

Law No. 9.509 of 20 March 1997

(Bill No. 53/92 by Deputy Ricardo Tripoli (PSDB [Brazilian Social-Democratic Party]))

Establishes the State Environmental Policy, its objectives, formulation and application mechanisms

The Governor of the State of Sao Paulo.

I hereby report that the Legislative Assembly decrees, and I promulgate the following Law:

Chapter I

State Environmental Policy

Section I

Preliminary Provisions

Article 1. This Law establishes the State Environmental Policy, its objectives, and formulation and application mechanisms, and constitutes the State Administration System for Environmental Quality, Protection, Control and Development and the Appropriate Use of Natural Resources (SEAQUA), pursuant to article 225 of the Federal Constitution and article 193 of the State Constitution.

Article 2. The objective of the State Environmental Policy is to guarantee present and future generations the right to an ecologically balanced environment, a common asset to all people essential to a healthy quality of life, and it aims to ensure the conditions within the State for sustainable development and social justice, in the interest of human safety and protection of the dignity of human life, specifically in accordance with the following principles:

I -- the adoption of measures, in the various areas of public action and in collaboration with the private sector, to maintain and promote environmental balance and improved quality of the environmental, preventing damage in all its forms, impeding or mitigating negative environmental impacts and restoring damage to the environment;

II -- planning and monitoring the use of environmental resources;

III -- definition, implementation and administration of territorial spaces and their components, representing all original ecosystems to be protected;

IV -- undertaking planning and environmental zoning, in consideration of regional and local characteristics, and articulating various plans, programs and actions;

V -- controlling and monitoring work, activities, productive processes and projects that may directly or indirectly result in environmental damage, adopting preventive or corrective measures and applying the corresponding administrative penalties;

VI -- controlling and monitoring the production, storage, transport, marketing, use and final destination of substances, as well as the use of techniques, methods and facilities that endanger life, the quality of life, and the environment, including the working environment;

VII -- periodically undertaking environmental audits relating to pollution control systems and potentially polluting activities;

VIII -- informing the population as to pollution levels, the quality of the environment, risks of accident, the presence of harmful substances and substances potentially harmful to health and the environment, food, water, soil and air, as well as the results of the audits to which section VII of this article refers;

IX -- requirement that all activities and projects subject to environmental licensing adopt techniques that minimize the use of energy and water, as well as the volume and polluting potential of liquid, gaseous and solid effluents;

X -- the promotion of education and environmental awareness with a view to training the population for the exercise of its rights and obligations as citizens;

XI -- preservation and restoration of the essential ecological processes of the species and ecosystems;

XII -- protection of the flora and fauna, including all wild, exotic and domesticated animals, and the prohibition of practices that endanger their ecological function, cause the extinction of species or subject animals to cruelty, monitoring the extraction, production, breeding and extermination methods, and the transport, marketing and consumption of them and their byproducts;

XIII -- monitoring of the entities involved in genetic research and manipulation;

XIV -- establishment of special programs by combining all public agencies, including credit agencies, with a view to providing incentives to owners and users in rural areas and engaging in practices involving the conservation of environmental resources, particularly soil and water, as well as the preservation and replacement of rainforests and the replanting of native species;

XV -- establishment of directives for the location and integration of manufacturing activities, taking into consideration environmental, locational, social, economic and strategic aspects;

XVI -- establishment of directives for urban development, including housing, basic health and transport;

XVII -- imposition on polluters of penalties and the obligation to recover and/or indemnify damage caused, and on users, to contribute to the use of environmental resources for economic purposes, through administrative and legal actions, notwithstanding such other penalties as are provided for by law, and assigning responsibility to agencies charged with direct, indirect and basic administration, for the obligation of promoting legal measures to apply liability to parties that cause pollution and environmental damage, after exhausting all administrative procedures;

XVIII -- restriction on the participation of individuals and legal entities punished for and/or found guilty of acts of environmental damage in proceedings carried out by the direct, indirect or basic administrative agencies of the State, or contracted thereby, as well as restriction on access to State tax benefits and official credits;

XIX -- incentives to research, development and technological training for the resolution of environmental problems and promoting information on these issues;

XX -- promoting and maintaining inventory and mapping of the native plant coverage, with a view to adopting special protection measures, as well as to promoting specific reforestation on the banks of rivers, lakes, dams and springs, with a view to their long-term survival;

XXI -- stimulation and contribution to the recovery of plant-growth in urban areas, through the planting of trees, particularly fruit trees, specifically with a view to achieving minimal levels of plant coverage; and

XXII -- incentives and technical assistance to associations involved in environmental protection, established in accordance with the law, and taking into consideration their autonomy and independence of action.

