



Hot Topics in Brazilian Environmental Law

Russell Fraker

Beveridge & Diamond, P.C.

1350 I Street N.W., Suite 700

Washington, D.C. 20005-7202

(202) 789-6048

**Latin American Region
Environmental Roundtable**
June 14, 2012

Overview



- **National profile**
- **Rio+20**
- **Climate change**
- **Deforestation**
- **Air regulations**
- **Water regulations**
- **Contaminated sites**
- **Reverse logistics**





RIO+20
United Nations
Conference on
Sustainable
Development

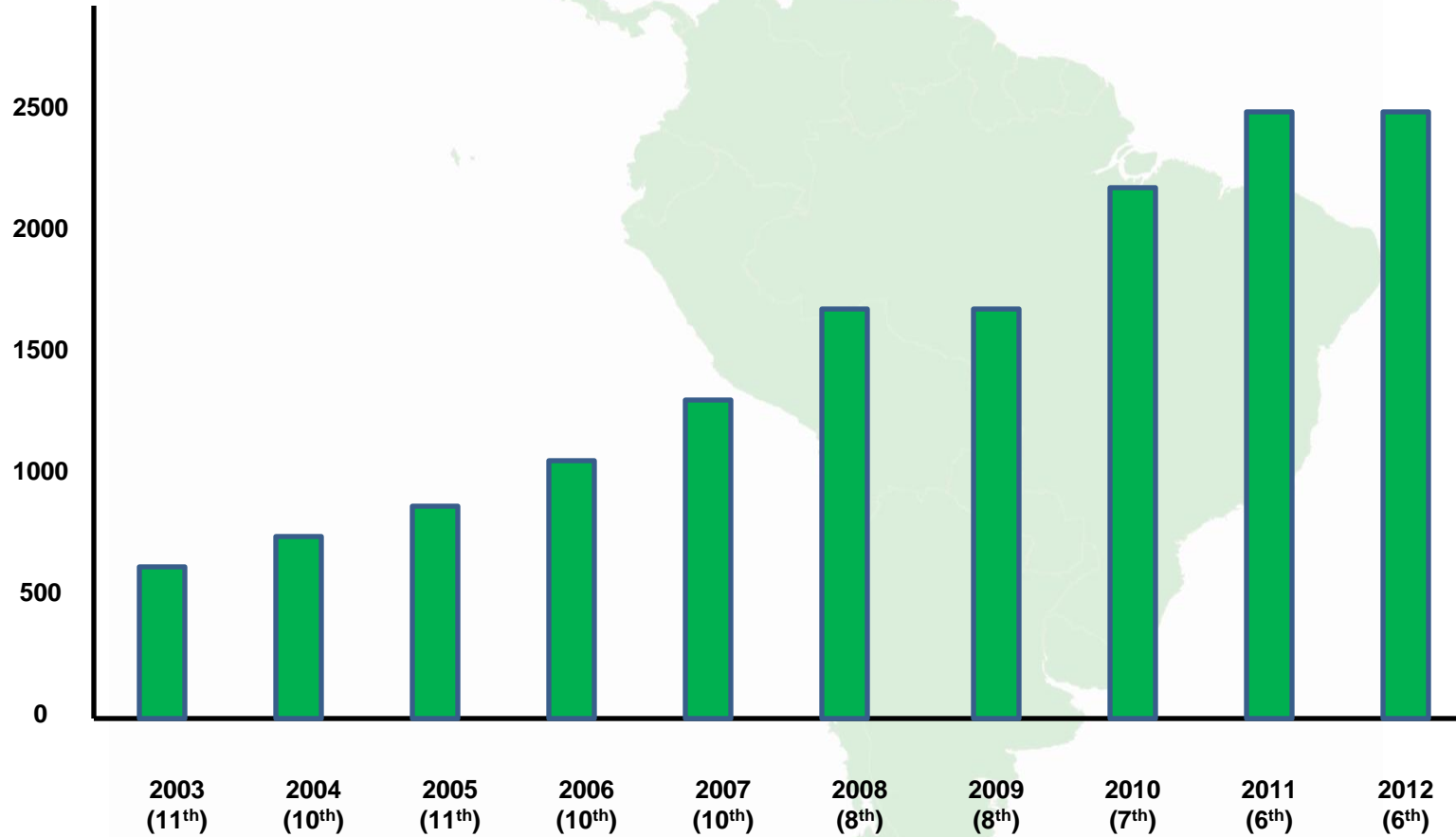


Rio 2016



GDP Growth

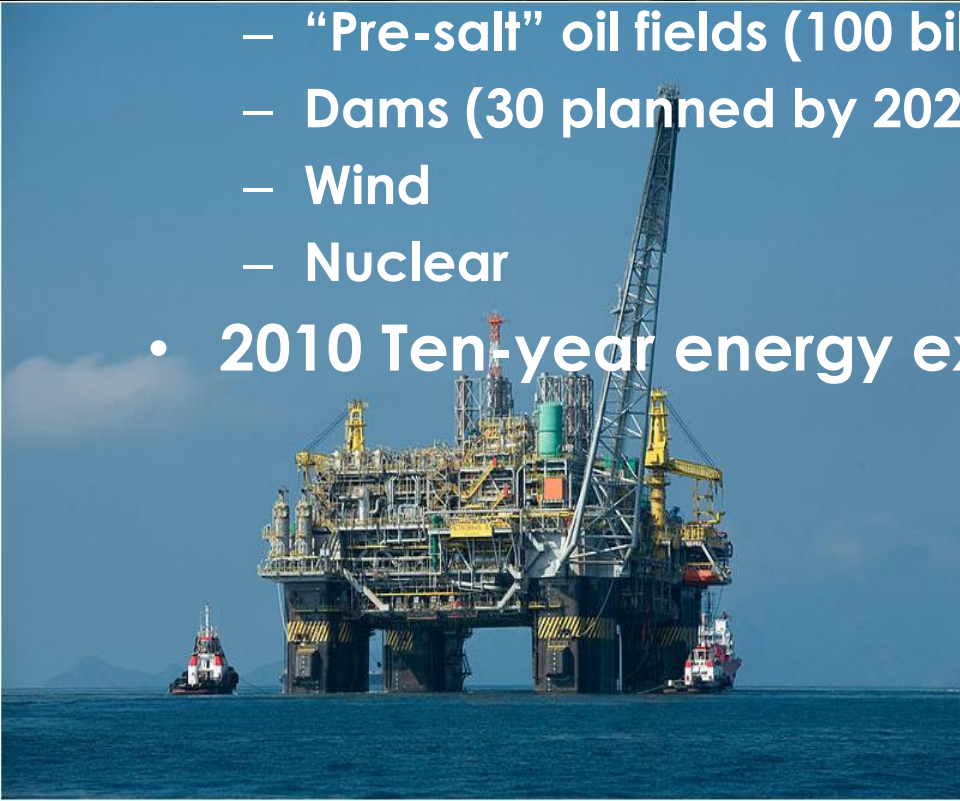
GDP
(in US\$
Billion)



* Figures & rankings based on IMF estimates.

Energy Independence

- Self-sufficient since 2006
 - Ethanol
 - Biodiesel
 - “Pre-salt” oil fields (100 billion barrels)
 - Dams (30 planned by 2020)
 - Wind
 - Nuclear
- 2010 Ten-year energy expansion plan



São Paulo

State

- Population: ~42 million
- GDP: ~ 1 trillion
- Would rank 16th globally



City

- Population: ~20 million
- 5,644 high-rise buildings
- Longest traffic jam: 295 km
- 50 million air travelers
- Largest helicopter fleet
- 6th most billionaires

Rio+20

- UN Conference on Sustainable Development: June 13-22, 2012
- Rio “Green Stock Exchange”:
 - Cap-&-trade for air emissions
 - Water effluent discharges
 - “Legal reserves” (Forest Code)





Climate Change



- **Federal Climate Change Law:**
 - *Sectoral approach: inventories, plans, targets*
- **State Climate Change Laws:**
 - São Paulo: *slowly assigning tasks to agencies*
 - Rio de Janeiro: *carbon intensity / productivity*
 - Rio Grande do Sul: *linked to federal provisions*



- **Pre-Salt Oil “Social Fund”:**
 - *mitigation & adaptation*



Forests

- **New Forest Code (May 25, 2012)**
 - Covers all native vegetation
 - Registration of “legal reserves” (20-80% of property)
 - Requires reforestation in some cases
 - Amnesty provisions; “regularization”
- **Enforcement: Decree 6514/2008**
- **“Operation Agata”**
- **International supply chain issue: illegal iron / steel**

Water



“Brazilian Water Decade”

