

Latin American Environmental Law Roundtable

March 11, 2015

Washington, DC
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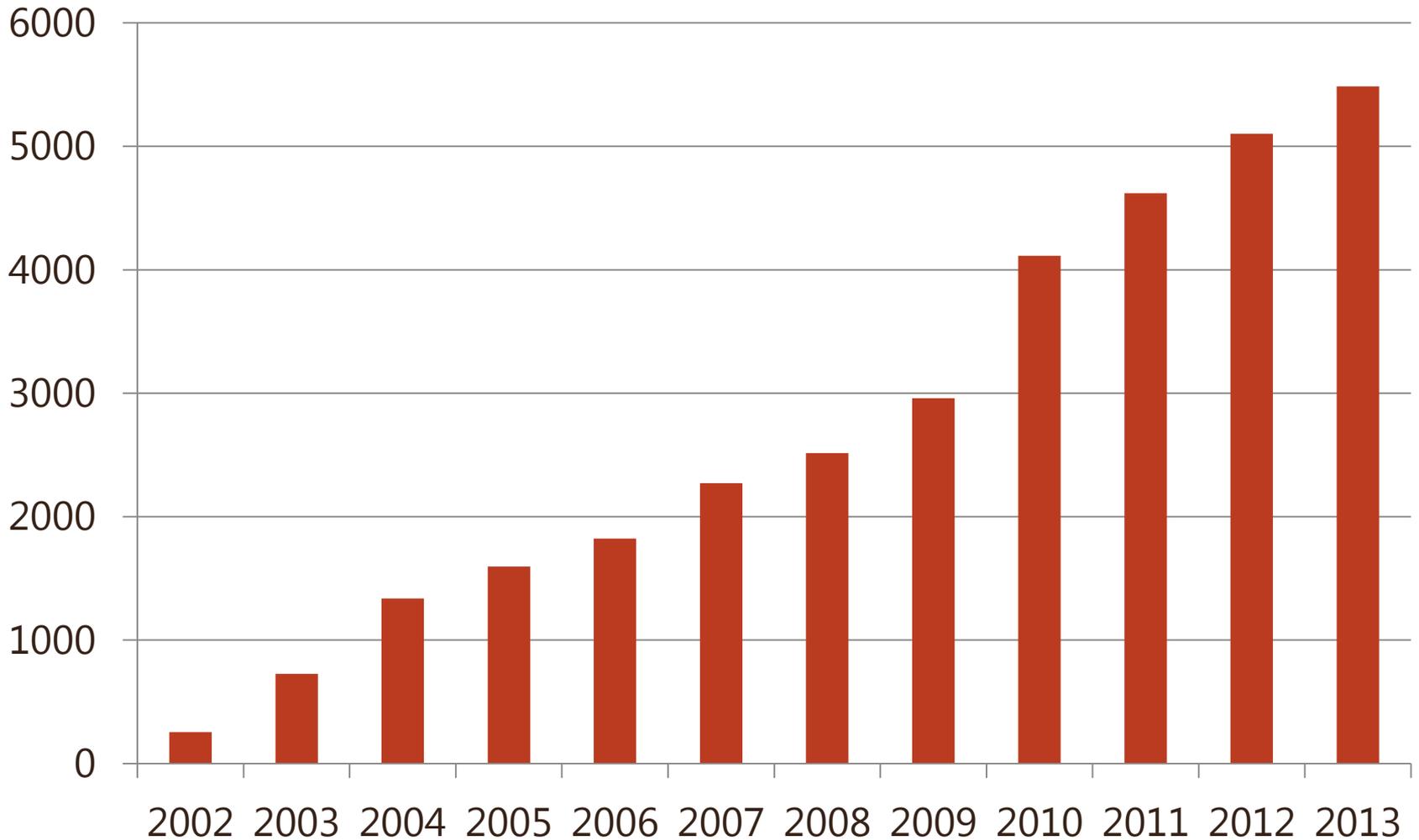
Trends in Brazilian Contaminated Site Liability

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Contaminated Sites in Brazil



Contaminated Site Liability



Sources

- Federal environmental law (1981)
- Civil Code (toxic tort)
- State legislation (esp. FEPRAC – 2009)

Mechanisms

- Federal remediation standards (2009)
- Waste management plans (National Solid Waste Policy – 2010)
- Contaminated site inventories
- Public prosecutors (public civil action)
- Licensing
- Disclosure obligations
- Lender responsibility (2014)

Federal Law & Remediation Standards



Law 6938/1981

- Art. 14 § 1: “polluter” bears strict liability to restore or compensate for environmental harm
- Art. 3(IV): “polluter” is one directly or indirectly responsible for an activity that causes environmental harm

CONAMA Resolution 420/2009

- Guidelines for state / local remediation programs
- Remediation plan:
 - Control sources of contamination
 - Current & planned uses of the site
 - Risks to human health
 - Technically & economically viable intervention measures
 - Implementation schedule
- Reference values for soil contaminants
- National Database of Contaminated Sites

