

# WORLD FOCUS

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## Brazil: An Overview

SH&E professionals will benefit by learning various countries' government and SH&E legislative processes to conduct business in the profiled country.

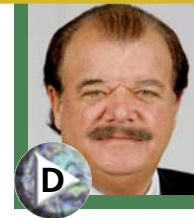
**B**razil is a constitutional republic composed of 26 federated states and one federal district (Brasilia). The states each have their own governments, with powers over all matters not specifically reserved for the federal government. Brazil is composed of 26 states plus the federal district. The federal government, which is based in Brasilia, is composed of three branches: executive, legislative and judicial.

*Legislative initiatives in Brazil are established in accordance with the National Environmental Policy (PNMA).*

The executive authority resides in the president, who is elected by the general population and serves as the chief of state and head of government. The president serves a 4-year, renewable term of office. The president appoints a cabinet whose members serve as heads of the various federal departments. These department heads are called ministers.

Legislative authority resides in a

*continued on page 9*



**PAGE 2**  
**WORLD FOCUS**  
Online Debut



**PAGE 4**  
**INTERVIEW**  
Fadel Al-Ali  
on Kuwait  
Chapter



**PAGE 13**  
**SH&E METRICS**  
What to  
measure



**PAGE 26**  
**PIRACY**  
Continued  
maritime  
threat

**For a complete  
Table of Contents,  
see page 3**

## Brazil

*continued from page 1*

bicameral national Congress consisting of a senate and a chamber of deputies. The senate consists of 81 members elected to 8-year terms. Each state and the federal district elect three senators. The chamber of deputies contains 513 members who are elected to 4-year terms, with the deputies allocated to the states based on population size.

The highest judicial authority, the Supreme Federal Tribunal, addresses primarily constitutional issues and is composed of 11 judges, all of whom are based in Brasilia. Federal courts exist in each state and in the federal district. Other federal courts include the Electoral Tribunal, which adjudicates matters pertaining to elections; the Labor Tribunal, which is involved in employment-related cases; State Tribunals; Federal Regional Tribunals and the Superior Justice Tribunal.

The Superior Justice Tribunal is composed of 33 magistrates who are appointed by the president of the republic. This tribunal renders decisions on matters such as conflicts of competence among the other tribunals; injunctions originating from decisions from the Federal Regional Tribunals; issues where one of the parties is a foreign state or international organization and appellate-level decisions from causes originating from the State Tribunals.

### LEGISLATIVE PROCESS

At the national level, a series of legal instruments govern SH&E issues.

Laws are initiated by the presentation of a bill by the executive body to the legislative houses (at all three levels—federal, state and municipal) or by the legislative body itself. After approval by both houses of the legislative body at the federal level, the bill must be sanctioned by the executive body (the president, governor or mayor), then publicized.

Decrees (“decretos”) are legal instruments enacted by the executive body to implement the regulation of a law.

Provisional acts (“medidas pro-

visórias”) are legal instruments promulgated by the president, which are binding immediately after publication. If Congress does not take any action on a provisional act within 60 days, it must be published again by the president and will be valid for another 60 days. The provisional act is only valid for such 60-day periods, unless Congress formally approves it (thus making it a law).

Resolutions (“resoluções”) are norms or standards, issued by governmental agencies that usually cover the technical aspects of laws and decrees.

Ordinances (“portarias”) are norms similar to resolutions, but a minister typically issues them.

### ENVIRONMENTAL AUTHORITIES

Legislative initiatives in Brazil are established in accordance with the National Environmental Policy (PNMA). The primary directives of the current policy are to ensure that the public is educated on environmental protection measures.

The National Environmental Protection System (SISNAMA) was created by Law 6.938/81 and is regulated under Decree 99.274/90. Strongly influenced by the U.S.’s National Environmental Policy Act, it establishes a network of environmental agencies at various levels to implement the National Environmental Policy.

SISNAMA agencies and their functions are as follows:

**Government Council.** Helps the president formulate and create directives on the PNMA. The ministers, the solicitor general and the essential bodies of the presidency, such as the cabinet, general secretariat, secretariat for strategic matters and secretariat for social communication, are members of the Government Council.

**Ministry of the Environment.** Plans, coordinates and supervises the actions related to the environment and executes and expands upon PNMA.

**National Environmental Council (CONAMA).** A normative, advisory and regulatory agency that issues federal regulations involving mostly emission standards, zoning and licensing requirements.