- **2005-2015 (March 22, 2005)**
- **Period of policy & program development**
- **Fees for water use & discharge (CNRH Res. 48; March 21, 2005)**
- **Implementation by hydrographic basin committees**
- **National Water Regulation (CONAMA Res. 357; March 17, 2005):**
- **Classify water bodies**
- **Effluent standards**

Federal Effluent Standards

- **CONAMA Resolution 430 (May 2011)**
- **New nationwide effluent standards**
- **Industry self-monitoring & testing (May 2014)**

Air



Federal Emission Standards

- **First round**: sources licensed after Jan. 2, 2007
 - 13 categories (include boilers)
 - Several pollutants: PM, NO_x, SO_x, CO, lead, fluoride, ammonia
- **Second round** (Dec. 2011): pre-2007 sources
 - Staggered deadlines: immediate to 15 years
 - Agencies must establish limits for sources not covered

São Paulo “Non-Attainment”

- Emissions Reduction Plan (Jan. 2013): will require offsets for major new sources / modifications
- Applies in “saturated” & “near-saturated” areas
- Major source / modification thresholds:
 - PM: 100 tpy
 - NOx: 40 tpy
 - SOx: 250 tpy
 - CO: 100 tpy
 - VOCs: 40 tpy
- São Paulo emissions trading market (on BOVESPA)

A close-up photograph of reddish-brown soil, likely a laterite or iron-rich soil. The soil has a crumbly, granular texture with some small clumps and visible roots or organic matter scattered throughout. The color is a rich, earthy red. The word "Soil" is overlaid in white text in the upper center of the image.

Soil

São Paulo “Superfund”

- Remediation procedures (2002)
- “Superfund” (FEPRAC) Law (13577/2009)
 - “Legally responsible”: cause; own; operate; control; benefit
 - “Technically responsible”: consultant
- Registry of Contaminated Sites
 - 2011: 4131 sites (78% gas stations; 14% industrial; 3% dump sites; 5% miscellaneous)
- Draft regulation (2011):
 - duty to investigate;
 - “critical sites” to remediate & litigate



Federal Remediation Standards

- Broad, general provisions for pollution liability
- National Waste Law includes remediation in municipal & facility waste management plans
- CONAMA Resolution 420/2009: non-binding guidelines for states & municipalities
- Modeled on São Paulo's procedures
- ABNT Technical standards (2011-12)

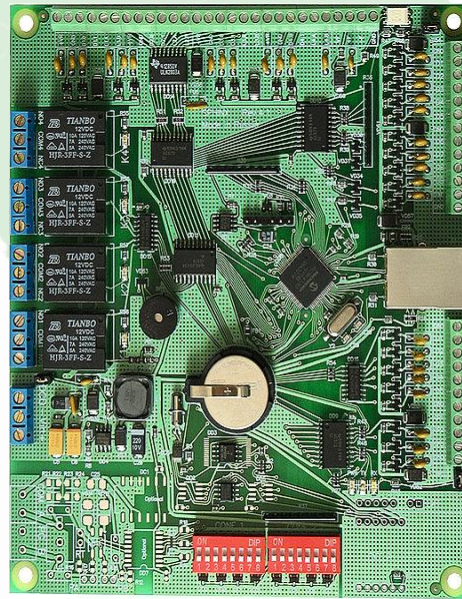
Remediation in Other States

- Minas Gerais:
Inventory of
Contaminated
Sites (2011):
490 sites
- Rio de Janeiro:
urban port re-
development



Yellow Pins = potentially contaminated industrial sites
in downtown Rio de Janeiro port district.

Products



Federal “Reverse Logistics”

- **National Solid Waste Policy Law (Aug 2010)**
- **Reverse logistics: integrated model**
 - Packaging (pesticides, lubricants, hazardous substances); batteries; tires; bulbs; electronics
- **Sectoral agreements rulemaking process**
 - Orientation Committee
 - First notice (lubricants, Dec 2011)
 - Public consultation (May 2012)
- **Packaging: reusable or recyclable**

São Paulo Producer Responsibility

- State Solid Waste Policy Law (2006)
- 2009 regulation authorizes SMA to list products
- SMA Resolution 24 & 131 (2010) – *revoked*
- SMA Resolution 38 (Aug 2011)
 - 60-day deadline for management proposals
 - Wide range of consumer products
- First agreements announced (Feb 2012)



Obrigado!

**Russell Fraker
Beveridge & Diamond, PC
1350 I Street, NW ~ Suite 700
(202) 789-6048
rfraker@bdlaw.com**