

# **CASE STUDY: CONTAMINATED SITE LIABILITY IN A BRAZILIAN LABOR COURT**



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# Background of Lilly Labor Court Case

## Public Civil Action

- 1977-2003: Lilly Manufacturing operations
  - Agricultural chemicals and antibiotics
- 2003: Sale of facility
- 2004: Voluntary disclosure to CETESB
- 2006: TAC signed and remediation begun
  - Similar to a US Consent Decree
- 2007: 10 individual labor cases (now approx. 30)
  - alleged contamination by “heavy metals”
- 2008: Labor investigation and public civil action filed
- 2009: Alien Tort Claim Case filed
  - U.S. District Ct (S.D. Ind.) (dismissed)





Industrial neighbor

Plant

SP 322  
Road

Landfill

Incinerator

Neighborhood

Recreation area

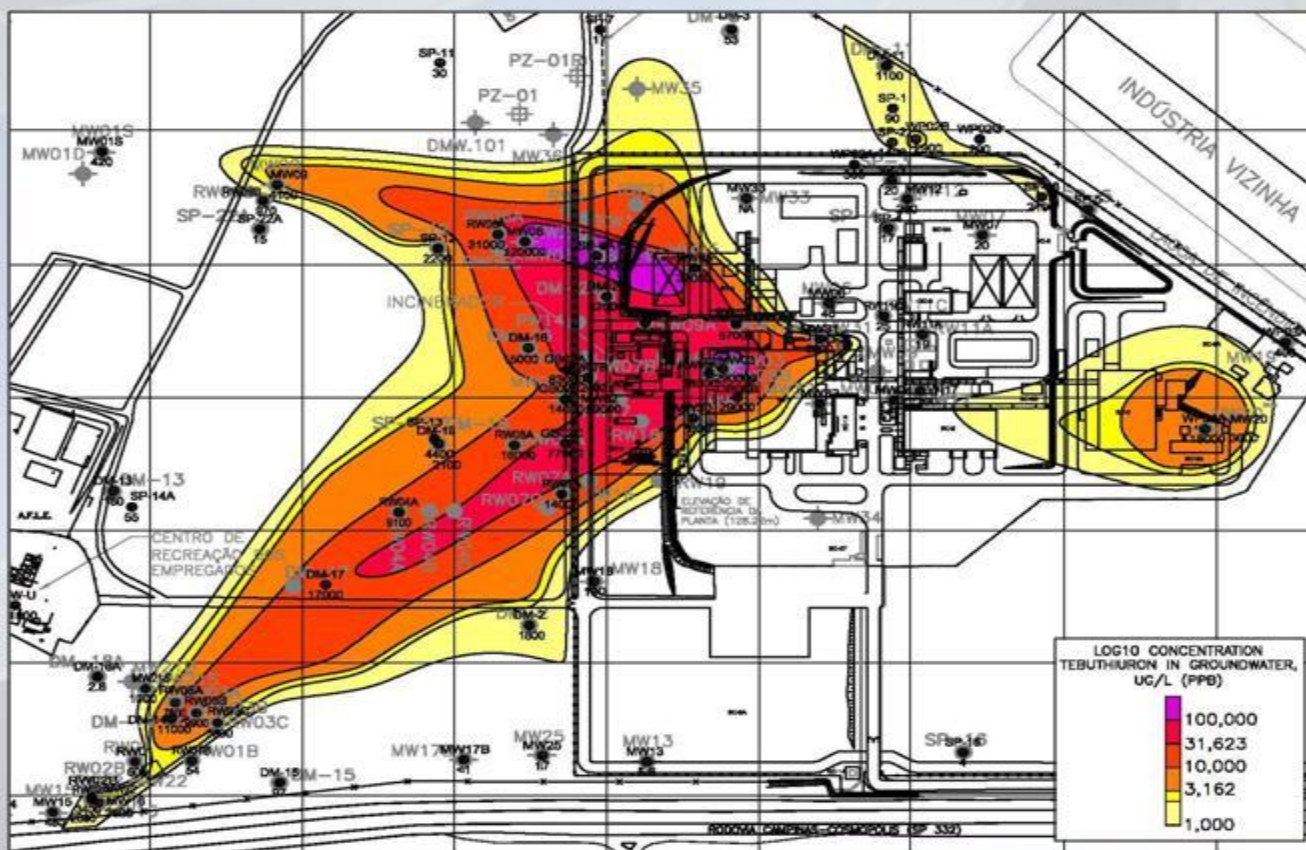
Water intake

SABESP Paulínia

Jaguari River



## TEBUTHIURON AREAL EXTENT – 1989 to 2006



## TEBUTHIURON AREAL EXTENT – 2<sup>nd</sup> Qrt 2013



# What is the role of causation in the Labor Court?

- To award damages, Brazil Labor Court is required to find:
  - Adverse environmental working conditions brought about by exposure above the legal tolerance limit (Regulation 15)
  - Damage to health for which a health plan is necessary
  - Correlation between alleged worker exposure to adverse working conditions created by employer
  - The formation of a tort based on the absence of precautionary measure for the health of the worker

# Labor Court Decision

- Second Labor Court of Paulínia, May 9, 2014
- Reversal of the burden of proof
- “Risk of exposure”—the mere presence of groundwater contamination creates a “risk of exposure” to all employees
- “Precautionary Principle”
- “Polluter Pays”

# Overview of the Labor Court Judgment

- Court estimates the value of the judgment as BRL 1 billion (\$459 million)
  - Health plan for all workers plus children born during/after employment (no fixed cost estimate)
  - Research Foundation for Population and Environment BRL 150 million
  - Donation of equipment to Campinas Hospital to diagnose and treat exposures – BRL 100 million
  - Moral Damages – BRL 50 million
  - Expert Fees – BRL 50,000
  - Court costs – BRL 20 million



# Decision

- Lengthy discussion of chemical industry in Brazil
- Many quotations from technical documents submitted by Lilly as part of the remediation
  - Used to demonstrate that the damage to the environment is proven
  - Exposure to the workers is presumed
  - Equates the “environment” with the “work environment”



# Excerpts from Decision

“Starting, therefore, from this premise, one comes easily to the conclusion that there can be a collective injury to the work environment (understanding this as the range of guarantees provided for by the Federal Constitution and the infra-constitutional laws).”

“From the constitutional list cited ... emerges as fundamental to the worker *‘the right to protection of the social values of labor’* which should guide the relations between employees and employers as a means to achieve social peace and balance in the distribution of wealth.”

# Procedural Differences—U.S. vs. Brazil

- Virtually no discovery
- Written evidence
- Court expert
- Written questions submitted to the expert—no opportunity for cross examination
- Witness testimony is not valued and may not be allowed
- In Labor Court, burden of proof may be shifted to the defendant at the court's discretion
- Meeting with the judge is expected