assessment (EIA). At the national level, Conama Resolution No. 1/1986 lists certain projects and activities for which an EIA is mandatory.

Approval of the EIA by the permitting authority is a prerequisite for the granting of the preliminary permit. Other environmental studies may be also required by legislation, specially at state, municipal, and district level.

EIAs must:

- consider all technological and spatial alternatives, including the option not to carry out the project or activity;
- identify and assess the environmental impacts of both the installation and operation stages;
- define the geographical area to be directly or indirectly impacted by the impacts, the so-called ‘influence zone’, based on the watershed where the project or activity is located;
- consider the governmental plans and programs that have been proposed for, or are being implemented in, the influence zone as well as their compatibility with the project or activity.

EIAs must further:

- provide a complete environmental diagnosis of the influence zone of the project or activity, one that covers the physical, biological and socioeconomic media;
- assess the environmental impacts of the project or activity along with its alternatives, including a description of the negative/positive, direct/indirect, short/medium/long-term, temporary/definite impacts as well as of their reversibility, cumulative and synergetic properties, and the distribution of social benefits/burdens;
- define the measures to mitigate the negative impacts;
- develop a monitoring plan.

EIAs may be, and usually are, challenged along with decisions to grant environmental permits. See question 5. Most typically, EIAs are challenged if they are claimed to have not adequately measured the negative impacts of a project or activity.

A report summarising the conclusions of the EIA must be provided to the permitting authority. Both the EIA and its summary report are made available to the public. Public hearings may be also held.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

At the federal level, contamination of soil and groundwater is regulated by Conama
Resolution No. 420/2009. Some States, including and most notably São Paulo, also have legislation on contaminated land. Municipal legislation on land use plays a role as well.

Site investigation and clean-up is legally required from anyone having a factual or legal connection with the contaminated land. In São Paulo State, for instance, State Law No. 13,577/2009 imposes the duty to investigate and remediate contaminated land severally and jointly on those who caused the contamination (factual connection) and their successors; the owner (legal connection); the surface lessee (legal connection); the occupier/possessor (legal connection); and anyone who directly or indirectly benefits from the contaminated property (factual connection). These persons are each individually referred to as a ‘responsible party’.

Those who caused the contamination may also have criminal and administrative liability in addition to being required to clean up the site. Fines are almost always imposed when a site has been found to be contaminated.

Investigation and remediation must be performed by technical consultants, usually consulting firms contracted out by a responsible party, and as a rule works are to be carried out without the prior approval of the relevant environmental authorities. These must be provided with the investigation/remediation reports, though.

If a responsible party cannot be identified, the obligation to investigate and clean up the site falls on public authorities.

8. **Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?**

In general, site investigation is required whenever there is a reasonable suspicion of contamination. A positive obligation to investigate land for potential soil and groundwater also exists in specific situations, namely in case of land use change; as a prerequisite for plant decommissioning and site closure for facilities requiring an environmental permit to operate; and upon request by the relevant environmental authority.

Investigation – as well as remediation and monitoring – reports must always be provided to the relevant environmental authority.

9. **If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?**

Yes, also because investigations reports must be provided to the relevant environmental authority.
10. **Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?**

Yes. A private right of recourse to recover the costs of compensation paid for damages caused by third parties exists under Article 934 of the Brazilian Civil Code and case law. In the context of contaminated land, the costs of (1) environmental consulting firms, (2) site investigation and remediation works, and (3) any monetary penalties (i.e. fines) imposed/paid due to the existing contamination may be recovered.

Contrary to collective claims seeking compensation for environmental damage, claims in exercise of rights of recourse are subject to a limitation period of three years starting from the date when the costs/expenditures were paid/incurred, as provided for by Article 206, §3, V, of the Brazilian Civil Code.

11. **What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?**

Federal Law No. 12,305/2010 lays down nationwide rules on waste management and establishes three regulatory regimes.

The first one concerns production waste, which is the waste generated by production activities in the three sectors of the economy (primary, secondary, tertiary). Generators of production waste are required to develop and implement a waste management plan in addition to obtaining approval thereof from the relevant authority.

