

Decree No. 39.551 of 18 November 1994

Regulates Law No. 8.943 of 28 September 1994, modifying the provisions of Law No. 997 of 31 May 1976, approved by Decree No. 8.468 of 8 September 1976.

Luiz Antonio Fleury Filho, Governor of the State of Sao Paulo, by virtue of his legal powers and in consideration of Article 3 of Law No. 8.943 of 29 September 1994,

Hereby Decrees:

Article 1. Law No. 8.943 of 29 September 1994 is hereby regulated with amendment of the provisions of Law No. 997 of 31 May 1976, which regulates the prevention and monitoring of environmental pollution, as approved by Decree No. 8.468 of 8 September 1976, in the following manner:

I. Article 4:

"Article 4. All construction, activities, installations, processes, operations, mobile or stationary devices or means of transportation which, directly or indirectly, cause or may cause environmental pollution, are considered sources of pollution.

Sole paragraph. For purposes of application of this Article, all motor vehicles, boats and similar devices are considered mobile sources and all other devices stationary sources.";

II. Articles 80 and 81:

"Article 80. Violation of the provisions of Law No. 997 of 31 May 1976 of this Regulation, as well as of such rules, standards and technical requirements as derive therefrom shall, at CETESB's discretion, be classified as minor, serious and very serious, when taking into consideration:

I -- the intensity of the damage, actual or potential;

II -- mitigating or aggravating circumstances;

III -- the violator's prior history.

Sole paragraph. Any party that, in any fashion, commits or participates in the action or benefits therefrom shall be held accountable for the violation.

Article 81. The violations specified in the previous Article shall be punished as follows:

I -- warning;

II -- fine of 10 to 10 000 times the value of the State of Sao Paulo Fiscal Unit (UFESF);

III -- temporary or permanent suspension;

IV -- seizure;

V -- demolition;

VI -- suspension of financing and tax benefits;

VII -- attachment or collection, temporary or permanent.

Sole paragraph. The penalties provided for in sections III to VII of this Article may be imposed in conjunction with those provided for in sections I and II.";

III. Articles 84 to 87:

"Article 84. The fine provided for in item II of Article 81 of this Regulation shall be imposed in conformance with the following limits:

I -- from 10 to 1 000 times the value of the UFESF, for minor infractions;

II -- from 1 001 to 5 000 the value of the UFESF for serious infractions;

III -- from 5 001 to 10 000 the value of the UFESF for very serious infractions.

Article 85. The fine shall be imposed at such time as the violation is discovered or whenever applicable, after expiration of the time allotted for its correction without the irregularity having been corrected.

Sole paragraph. Fines for mobile sources shall be applied pursuant to the following:

1. For the same source, a violation record shall be maintained for each irregularity incurred and proven;

2. Subject to a lapse of 10 (ten) days from date of the preceding charge for the same violation.

Article 86. In the event of recurrence, the corresponding fine shall be double the value of the fine previously imposed.

1. Recurrence shall be understood as being a new violation of the same law or statute as originated the previous fine.

2. For mobile sources it shall not be considered a repeated violation if:

1. A period of one year has elapsed between the previous violation and evidence of the current one;

2. Within a one year period, the same source is charged on more than four occasions for violations of the same nature.

3. In the event that more than one violation is entered on the same violation record, only provisions being violated on a repeated basis shall be considered repeated violations.

Article 87. For cases of continuous violations, a daily penalty of 1 to 1.000 times the value of the UFESP may be applied, at CETESB's discretion.

1. An environmental pollution source shall be deemed as being in continuous violation if:

1. While active or in operation it does not have the proper means to avoid the release or discharge of pollutants;

2. It is about to operate or is operating without the necessary permits;

3. It continues to disregard technical or administrative requirements of CETESB after the lapse of the period granted for its correction.

2. In the event a daily fine is being applied, CETESB may, at its discretion, grant a new period for correction of the irregularities, subject to a justification of such request by the violator.

3. Deferral of the request to which the preceding paragraph refers shall result in a suspension of application of the fine.

4. The daily fine, the application of which shall not

exceed a period of 30 (thirty) days from its assessment, shall be discontinued upon correction of the irregularity or suspension of its enforcement.

5. Upon correction of the irregularity, the violator shall notify CETESB thereof in writing, and upon verification of the accuracy of such statement, assessment of the daily fine shall cease as of such date as the notification was received.