Article 3. For the purposes provided in this Law, the following definitions shall hold:

I -- environment: the combination of conditions, laws, influences and interactions of a physical, chemical and biological nature, which permit, cover and govern life in all its forms;

II -- damage to the quality of the environment: adverse changes to the characteristics of the environment;

III -- pollution: damage to environmental quality resulting from activities which directly or indirectly:

- a) harm the health, safety or well-being of the population;
- b) create conditions adverse to social and economic activities;
- c) unfavorably affect the region's characteristic flora and fauna;
- d) affect the aesthetic or sanitary conditions of the environment;
- e) emit materials or energy in violation of established environmental standards; and
- f) unfavorably affect the quality of life.

IV -- polluter: an individual or legal entity, subject to private or public law, directly or indirectly responsible for an activity causing environmental damage;

V -- environmental resources: atmosphere, interior, surface, subterranean, meteoric or estuary waters, or territorial seas, or the soil, sub-soil, biosphere elements, fauna and flora;

VI -- specially protected territorial spaces: areas which, by reason of the law, are subject to restrictions on use, such as conservation units, collapsed natural areas, springhead protection areas and others provided for in the relevant laws; and

VII -- Conservation Units: parks, forests, biological reserves, ecological stations, areas of relevant ecological interest, natural monuments, botanical gardens, zoological gardens, forest orchards and others defined in the specific laws.

Section II

Objectives of the State Environmental Policy

Article 4. The State Environmental Policy will be aimed at the following:

I -- rendering economic and social development consistent with preserving the quality of the environment and ecological equilibrium;

II -- defining priority areas of government action with respect to environmental and ecological quality, with a view to ensuring all parties the right to an ecologically balanced environment, pursuant to the terms of the main body of article 225 of the Federal Constitution and article 191 of the State Constitution;

III -- the establishment of criteria and standards of environmental quality and rules relating to the use and handling of environmental resources;

IV -- the preservation and restoration of environmental resources with a view to sustained use and permanent development, contributing to maintaining an ecological balance propitious to life;

V -- imposition on polluters of the obligation to restore and/or indemnify the harm caused and, on users, to contribute for the use of environmental resources for economic purposes;

VI -- undertaking research and techniques oriented toward the sustained use of environmental resources;

VII -- the availability of technologies for sustained use of the environment; and

VIII -- public awareness of environmental preservation, through annual reports on the State's environmental quality, the release of data and environmental information and the promotion of educational campaigns.

Article 5. Directives of the State Environmental Policy will be developed through rules and plans intended to guide the actions of the Public Authorities with respect to the recovery and maintenance of environmental quality, the maintenance of environmental equilibrium, sustainable development and improved quality of life, with a view to the principles established in article 2 of this Law.

Sole paragraph. Public and private activities and projects will be executed in accordance with the directives relating to State Environmental Policy.

Chapter II

State Environmental Quality Administration System (SEAQUA)

Section I

Objectives

Article 6. The objective of the State Administration System for Environmental Quality, Protection, Control and Development and the Appropriate Use of Natural Resources (SEAQUA) is to organize, coordinate and integrate activities corresponding to the direct, indirect and basic administration agencies and entities established by the public authorities, ensuring the participation by society in the execution of State Environmental Policy with a view to protecting, controlling and developing the environment and the sustainable use of natural resources, pursuant to article 193 of the State Constitution.