**Brazilian Environmental and Renewal Natural Resources Institute (IBAMA).** Responsible for monitoring and issuing permits with respect to certain polluting activities. It also maintains records related to companies that engage in activities related to production, transportation, commercialization and use of toxic, hazardous, corrosive, reactive, pathogenic or flammable substances. It has a normative function in this area.

**Sectorial Agencies.** Other federal administration agencies that are not directly related to this ministry but whose activities are related to the protection of the environment, such as agencies from the Ministry of Mining and Energy; Health; Agriculture and others.

**State and Municipal Environmental Secretariats and Agencies.** These bodies have executive functions as well as normative authority and can legislate on issues of their special-interest areas.

•**Health & Safety Authorities.** In contrast to the environmental authorities, only the federal government has the authority to issue regulations related to worker health and safety and to enforce such legislation. The government agencies under the Ministry of Labor and their respective responsibilities are as follows:

•**Health and Safety at Work Secretariat (SSST).** Along with the Ministry of Labor, this agency is responsible for most safety and health regulations.

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•Regional Labor Agency. With offices located in each state, it is responsible for the control and implementation of the legislation and issues permits and licenses.

•FUNDACENTRO. Responsible for most of the studies that form the basis for worker safety and health regulations issued.

## **SH&E LEGISLATION ENFORCEMENT**

### **Administrative Actions**

Law 9.605/98, regulated by the federal Decree No. 3.179 of Sept. 21, 1999, revised the administrative sanctions to which facilities may be subject for noncompliance with environmental laws and regulations (Articles 70/76). According to this legislation, administrative actions may consist of a warning or simple or daily fines ranging from R\$50 (approximately \$30 U.S.) to R\$50,000,000 (approximately \$30 million U.S.).

Simple fines may take the form of performing services, such as those related to environmental protection:

- suspension of construction work or building demolition;
- suspension of production or sale of a product;
- suspension of activities; and
- suspension of rights, such as the ability to obtain credit from government banks or the right to participate in governmental bids.

### **Civil Liability**

The Brazilian Federal Constitution (Article 225, Number 3) subjects the polluter to administrative and criminal sanctions as well as the obligation to repair the damages caused to the environment.

Enacted in 1981, Federal Law No. 6.938 establishes the notion of strict liability for polluters, which means that the polluting agent may be held liable for damages caused to the environment or/and to third parties irrespective of fault. Therefore, once the factual link between the company's conduct and the environmental damage is ascertained, the polluter may be held liable for such damage and will be responsible for its restoration and/or indemnification.

Consistent with the "polluter pays" principle, Brazilian environmental legislation also establishes that the generator of the waste is liable for ensuring its proper disposal.

In view of the notion of strict liability and of the principle that the polluters pay, successors and anyone who directly or indirectly contributes to evidenced environmental damage may be held liable for its restoration and/or indemnification, irrespective of fault. Furthermore, companies may even be deemed jointly liable with third-party contractors hired for tasks such as transportation, treatment and disposal of wastes. It is important to stress that the notion of strict liability does not apply to the criminal sphere.

### **Criminal Sanctions**

Law 9.605/98 changed the enforcement of environmental legislation by defining crimes against the environment and by establishing associated procedures and sanctions. The law established criminal charges against individuals and corporations as well as anyone who contributes to the crime, such as individuals who are aware of damaging practices and do not interrupt them when the problem could have been avoided. This legal provision includes members of the corporation's executive technical boards, directors, administrators, auditors, managers and legal representatives. The corporation may also be held criminally liable when the infraction is committed, in the interest of the corporation, based on a decision made by its legal representative or its decision-making body.

The following sanctions are available in a criminal lawsuit:

- incarceration (from 3 months to 5 years);
- home imprisonment (restrained activities allowed during the day);
- temporary restriction of rights;
- recovery of damages;
- fines ranging from R\$350 (approximately \$206 U.S.) to R\$126,000 (approximately \$74,000 U.S.).

The corporation may be sentenced to one or more of the following penalties: 1) fine; 2) restriction of rights (partial or total shutdown or interdiction; inability to contract with the government or to obtain tax incentives for up to ten years); or 3) rendering services to the community, such as funding environmental projects or programs, recovering degraded areas or contributing to environmental or cultural public entities.

The penalties related to the restriction of rights are independent and substitute for the penalties that impose incarceration to the individuals. The award to the victim is a payment of a sum that is determined by the judge, ranging according to the interval of amounts mentioned and according to the proportion of the damages caused due to the infraction.