The second regime concerns urban waste, which comprises domestic and urban cleaning waste. Under the Federal Constitution and Federal Law No. 11,445/2007 on sanitation, urban waste management is considered a public service to be provided by local authorities and financed by the tax paid by waste generators (i.e. households). Local authorities are also required to plan the management of urban waste.

The third and last regime concerns certain products and packaging which must be managed at end of life by the manufacturers, importers, distributors, and sellers that place them on the market. See question 13.

12. **Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?**

Under Article 27, paragraph 1, of Federal Law No. 12,305/2010, generators of production waste who contract out the collection, storage, transport, treatment and recovery/disposal of their waste retain liability for damages resulting from inadequate waste management.
By contrast, households do not retain any liabilities once they have made their urban waste available for collection by local authorities or returned end-of-life products and packaging to a take-back scheme.

13. **To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?**

Federal Law No. 12,305/2010 imposes take-back requirements for the following products and packaging: pesticides and their packaging; batteries; tyres; waste oil and its packaging; fluorescent lamps; and electric and electrical and electronic equipment.

Take-back mandates may be extended for other products and packaging provided that take-back schemes are economically and technically feasible. In this sense, take-back schemes have so far been further introduced for packaging in general and steel packaging in particular. They are also being discussed for unused household medicines. State law may also require take-back of end-of-life products and packaging other than those already governed by federal law.

Take-back obligations fall on manufacturers, importers, distributors, and sellers (collectively referred to as ‘producers’), who must set up and run individual or collective schemes to ensure that products and packaging are collected and recovered in an environmentally sound manner at end of life.

Allocation of take-back obligations among producers occurs on a case-by-case basis by product-specific take-back regulations.

14. **What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?**

Article 2 of Federal Law No. 9,055/1995 allowed the extraction, industrialisation, sales, and use of chrysotile asbestos, but it was declared unconstitutional by the Brazilian Supreme Court in 2017. All other types of asbestos had already been banned by the federal statute.

Neither statutory law nor the case law of the Brazilian Supreme Court requires owners/occupiers of premises where asbestos is found to replace asbestos containing products already in use. However, the presence of asbestos on land or in buildings may have labour repercussions such as employees’ right to hazard pay and employers having potential liability for health damages caused to their employees.

In addition, a duty of environmentally sound disposal of hazardous construction and demolition waste such as roof tiles and other asbestos containing products exists under Conama Resolution No. 307/2002.
15. **To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.**

Brazilian product-related environmental law is still underdeveloped. Very few products are regulated due to environmental considerations. Examples include Conama Resolution No. 359/2005 governing the phosphorus content of powder detergents and Federal Law No. 11,762/2008 setting maximum levels of lead in certain categories of paint.

Regarding chemicals, although Article 225, paragraph 1, of the Federal Constitution allows governmental control of the manufacture, sales and use of substances that pose risks to health, quality of life and the environment, there is still no comprehensive chemicals legislation such as the European REACH Regulation or the American TSCA. Brazil’s extinct National Chemical Safety Council came up with draft regulations on industrial chemicals and RoHS, but efforts to regulate chemicals have come to a standstill under the Bolsonaro administration.

Apart from environmental considerations, certain chemicals are controlled by the Brazilian Army due to their destructive potential or by the Federal Police due to their potential to be used as, or for the production of, drugs. In any case, control is also exerted by the Civil Police of the Federal States. Control fundamentally means having to (1) register with the relevant authority, (2) obtain a permit to manufacture, import, export, acquire, sell, store, transport use etc. a chemical and (3) periodically report the amounts handled.

16. **What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?**

Federal Law No. 10,295/2001 governs the National Policy on the Conservation and Rational use of Energy. It authorises the federal government to set maximum energy consumption levels, or minimum energy efficiency levels, for energy-using machinery and devices that are manufactured or sold in Brazil. It also provides for the creation by the federal government of mechanisms to promote energy efficiency in buildings.