Section II

Agencies

Article 7. The State Environmental Quality Administration System (SEAQUA) will consist of the direct, indirect and basic administrative agencies and entities of the State and Municipalities established by the Public Authorities, responsible for the protection and improvement of environmental quality and the administration of natural resources, as well as those oriented toward maintaining and restoring the quality of life, which will form part of the National Environmental System (SISNAMA), and be structured as follows:

I -- vetoed;

II -- Central Agency: The Secretariat of State for the Environment (SMA), for purposes of planning, coordinating, supervising and controlling, as a state agency, the State's Environmental Policy, as well as the government directives established for purposes of managing environmental quality;

III -- Executing Agencies: those instituted by the State Public Authorities with a view to executing and ensuring the execution, as a state agency, of government policies and directives established for purposes of managing environmental quality;

IV -- Sectoral Agencies: the agencies or entities forming part of the direct, indirect and basic state administration, the activities of which are associated with protecting environmental quality and life or regulating the use of environmental resources, as well as those responsible for controlling the production, commercialization and use of techniques, methods and substances that may constitute a risk to life, the quality of life and the environment;

V -- Local Agencies: municipal agencies or entities responsible for environmental control and monitoring in their respective areas of activity.

Paragraph 1. Municipalities may also establish supplementary rules complementary to the federal and state rules relating to management of the environment, the use of environmental resources, sustainable development, the control of production and commercialization, and the use of techniques, methods and substances that pose a danger to life, the quality of life and the environment.

Paragraph 2. The agencies forming part of SEAQUA must provide the results of the analyses carried out, inspection reports, environmental licensing processes and documents for which it is responsible, when requested by an interested citizen and/or non-governmental organization.

Section III

State Environmental Council (CONSEMA)

Article 8. Vetoed:

I -- vetoed;

II -- vetoed;

III -- vetoed;

IV -- vetoed;

V -- vetoed;

a) vetoed;

b) vetoed; and

c) vetoed.

VI -- vetoed;

VII -- vetoed;

VIII -- vetoed;

IX -- vetoed;

X -- vetoed;

XI -- vetoed;

XII -- vetoed;

XIII -- vetoed.

Paragraph 1. Vetoed.

Paragraph 2. Vetoed.

Paragraph 3. Vetoed.

Article 9. Vetoed:

I -- vetoed; and

II -- vetoed.

Article 10. Vetoed:

I -- vetoed;

II -- vetoed;

III -- vetoed;

IV -- vetoed;

V -- vetoed;

VI -- vetoed;

VII -- vetoed;

VIII -- vetoed;

IX -- vetoed;

X -- vetoed;

XI -- vetoed.

Paragraph 1. Vetoed.

Paragraph 2. Vetoed.

Paragraph 3. Vetoed.

Paragraph 4. Vetoed.

Paragraph 5. Vetoed.

a) vetoed;

b) vetoed.

Paragraph 6. Vetoed.

Article 11. Vetoed.

Paragraph 1. Vetoed.

Paragraph 2. Vetoed.

Paragraph 3. Vetoed.

Paragraph 4. Vetoed.

Article 12. Vetoed.

Section IV

Central Agency

Article 13. The Secretariat of State for the Environment (SMA), the central agency of the SEAQUA, notwithstanding such other authority as has been legally vested therein, shall be responsible for the following:

I -- coordinating the process of formulating, approving, executing, evaluating and updating the State Environmental Policy;

II -- undertaking analyses of sectoral public policies that have an impact on the environment;

III -- approving the plans, programs and budgets of the executing agencies and coordinating their execution;

IV -- articulating and coordinating the plans and actions resulting from State Environmental Policy with the sectoral and local agencies;

V -- generating interfaces with bordering States and the Federal Government with respect to environmental policies, plans and actions;

VI -- defining the information policy for environmental management and monitoring its execution;

VII -- providing support to the Administrative Secretariat and the Technical Chambers of CONSEMA.

Paragraph 1. The approval of the State Environmental Policy will require the prior approval of CONSEMA.

Paragraph 2. The results of the analysis of public policies with an environmental impact must be submitted to the Government, after obtaining input from CONSEMA.

Article 14. Vetoed:

I -- vetoed;

II -- vetoed;

III -- vetoed;

IV -- vetoed; and

V -- vetoed.