The law also defines the crimes against the public administration, practiced by the public agent, such as providing false information, omitting relevant information, granting licenses in disregard of the legislation, etc. Criminal charges may be brought against the directors and technicians (doctors, safety engineers) if an on-the-job accident or illness harms an

This is the latest installment in a series of articles summarizing various countries' government and SH&E legislative processes. It is intended to serve as a useful planning tool for SH&E professionals preparing to conduct business in the profiled country. Previous profiles are available on ASSE's International Practice Specialty website at [www.asse.org/practicespecialties/international/country\\_overviews.php](http://www.asse.org/practicespecialties/international/country_overviews.php).

This article is provided courtesy of ENSR. Requests for additional country information should be directed to Halley Moriyama at [hmoriyama@ensr.aecom.com](mailto:hmoriyama@ensr.aecom.com); +1-978-589-3233.

employee as a result of the company's negligence in complying with safety and health regulations. Such actions are usually carried out by the public attorney's office.

### **ENFORCEMENT PRACTICES**

Most of the state agencies of SISNAMA lack the necessary resources and tools to enforce the environmental legislation; therefore, enforcement practices focus on the most important and relevant issues of each area. The City of São Paulo and other large cities emphasize enforcement of water and air requirements. However, the proper disposal of hazardous waste is also a common problem, since the country lacks a system for disposal of industrial and sanitary waste. Safety at work also continues to be a concern, since the country ranks among those with high numbers of on-the-job accidents.

### **Access to Information**

Enacted on April 16, 2003, Federal Law No. 10.650 foresees that environmental authorities are obliged to allow public access to documents and administrative procedures related to environmental issues and to supply any environmental information kept in their records, especially those related to environmental quality, programs can potentially impact the environment, results of monitoring and auditing in pollution control systems, recovery plans and actions in degraded areas, accidents or environmental emergencies, liquid effluent and air emissions, wastes generation and hazardous substances. Access to information established in the legislation, including the federal law mentioned and those rules related to public hearings associated with environmental impact studies/environmental impact reports and the publication of permit applications, requires that industrial confidentiality be preserved.

### **CONTAMINATED LAND**

No specific legislation covers the issue of contaminated land or rules governing how cleanups should be conducted. Ordinance No. 518 of

March 25, 2004 of the Ministry of Health (see Section 5.0 of this protocol, Water Resources) establishes the legal standards for drinking water, which is a parameter for the remediation of groundwater contamination. Cleanup procedures and objectives are established by the agency on a case-by-case basis depending on the pollutant(s) involved and use of the area, etc.

The environmental agency of the State of São Paulo (CETESB) has established standards for assessment of soil and groundwater contamination. Environmental agencies of other states may use them as reference for remediation purposes, at their discretion. According to the level of contamination of soil or groundwater, those standards are classified into three categories, as follows:

1) Quality reference standards. Indicate the natural and clean quality of soil and groundwater in the State of São Paulo.

2) Warning standards. Indicate modification of the natural quality of soil and groundwater, requiring assessment and control of occasional pollution sources.

3) Intervention standards. Indicate contamination of soil and/or groundwater, requiring remediation measures.

A copy of the São Paulo standards (in Portuguese) is available at [www.cetesb.sp.gov.br](http://www.cetesb.sp.gov.br).

### **Liability for Preexisting Conditions**

Under Brazilian case law, an innocent party can be held liable for cleanup of a site whose problems were created by a predecessor. Thus, successors may be held liable for environmental damage caused by predecessors.

### **Property Transfer Legislation**

For people or companies engaged in the purchase or sale of a business or property, no statutory legal requirement exists to undertake pre-transaction environmental investigations. Nor is there any legislation in effect that requires sellers of businesses or property to provide the potential buyer with any document

or statement concerning the environmental condition of the property.

Parties involved in property or business transactions may agree on the performance of environmental technical assessments and establish, in the purchase agreements, clauses regulating liabilities for pre- and post-selling environmental contingencies, among other provisions.