Those levels/mechanisms are to be set/created under the coordination of the Ministry of Energy and Mines by the Energy Efficiency Indicators and Levels Committee created by Federal Decree No. 9.864/2019, which implements Federal Law No. 10,295/2001.

17. **What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?**

Federal Law No. 12,187/2009 establishes the National Climate Change Policy, whereby Brazil has set the goal to reduce between 36.1% and 39.8% of the projected greenhouse gas emissions by 2020. This policy has been followed by governmental, sector-based mitigation
and adaptation action plans as well as deforestation action for two biomes.

Brazil’s intended nationally determined contribution (iNDC) reads: ‘Brazil intends to commit to reduce greenhouse gas emissions by 37% below 2025 levels in 2025’. NDC implementation efforts are threefold: (1) increase the share of sustainable biofuels in the Brazilian energy mix to approximately 18% by 2030; (2) restore and reforest 12 million hectares of forests by 2030; (3) in the energy sector, achieve 45% of renewables in the energy mix by 2030.

In 2017, Federal Law No. 13,576 established the National Biofuels Policy (Renovabio) and created an emissions trading scheme based on the certification of biofuels. The scheme works as follows: based on a life cycle assessment (LCA), the certification measures the contribution of each biofuel producer to GHG emissions reductions in comparison to their fossil fuel substitute. Biofuel producers are entitled to issue decarbonisation credits depending on their LCA-based measured contributions. Fossil fuel distributors, in turn, have GHG emissions reduction targets, which they must meet by acquiring decarbonisation credits from biofuel distributors.

18. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and/or ESG public reporting becoming more common?

ESG is increasingly receiving attention in Brazil. ESG due diligence for transactions and ESG public reporting are usually demanded by investors/banks as a result of the Equator principles.

19. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

Under article 225, §3 of the Federal Constitution, breaches of environmental regulations can lead to both criminal and administrative penalties in addition to the obligation to provide compensation for environmental damage. In this sense, environmental liability in Brazil is said to be threefold: legal consequences for noncompliance with environmental requirements arise at three different and independent levels, namely criminal, administrative, and civil.

Federal Law No. 9,605/1998 governs environmental crimes. Environmental offenders may be natural or legal persons, i.e. penalties for environmental crimes may be imposed on both individuals and businesses. In particular, the federal statute imposes criminal liability on the director, manager, board or technical member, auditor, and representative of a company whenever he or she knows about the criminal act (actus reus) but does prevent it despite being able to do so.
While individuals are usually penalised with imprisonment, penalties to businesses include fines, restriction of rights (e.g. suspension of activities, prohibition to participate in public tenders), and/or community service (e.g. financing environmental recovery projects). Criminal enforcement of environmental law is carried out exclusively by Public Prosecution Offices, which may bring criminal charges at either federal or state level.

Administrative, i.e. non-criminal offenses against legislation are termed infractions. Environmental infractions and their corresponding penalties on both individuals and businesses are regulated by federal, state, and municipal law, as applicable. Penalties for environmental infractions range from warnings through suspension of activities to fines up to BRL 50 million. Enforcement is carried out by environmental authorities but is open to judicial review.

Civil liability concerns the obligation to provide compensation for environmental harm. Unlike criminal and administrative liability, which is fault-based and rests with those who caused the pollution only, Federal Law No. 6,938/1981 adopts a system of strict, joint and several liability for environmental damage.

Strict liability means that individuals and/or legal entities may be held responsible regardless of fault, that is, even if they have not behaved intentionally or negligently. Proof of causation therefore suffices for liability to arise. Causation is established where there is evidence that the environmental damage is a direct or indirect result of a natural or legal person’s activity. Direct polluters are liable due to their action or inaction, whereas indirect polluters have liability if they have financed or benefited from the activity directly causing the environmental harm.

Joint and several liability means that in situations involving two or more polluters, each of them is equally responsible for providing full compensation irrespective of their individual behaviour. However, a right of recourse between the liable polluters exists.