Section V

Operation of the State Environmental Quality Administration System (SEAQUA)

Article 15. The SEAQUA shall be operated by means of the coordinated articulation of the agencies and entities constituting it, in conformance with, among other aspects:

I -- access by the public to information relating to threats to the environment, environmental protection activities, the sustained use of environmental resources and the process of environmental licensing, in the form established by the corresponding federal and state laws and by CONSEMA;

II -- the municipal rules and standards drafted on a basis complementary to federal and state legislation.

Sole paragraph. The rules and standards of the Municipalities may set parameters for the issuance, emittance and emanation of polluting agents, in accordance with the federal and state limits.

Article 16. The direct, indirect and basic State administration agencies and entities, the activities of which are related to those of protecting the quality of the environment or disciplining and controlling the use of environmental resources, as well as the state agencies and entities responsible for executing programs and projects and for the control and monitoring of activities capable of causing environmental damage, shall provide CONSEMA with information on their action plans and programs being executed, as set forth in annual reports, notwithstanding partial reports that address specific requests.

Paragraph 1. By March 31 of each year, the Secretariat of State for the Environment will publish in the "Official State Daily Newspaper" the consolidated reports mentioned in this article in an "Annual Environmental Quality Report" for the State of Sao Paulo, which shall also contain specific evaluations and recommendations with respect to the revision of priorities, programs and actions, financial resources, technologies and community participation within the scope of the SEAQUA.

Paragraph 2. The annual Report mentioned in the above paragraph must be sent to CONSEMA for it to take such measures as fall within its scope and jurisdiction.

Article 17. CONSEMA may request information and opinions from direct, indirect and basic State public administration agencies and from municipal governments, which must be provided within a period not to exceed 15 (fifteen) business days.

Article 18. The information required of the agencies and entities forming part of SEAQUA, from individuals or legal entities showing a legitimate interest, shall be provided within the period established in article 8 of Federal Law No. 7.347 1 of July 24, 1985.

Sole paragraph. The information provided pursuant to the terms of the heading of this article must maintain industrial confidentiality and avoid unfair competition.

Chapter III

Licensing of Activities

Article 19. The construction, installation, expansion and operation of establishments and activities that use environmental resources, which are considered as being effectively or potentially polluting, as well as projects capable in any way of causing environmental damage, will require prior licensing from the state agency with jurisdiction forming part of SEAQUA, notwithstanding such other licenses as may be legally required.

Paragraph 1. Vetoed.

Paragraph 2. The EIA [Environmental Impact Analysis]/RIMA must be performed by qualified technicians, and the work coordinator on each team of specialists will be required to register the Technical Responsibility certificate (RT) with the Regional Council for his professional category.

Paragraph 3. In conformance with the matter of industrial confidentiality, as expressly characterized and justified, and at the request of the interested party, the RIMA, subject to due justification, shall be accessible, as shall all work undertaken for purposes of technical and economic feasibility studies, as well as that mentioned in the bibliographic notes of the EIA and the RIMA, at the SMA library and in all Municipalities located within the area of influence of the project, with all expenses to be assumed by the project bidder.

Paragraph 4. While safeguarding industrial confidentiality, requests for licensing under any method, their renewal and the respective concession of the license shall be subject to a summary publication, paid for by the interested party, in the "Official Daily State Newspaper" as well as in a large circulation newspaper, regional or local, in accordance with the model approved by CONSEMA.

Paragraph 5. CONSEMA shall convoke a Public Hearing to debate the process of environmental licensing whenever it deems necessary or when required by:

- a) the direct, indirect and basic administrative agencies of the Federal, State and Municipal governments;
- b) legally established non-governmental organizations, for defending the various interests relating to protection of the environment and natural resources;
- c) 50 (fifty) or more citizens, duly identified;
- d) political parties, State and Federal Deputies and Senators elected in Sao Paulo;
- e) legally established union organizations.