### **REPORTING OBLIGATIONS: SPILLS & RELEASES**

Brazilian legislation does not require the notification of spills or releases, which have caused or may cause environmental damages. Federal Law No. 9.605/98 foresees that the prior notification of imminent hazard of environmental degradation is an attenuating circumstance that shall be considered to reduce the criminal sanction imposed to the agent. In the State of São Paulo, Article 82, Item II of Law No. 8.468/76 considers as aggravating circumstance the lack of immediate communication of an accident that may bring risks to the environment. ☺

### **KEY CONTACTS**

#### **Federal Environmental Authorities**

Conselho Nacional do Meio Ambiente (CONAMA)  
SEPN 505, Lote 2, Bloco B,  
Edifício Marie Trendi Cruz,  
1st Fl.  
ASA NorteCep.: 70370-452  
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Phone: (61) 3105-2207  
Fax: (61) 3105-2102  
[www.mma.gov.br/conama](http://www.mma.gov.br/conama)

Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA)SCEN Trecho 2,  
Edifício Sede, Caixa Postal 09870  
Cep.: 70818900 Brasília DF



*The proper disposal of hazardous waste is also a common problem, since Brazil lacks a system for disposal of industrial and sanitary waste. Safety at work also continues to be a concern, since the country ranks among those with high numbers of on-the-job accidents.*

## Brazilian States



Acre  
Alagoas  
Amapá  
Amazonas  
Bahia  
Ceará  
Espírito Santo  
Goias  
Maranhão  
Mato Grosso  
Mato Grosso do Sul  
Minas Gerais  
Paraíba  
Paraná  
Pernambuco  
Piauí  
Rio de Janeiro  
Rio Grande do Norte  
Rio Grande do Sul  
Roraima  
Santa Catarina  
São Paulo  
Sergipe  
Tocantins

*Note: There is also one federal district—Distrito Federal.*

Phone: (61) 3316-1212  
Fax: (061) 3316-1830  
[www.ibama.gov.br](http://www.ibama.gov.br)

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Esplanada dos Ministérios,  
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[www.mma.gov.br](http://www.mma.gov.br)

Secretaria de Coordenação dos  
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Bloco I, Ed. Sede da  
CODEVASF, 4º Andar  
Cep.: 70830-901 Brasília DF  
Phone: (61) 3312-4611  
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[www.codevasf.gov.br](http://www.codevasf.gov.br)

Secretaria de Mudanças  
Climáticas e Qualidade Ambiental  
Esplanada dos Ministérios—  
Bloco B- 8º andar  
Cep.: 70068-901 Brasília DF  
Phone: (61) 3317-1225  
Fax: (61) 3317-1759  
[www.mma.gov.br](http://www.mma.gov.br)

Assessoria Internacional  
Esplanada dos Ministérios—  
Bloco T4º andar, sala 436  
Cep.: 70064-900 Brasília DF  
Phone: (61) 3429-3372/3512  
Fax: (61) 3225-9089  
[www.mj.gov.br](http://www.mj.gov.br)

Gerência de Gestão Ambiental  
Urbana e Regional  
Esplanada dos Ministérios—  
Bloco B-8º andar, sala 851  
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[www.mma.gov.br](http://www.mma.gov.br)

Diretoria de Educação Ambiental  
Esplanada dos Ministérios—  
Bloco B-5º andar, sala 553  
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[www.mma.gov.br](http://www.mma.gov.br)

Conselho Nacional dos  
Recursos Hídricos e Meio  
Ambiente Urbano  
SGAN—Quadra 601, lote 01—  
Edifício CODEVASF 4º andar  
Cep.: 70880-901 Brasília DF  
Phone: (61) 3410-2082

**Federal Labor Agencies**  
Ministério do Trabalho (MTB)  
Esplanada dos Ministérios—Bl. F,  
2nd Fl.  
Cep.: 70059-900 Brasília DF  
Phone: (61) 3317-6000  
[www.mte.gov.br](http://www.mte.gov.br)

Secretaria de Inspeção do  
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[www.mte.gov.br](http://www.mte.gov.br)

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### **Regulatory Information**

New rules and regulations are  
published in the Official Gazette,  
which is published every day except  
Sunday. Copies of federal regulatory  
information may be obtained from:

Imprensa Nacional  
SIG, Quadra 6, Lote 800  
CEP: 70610-460 Brasília DF  
Tel: (55) 0800-7256787

Copies of ABNT standards may  
be obtained from:

Associação Brasileira de Normas  
Técnicas (ABNT)  
Rua Minas Gerais, 190—  
Higienópolis  
CEP: 01244-010 São Paulo SP  
Tel: (55 11) 3017-3600  
Fax: (55 11) 3017-3650  
[www.abnt.org.br](http://www.abnt.org.br)

Health and safety legislation is  
published in the daily *Federal Gazette*  
(*Diário Oficial da União*). A source of  
published safety and health legisla-  
tion, including norms, is:

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