Civil liability for environmental harm is usually enforced by Public Prosecution Offices, which may either initiate public inquiries (inquéritos civis) or bring public civil actions (ações civis públicas) against liable polluters. Civil inquiries are investigations to identify potentially liable parties and ascertain liability. They may result in the execution of commitment agreements (termos de ajustamento de conduta), whereby liable polluters commit themselves to abide by the relevant environmental legislation and/or compensate the environmental damage, as applicable. Commitment agreements are enforceable out of court, thereby eliminating the need for public civil actions.

Federal Law No. 7,347/1985 on public civil action grants legal standing also to governments, NGOs, and private associations. There is no limitation period for public civil actions seeking compensation for environmental damage, which means that they can be filed at any time. Furthermore, there is no cap on the amount of compensation.
Finally, both statutory and case law allow the corporate veil to be pierced whenever it represents an obstacle to compensation.

20. **To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?**

Case law holds, and Article 2, paragraph 2, of the Forest Code reinforces, that buyers/occupiers assume pre-acquisition/occupation liabilities, since obligations derived from environmental law are of a *propter rem* nature, i.e. they adhere to the property and are transferred to future owners/occupiers. However, this is not applicable to criminal or administrative penalties, which means that buyers cannot be held liable for past crimes/infractions committed by third parties.

A seller retains liability if he or she has caused the liability.

21. **What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?**

Disclosure of known environmental information by the seller to the purchaser is a contractual duty of good faith under the Brazilian Civil Code. Environmental due diligence is commonplace in Brazil precisely because potential environmental liabilities may be unknown to the seller.

22. **What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?**

Insurance for civil liability for environmental damage is the most typical insurance coverage in Brazil. Federal Law No. 12,305/2010 on waste allows the permitting authority to require facilities handling hazardous wastes to take out insurance.

23. **To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?**

Public registers of environmental information are typically mandated by sectoral legislation and they usually take the form of electronic data bases. Examples include *inter alia* the following electronic systems:

- PNLA, the National Environmental Permitting System;
- SNIRH, the National Water Resources Information System;
- BDNAC, the National Contaminated Land Database;
- SICAR, the National Rural Environmental Register System;
SINIR, the National Waste Management Information System;  
SISGEN, the National Genetic Resources and Associated Traditional Knowledge System.

The electronic platform where information, including proceedings and documents, can be obtained online is the ‘Electronic Information System’ (SEI). The tool is available at the federal, state, municipal and district levels.

As a rule, information is publicly available and readily accessible by parties that sign up to the system. However, cases exist in which parties are required to make a formal request to obtain certain information. See Question 23.

24. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

Federal Law No. 10,650/2003 regulates public access to information held by environmental authorities. The statute grants any person, upon request, the right to access any environmental information held by environmental authorities. The request is to be made in writing, whereby the person assumes, under the penalties of civil law, criminal law, copyright law and industrial property law, the obligation not to use the information for commercial purposes and to mention the sources if the information is by any means disclosed. The information is to be provided within 30 days from the date of the request. Any decision to deny access must be reasoned/justified and a right of appeal exists.

25. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

Since the enactment of Federal Law No. 13,576/2017 on the National Biofuels Policy, many legal acts have been issued to implement the emissions trading scheme introduced by the statute.

After the Mariana (2015) and Brumadinho (2019) dam disasters, a few states passed laws on dam safety, thereby setting more stringent standards.

Vehicle exhaust emission standards were updated in 2019.

In the waste field, several sectoral (i.e. industry-wide) agreements have been executed, or are being negotiated, with the federal government to regulate take-back schemes for certain products and packaging. The last one was signed in 2019 for electrical and electronic equipment. In addition, there has been a ‘wave’ of state and municipal statutes banning/phasing out plastics and single-use plastic products. As for proposals, there is a bill in Congress seeking privatisation of sanitation/waste management services.
Brazil’s extinct National Chemical Safety Council came up with draft regulations on industrial chemicals and RoHS in 2018, but efforts to regulate chemicals have come to a standstill under the Bolsonaro administration.

Reforms aiming at simplification of the environmental permitting legislation are also being discussed.