Article 20. The public authorities, in exercise of their control authority, shall issue the following licenses:

I -- Prior License (LP), during the preliminary planning phase of the activity, containing basic requirements to be met for the localization, installation and operations phase, in accordance with the municipal, state and federal plans for land use and development;

II -- Installation License (LI), authorizing initiation of the implementation, in accordance with the specifications contained in the approved master Plan; and

III -- Operating License (LI), authorizing the initiation of the licensed activity and the operation of its pollution control equipment, after the necessary verifications, as provided for in the Prior and Installation Licenses.

Article 21. Upon initiation of the implementation and operation activities, prior to issuing the respective licenses, the managers of the agencies responsible for issuing the licenses must, under

penalty of serious functional liability, notwithstanding the imposition of other penalties, implement administrative prohibition measures which, if not immediately satisfied, must then be followed by legal measures taken by the legal agency with jurisdiction, involving seizure and other precautionary measures, and CONSEMA must then be notified pursuant to section V, article 8 of this Law, in addition to notifying the project financing entities of the occurrence.

Article 22. In cases where the licensing occurs within the scope of the Federal Administration, the opinion to be offered by SEAQUA shall be proposed by the SMA and evaluated by CONSEMA.

Article 23. In exercise of the monitoring activities, the monitoring agents shall be guaranteed entry on any day and at any time, and shall be permitted to remain for such time as may be necessary, at public or private establishments or properties.

Paragraph 1. When impeded, the agents may request police assistance to guarantee the execution of their responsibilities.

Paragraph 2. Whenever the monitoring is carried out at the request of a legally established union, non-governmental entity, an organization for the defense of various interests relating to protection of the environment and natural resources, political parties and members of Congress, they may observe such monitoring activities or appoint a qualified technician to represent them.

Article 24. When analyzing projects submitted to their examination, agencies forming part of the SEAQUA shall require that prior to issuing the Operating License (LO) or renewing the aforementioned license, the interested party adopt measures capable of ensuring that the raw materials, inputs and goods produced are of such a quality as to eliminate or reduce the effects of pollution deriving from their use and utilization, to legally permitted levels, and provide a system for discharging liquid and gaseous effluents and solid residue, duly licensed by the agency with jurisdiction.

Article 25. Certification of the environmental licensing process with the agency with jurisdiction must be provided, along with the voucher for collection of the "Analysis Price," the value of which shall be set in accordance with Sao Paulo State Tax Units (UFESP) or by such index as substitutes them, maintaining its value, in current currency as of the time of the substitution, according to type, size and complexity of the undertaking subject to the licensing process.

Article 26. Any direct, indirect and functional agency or entity of the State government, whether or not forming part of the SEAQUA, that is called upon to issue an opinion or in any other way to contribute to the licensing processing activities, even in cases where the licensing falls under the jurisdiction of the federal government, must do so within a period of 60 (sixty) days after the date it receives any necessary documentation, under penalty of serious functional liability of its directors.

Chapter IV

Incentives

Article 27. Publicly and privately financed entities and institutions or providers of incentives shall make their concession conditional upon evidence of the licensing provided for in this Law and certification by CONSEMA, with the interested party declaring itself as not being subject to the prior restrictions contained in section V, article 8 of this Law.

Chapter V

Penalties

Article 28. For purposes of this law, any act or omission resulting in failure to satisfy the established requirements or in violation of the rulings of a regulatory nature by the agencies of the administrative authorities with jurisdiction shall be considered as being a violation.

Article 29. Violations of the provisions of this Law, its regulation, and its rules, standards and technical requirements shall be classified as light, serious and extremely serious, in accordance with the criteria of the authority with jurisdiction, taking the following into consideration:

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

II -- attenuating or aggravating circumstances;

III -- the background of the violator; and

IV -- the violator's economic capacity.

Sole paragraph. Such party as in any way commits or contributes to the practice of a violation or benefits therefrom shall be liable.

Article 30. The violations in question in the previous article shall be punished by the following penalties:

I -- warning;

II -- fine of 10 to 10,000 times the value of the Sao Paulo State Tax Unit (UFESP);

III -- temporary or permanent prohibition;

IV -- seizure;

V -- demolition;

VI -- suspension of financing and tax benefits; and

VII -- seizure or attachment, temporary or permanent.

