

Role of Public Prosecutors in Environmental Enforcement

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Brazilian Legal Structure - Overview



PUBLIC AUTHORITIES

EXECUTIVE

**Federal Environmental
Agency**

**State Environmental
Agency**

**Municipal
Environmental Agency**

LEGISLATIVE

Federal Laws

State Laws

Municipal Laws

JUDICIARY

Superior Courts

**Federal
Courts**

(for federal
issues in
Federal,
State and
Municipal
levels)

State Courts

(for all other
issues in
Federal,
State and
Municipal
levels)

PUBLIC PROSECUTORS (PP)

Federal PP

State PP

- **PP is empowered to promote**
 - **class actions – *ação civil pública ACP* (collective interests)**
 - **civil/criminal investigations**
 - **criminal lawsuits**
- **PP is completely independent from Public Authorities**
 - **can inspect and challenge decisions from Environmental Agencies**
- **PP has no powers to enforce its interpretations of the laws**
 - **needs to file Class Actions to discuss them in Courts**

Investigations

- ☐ PP's discretion to initiate
- ☐ Hearing of investigated party is **optional**
- ☐ **Optional** (lawsuits can be filed regardless of prior investigation proceeding)
- ☐ PP's can notify Public Authorities requesting info (ordinary movement)
- ☐ PP's can request any kind of docs/info

Dealing with PP



- ❖ Companies cannot challenge PP's powers to request docs/info
- ❖ However, companies may refrain from providing info (risky strategy)
 - Probably, PP will file lawsuit
 - PP will certainly inform judge about company's silence
- ❖ Depending on the case: limit response to the request

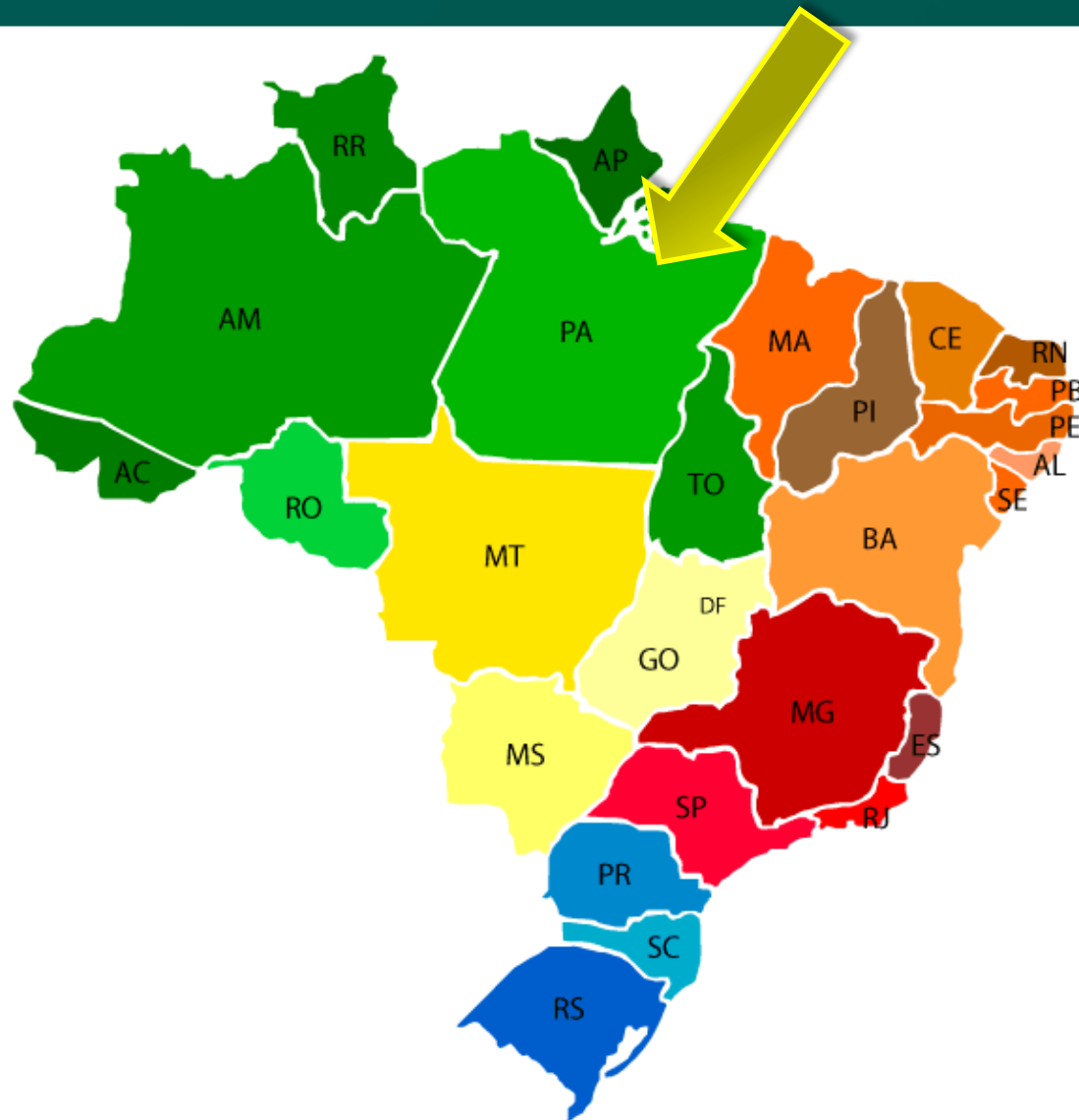
How to cope with PP?



- ❖ Evaluate professional and educational background of PP
- ❖ Evaluate PP's media involvement
- ❖ Evaluate PP's former actions/decisions
- ❖ Evaluate cost/benefit of confronting PP's decision
- ❖ Provide limited information/clarification with quality
- ❖ Conclusion: decision on case by case basis**

Concrete Cases involving PP

Environmental Licensing Issues - Pará



Port + Industrial District

☐ Federal + State DP (i.e. DP) (se)

☐ C... al to

Integrated
Environmental
Assessment is
NOT FORESEEN
by Environmental
Brazilian laws

✓

✓

Lic... include
mandatory monitoring actions



Brownfield Cases

São Paulo



Brownfield Case - Diadema, SP



Brownfield - Diadema, SP



- ❖ Contamination caused by owner's **gas station** → Civil Inquiry initiated by SPP
- ❖ Investigation detected several contaminants not related to gas station
- ❖ PP notified former users of site → client
- ❖ New Civil Inquiry involving owner + client
- ❖ Owner + Client signed TAC with SPP
- ❖ Superior Council of PP rejected TAC + ordered further investigations

Product-Focused Environmental Controls



PP – E-Waste Take Back

Post-Consumption Liability Rules



- **August 2010: National Solid Waste Policy Act**
- 3 Mandatory conditions to have take back systems:
 - Sectorial Agreement
 - Decree (published)
 - Commitment Agreements (with EA/PP)
- **January 2015:** conditions not fulfilled for e-waste
- **April 2012:** Consumer PP proposed Class Action against 5 cell phones manufacturers
- **2014:** Environmental PP initiates inquiries involving cell manufacturers/importers/brand holders





Petroleum By-Product Investigation

Cabedelo, Paraíba



- Claim from local NGO on potential contamination + health damages derived from petroleum by-product
- FPP started EI
- Client is responding FPP's questions (client's burden of proof)



Responsabilidade Civil Ambiental dos Financiadores

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♦ Cynthia Ferragi Hungria ♦ Josephine Eugenia Chen

LUMEN JURIS | editora

DIREITO AMBIENTAL

Aplicado aos Contratos



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Obrigada!

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