ENVIRONMENTAL

IMPACTS FOR ENTREPRENEURS OF THE NEW RULES ON THE FEDERAL TECHNICAL REGISTER OF POTENTIALLY POLLUTING ACTIVITIES

22 AUGUST 2018

AUTHORS

ROBERTA DANELON LEONHARDT
PARTNER / SÃO PAULO

THAIS FERREIRA MORENO
LAWYER / SÃO PAULO

Two new regulations issued by the Brazilian Institute of the Environment and Renewable Natural Resources ("Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis" - IBAMA) regulate the Federal Technical Register of Potentially Pollution Activities (CTF/APP). Effective as of June 29, IN No. 11/2018 and IN No. 12/2018 have brought about significant changes in the framework of activities subject to registration with the CTF/APP, unlike previous Ibama instructions published on the subject.

IN No. 11/2018, for example, consolidated all the information related to the subject and included, in its Annex I, a list of activities subject to registration with the CTF. They were divided into two categories: (i) those provided for in Federal Law No. 6,938/1981 (the National Environmental Policy); and (ii) those provided for in other federal regulations.

With this, the analysis of activities subject to registration became faster and more efficient, and offers greater certainty to entrepreneurs, since all the activities that are subject to registration are listed in a single rule. For the most part, they underwent only modifications in their descriptions, which are now more detailed and specific and with reference to rules related to each one of the subjects.

Other relevant changes brought about by the rule are provided for in articles 10, 10-A, and 10-B. The provisions broaden the understanding that only undertakings in the operating phase would be subject to registration with the CTF, therein establishing the obligation of registration for projects that carry out activities subject to environmental control and inspection, which have an Installation License (LI) or other licenses or authorizations (which are also considered as environmental control and inspection actions). This rule includes activities set forth in technical conditions for environmental licenses or authorizations. Thus, even if the main licensed activity is not subject to registration with the CTF, if any of the technical conditions includes one of the activities listed in Annex I of IN No. 11/2018, enrollment with the CTF should be performed.

The articles mentioned make it clear that not only the licensee but also a third party carrying out the activities set forth therein (and listed in Annex I) must be registered with the CTF. In addition, entrepreneurs must register all activities that are required to be registered with the CTF developed in their establishment, and not only those stated in their corporate purpose or in the National Register of Corporate Taxpayers (CNPJ).

Thus, in general terms, Ibama IN No. 11/2018 clarifies some important concepts and obligations that were not explicit in the previous rules and extends the cases giving rise to an obligation to effect registration with the CTF. IN No. 12/2018, in turn, was responsible for creating a specific regulation for the classification of activities with the CTF.

The rule established criteria not only normative (as had been happening) but also technical standards to classify the activities subject to registration with the CTF. Therefore, in addition to the list in Annex I of IN No. 11/2018, the IN provided for the use of the Technical Classification Form (FTE) as a guide in describing the activities of the CTF.

The FTE consists of an electronic form that contains detailed descriptions for classifying activities. Each of the activities listed in Annex I has a corresponding FTE.

This may have been the greatest benefit for entrepreneurs brought about by the new INs, since the FTE can resolve most of the uncertainties regarding the activities registrable and non-registrable with the CTF and, therefore, avoid mistaken registrations that may generate undue costs arising from the quarterly payment of the Environmental Control and Inspection Fee (TCFA).

The rule also provided a glossary with definitions of various concepts mentioned in both Annex I of IN 11/2018 and in the FTEs, thus creating a useful consultation tool for entrepreneurs upon registering activities.

In view of the recent entry into force of the rules, it remains to be seen how the new provisions will be applied in practice and whether Ibama will propose in the coming months new regulations directed to the payment of the TCFA, since the subject has not been addressed in the rules recently published.