Paragraph 1. The penalty of a fine shall be imposed in accordance with the following limits:

1 -- from 10 to 1,000 times the value of the UFESP, for light infractions;

2 -- from 1,001 to 5,000 times the same amount, for serious violations; and

3 -- from 5,000 to 10,000 times the same amount, for extremely serious violations.

Paragraph 2. The fine shall be collected on the basis of the value of the UFESP on the date of its actual payment.

Paragraph 3. In the event of the extinction of the UFESP, for purposes of this law the same index as replaces it shall be adopted.

Paragraph 4. In the event of a repeat violation, characterized by committing a new violation of the same nature and seriousness, the fine shall correspond to double the one imposed above, cumulatively.

Paragraph 5. In the event of continued violation, in the judgment of the authority with jurisdiction, a daily fine of from 1 to 10,000 times the value of the UFESP may be imposed.

Paragraph 6. The penalty of permanent or temporary suspension shall be imposed for cases of endangering the public health, and may also be applied, in the judgment of the authorities with jurisdiction, for cases of continuing violation and after the third repeated violation.

Paragraph 7. The penalties of seizure and demolition shall be imposed for cases of work or construction undertaken without a license or in violation thereof.

Paragraph 8. The penalty of temporary or permanent collection shall be applied in cases of endangering the public health or, at the judgment of the public authorities, in cases of continued violation or based on a third repeated violation.

Paragraph 9. The penalty of suspension of financing and tax benefits shall be imposed as provided for in section V, article 8 of this Law.

Paragraph 10. The penalties established in sections III and IV of this article may be imposed cumulatively with those provided for in sections I and II.

Article 31. The mandatory nature of the fines may be suspended in the event that the violator, under the terms and conditions accepted and approved by the authorities with jurisdiction, are required to adopt specific measures to cease and correct the environmental damage.

Paragraph 1. Upon completion of all obligations assumed by the violator, the fine may be reduced by up to 50% (fifty percent) of its value.

Paragraph 2. The violator may not benefit from a reduction in the fine provided for in this article in the event that he fails to satisfy, in whole or in part, any of the measures specified within the established deadlines and in cases of repeated violation.

Article 32. Independently of the application of the penalties mentioned in article 30 and the existence of blame, the polluter shall be required to indemnify or repair the damage caused to the environment and to third parties affected by its activity.

Article 33. The entities and agencies of SEAQUA must directly and immediately send the State Public Ministry the necessary information for measures falling within its jurisdiction relating to polluters that expose any humans, animals or plants to danger, situations that are hazardous or those becoming more serious, pursuant to the terms of the relevant laws.

Sole paragraph. Authorities, officials or public servants who fail to satisfy the obligations mentioned in this article, or who act to prevent, impede or delay compliance therewith shall incur

the same liability as the polluter, notwithstanding any other administrative and criminal penalties as may apply.

Chapter VI

State Environmental Fund (FEMA)

Section I

Objectives and Administration of the FEMA

Article 34. Vetoed.

Sole paragraph. Vetoed.

Article 35. Vetoed.

Paragraph 1. Vetoed.

Paragraph 2. Vetoed.

Paragraph 3. Vetoed.

Paragraph 4. Vetoed.

Paragraph 5. Vetoed.

Section II

FEMA Funds and Investments

Article 36. Vetoed:

I -- vetoed;

II -- vetoed;

III -- vetoed;

IV -- vetoed;

V -- vetoed;

VI -- vetoed;

VII -- vetoed;

VIII -- vetoed; and

IX -- vetoed.

Article 37. Vetoed.

Sole paragraph. Vetoed.

Article 38. Vetoed.

Chapter VII

Final Provisions

Article 39. The Executive Branch shall enforce the provisions contained in this Law within a period of 120 (one hundred twenty) days as of its publication, and within the same period shall also establish the value of the fines provided for in article 30 of this Law.

Article 40. This Law shall enter into force on the date of its publication, subject to repeal of all provisions to the contrary.

Transitory Provisions

Article 41. Until such time as this Law enters into force, the fines established in current law for similar cases shall continue to apply.

Article 42. Vetoed.

Mario Covas, State Governor

----- 1 Federal Law, 1985, page 626.