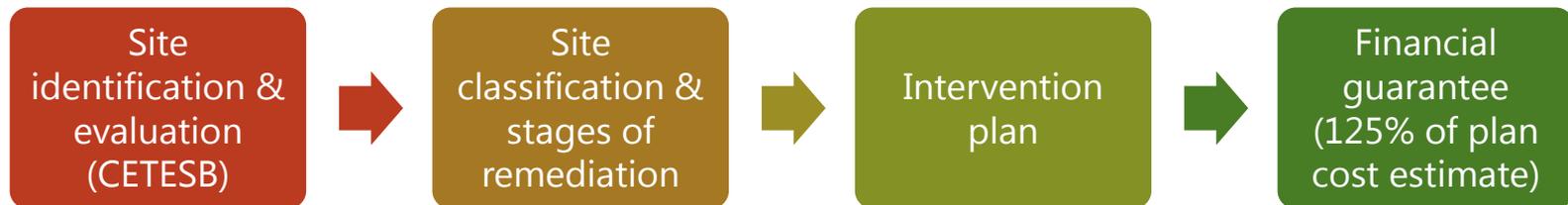
São Paulo Superfund Law (FEPRAC)



Law
13577
2009

Decree
59263
2013

- “FEPRAC”: State Fund for Prevention and Remediation of Contaminated Sites
- Funded through: license fees, fines, other sources
- Legally responsible parties: broadly defined (incl. indirect beneficiary)
- Environmental licensing: soil evaluations
- Remediation process, key elements:



National Solid Waste Policy



Law
12305
2010

Decree
7404
2010

- Facility waste management plans: required to identify environmental liabilities
- Municipal management plans: identify contaminated sites and remediation measures
- Orphan sites: agency may remediate a contaminated site, then collect from responsible party

State Contaminated Site Inventories



São Paulo

2 inventories

- Registry of Potentially Contaminated Sites (obligatory monitoring)
- System of Contaminated and Remediated Sites (SIACR; accessible database; 4771 sites)



Minas Gerais

554 sites



Paraná

Gas station program



Rio de Janeiro

160 sites



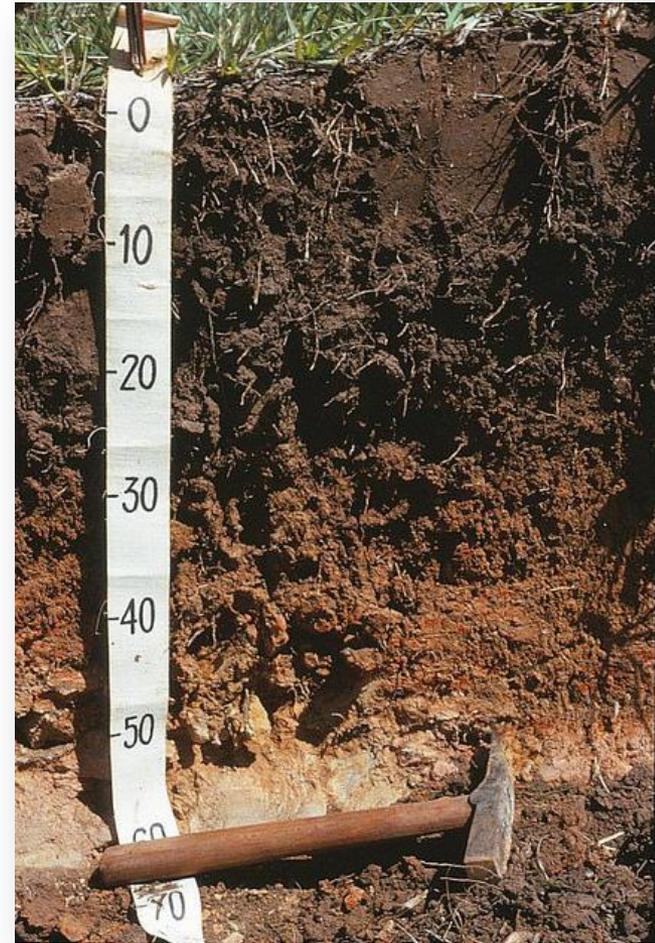
Bahia

VIGISOLO program, linked to public health system

Self-Inspection & Monitoring (São Paulo)



- Facility environmental licensing
 - soil inspection required for:
 - ◆ Application
 - ◆ Expansion
 - ◆ Termination
- Disclosure obligations:
 - ◆ Owner / operator (legally responsible)
 - ◆ Consultant (“technically” responsible)



Lender Responsibility



- Central Bank of Brazil Resolution 4327/2014
- SARB Regulatory Standard 14/2014
- Require lenders to establish Social and Environmental Responsibility Policies
- Obligations include:
 - Acknowledge environmental risk in lender's risk portfolio
 - Assess & manage environmental risk
 - Require borrowers to identify & mitigate environmental impacts
 - Audit borrower projects' environmental compliance & liability risks



Thank You!



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