6. In the event the violation is not ceased after the period of time to which 4 of this Article refers, a new daily fine may be imposed without prejudice to the penalties provided for in sections III to VII, Article 81 of this Regulation.";

IV. Articles 89 to 92:

"Article 89. Garnishing and demolition penalties shall apply for cases of work or construction carried out without the necessary CETESB permits or when in violation thereof, when their existence or maintenance places in risk or causes damage to the environment, or is contrary to legal provisions, this Regulation and the standards corresponding thereto.

Sole paragraph. The penalties mentioned in this Article shall apply as of the date of first recurrence of the violation.

Article 90. The penalties of attachment or seizure, temporary or permanent, shall apply in cases of threats to public health or, at CETESB's discretion, in cases of continuous violation or after the third recurrence.

1. For mobile sources, if the attachment penalty applied is temporary, the vehicle shall remain, until the proven irregularity is remedied, in a location designated by CETESB.

2. Permanent attachment shall result in the prohibition of use.

Article 91. In the event of resistance, the penalties provided for in sections III, IV and VII above of Article 81 of this Regulation shall apply with a request for police assistance.

Article 92. Upon verification of the violation, a record shall be made in a minimum of three copies, the first for the violator, and the others for purposes of formalization

of the administrative proceeding, which must contain:

I -- the identification of the party or corporation charged, along with their complete address, Tax Payer Identification number or Corporate Identification number;

II -- the action, fact or omission that resulted in the violation;

III -- the place, date and time the violation occurred;

IV -- the legal regulation violated;

V -- the fine applied and the time allowed to correct the irregularity, when applicable;

VI -- the name and signature of the enforcement authority.

Sole paragraph. The violator shall be notified of the charges, including those of section III of Article 78 of this Regulation, in the following manner:

1. in person, or through a legal representative or an agent;
2. by registered mail or certification with "return receipt requested" (A.R.);
3. by a notice published in the Official State Journal;
4. by extrajudicial notification.";

V. Article 95:

"Article 95. The penalties provided for in sections III to VII of Article 81 of this Regulation shall apply as follows:

I -- By the Secretariat for the Environment, at the proposal of the CETESB, for cases of temporary and permanent suspension, attachment, demolition or suspension of funding and fiscal benefits;

II -- By the Director-President of CETESB, at the recommendation of the department with jurisdiction, for cases of temporary or permanent attachment or seizure.";

VI. Articles 98 and 99:

"Article 98. Payment pursuant to the previous Article shall be made to any branch of Banco do Estado de Sao Paulo

(BANESPA), Nossa Caixa-Nosso Banco S.A., or any other authorized bank, to CETESB's account, using the appropriate receipts to be supplied by the proper department.

Article 99. The fine shall be collected on the basis of the value of the UFESP on the day actual payment is made.

Sole paragraph. For purposes of this Regulation, if the UFESP becomes extinct, the index replacing it shall be the one adopted.";

VII. Articles 101 and 102:

"Article 101. The violator, within 20 (twenty) days of the violation, may file an appeal stating which specific means shall be used to stop and remedy environmental degradation.

1. The appeal shall be suspensive in nature if the proposed measures are accepted by CETESB and when:

1. it is the first penalty applied;
2. the applied penalty is of a very severe nature.
2. Upon fulfillment of all obligations by the violator, the fine may be reduced by up to 90% (ninety percent) of its amount.
3. The violator shall not benefit from the reduction in fine to which the preceding paragraph refers, in the event of a total or partial failure to comply with any of the specific measures within the established periods.

Article 102. Appeals, along with all documentation required for analysis, shall be addressed to:

- I. The manager of the relevant CETESB department, for the case of warning penalties and fines;
- II. The Secretary of the Environment for the case of attachment or seizure penalties;
- III. The Governor of the State for all other cases.";

VIII. Article 106:

"Article 106. Refunds of fines resulting from the enforcement of this regulation shall at all times be based on the amount received.

Sole paragraph. Refunds provided for in this Article must be requested from the Manager of the relevant CETESB department, through an application that shall be accompanied by:

1. the identification and complete address of the violator;
2. the administrative proceeding number to which the refund refers;
3. a copy of the receipt of payment;
4. proof of acceptance of the appeal that was filed."

Article 2. This decree shall enter into effect on the date of its publication, Articles 7 of Decree No. 15.426 of 23 July 1980, and 1 of Decree No. 27.399 of 24 September 1987 being hereby revoked in the portions altered by the present decree.

Bandeirantes Palace, 18 November 1994

Luiz Antonio Fleury Filho

Edis Milare
Secretary of the Environment

Frederico Coelho Neto
Government Secretary

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ENFLEX History Note:
Correction to Article 1 published on 25 November 1994, p. 6.

EFFECTIVE-DATE: 11/18/1994