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**ENVIRONMENTAL MANAGEMENT:
PROACTIVE LEGISLATION FOR MUNICIPAL SOLID WASTE**

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INTRODUCTION

The environmental question is of complex nature. It involves knowledge of diverse subjects and makes possible the accomplishment of studies under the optics of different specialties. The philosopher Heller apud Carvalho (2001) contents that the world-wide civilization is in crisis, understands that the solution of the most serious problems is urgent, lest social and political chaos or even human self-destruction will result.

Environmental Law is a science that appeared at a historical moment designated by the crisis. This science has been appraised as being a set of principles, norms and rules that have the objective of protecting the environment, maintain the ecological balance, conserve cultural assets and contribute to harmonic development and social justice. For the application of this concept, administrative and legal measures are used beyond repairing the actual damages to the environment and ecosystems (CARVALHO, 2001).

The law itself is one of the tools used by the Science of Environmental Law. To command the social and cultural life in an effective process of adjustment in the light of the evolution of society is, in ample direction, the dynamics of the law. It can be observed that it also expresses the necessity of living beings to share one determined space of time and place, without the need for foreign orders devoid of adaptations.

Amongst the legal devices that target tutoring the environment it is possible to discern elements that regulate, prohibit and sanction. However, it can be observed that there exists a concentration of laws that forbid and sanction, in detriment of the avoidance of future environmental damage or pollution.

The law has remained passive in the aspect of stimulating the construction of a sustainable society. To cover a dynamic and active ideal situation immediate changes are necessary in order to arrive at a legal tool that values the maintenance of the existing environment.

To plan the development involves the elaboration of politics with the intention to influence or mold the action of man in his relation to nature (SACHS, 1986). That author expresses concern of practical order and mentions the cultural ecology related to it. The term cultural ecology was defined by Bennett (1976) apud Sachs (1986) as being the way in which the relation "man-man" modifies the relation "man-nature" in predetermined representative cases, and as a result affects the future of both. Rereading the concept above, it can be confirmed that the ideal of a sustainable society involves the formulation and the execution of politics with the objective to test and to mold the action of man in relation with himself and with nature, which is transformed in the process of consumption.

This research proposes to analyze the environment within the specific topic of municipal solid waste by explaining the present legal instruments and the behavior of individuals subjected to those instruments. The study describes the large quantity of existing environmental legislation, which historically is ineffective.

OBJECTIVES

Understand the working of present environmental law and innovate with the proposal of a proactive instrument.

Promote public awareness with respect to municipal solid waste and create a sense of environmental responsibility.

Develop proactive legal instruments that will force this awareness so as to be accepted and attended to voluntarily.

Specifically, the study traces a brief history of environmental legislation in Brazil, analyses the legislation on municipal solid waste and its influence on waste management.

The City of Araguari is used as an example of proactive legislation as regards solid waste.

PRESENT AND FUTURE CONCEPTS OF ENVIRONMENTAL LEGISLATION

A paradox is raised by Carvalho (2001, p. 34) when the author states that the increase of legal concern with natural resources historically contrasts with the governmental actions or omissions related to the fulfillment of legislation. It may be shown that economic intentions were the main responsible factor of prohibitions of environmental order. The Project of Law of the Brazilian Senate n.º 265, of 1999, objectively proposes the National Politics on Solid Waste. Its purpose is to establish nationwide directives and norms for efficient use of natural

resources with the intention to prevent their exhaustion, to reduce and prevent pollution and to protect and to recover the quality of the environment and public health. The Project of Federal Law is an adaptation of the Law of Urban Solid Waste of the state of São Paulo to the federal level. The present study assists the understanding of the proposed federal legislation and its effect on the municipal scene.

It brings out those aspects of environmental management that lead into the future, emphasizes the necessity of a national policy on solid waste, and creates a new legal framework for municipal solid waste management.

The methodology of approach is based on the literature and on the solid waste management model effective in the City of Araguari.

The City of Araguari is situated in the macro-region of the Mining Triangle, occupies a total area of 2774 km² of which 54 km² represent the urban area. Five districts, namely Amanhece, Florestina, Piracaíba and Santo Antonio, apart from the municipality of Araguari itself, constitute the metropolitan region, which has 104223 inhabitants with an average demographic density of 37,6 per km². The main economic activity is agriculture (PREFEITURA MUNICIPAL DE ARAGUARI-MG, 2003).

This city lives an experience of equilibrium between the ideal – the law – and the possible – the practical situation. It faces the solid waste problem in collaboration with the citizens and has sanctioned a law that will guarantee the perpetuity of the established practices.

The city of Araguari initiated the implementation of municipal management of the solid waste in the year of 2001; it did this independently from the existence of a federal law disciplining the subject. It introduced practical procedures by means of a joint effort of the administration, the garbage pickers and the townspeople. It attributed the attainment of positive results to the shared management and the existence of political will, associated with the use of knowledge about the necessities of the garbage pickers who are today being referred to as waste retailers. The experience of the city of Araguari can be characterized as innovative. The model of management included and legalized all practical experiences already in existence and that had produced positive results. The municipal law provided the necessary tool for the correct handling of solid waste in the city. It is important to emphasize that its elaboration occurred parallel to the stimulation of new environmental practices. There was initial resistance from the retailers in adhering to the proposal of City Hall. This fact gave evidence of the existing exclusion of the retailers from municipal matters. The administration then presented proposals

of inclusion and the corresponding actions. The conflicting goals of public and private sectors were addressed, and the model became acceptable to all concerned. Some lines of approach can be highlighted, such as the constant search for professional qualification of the retailers and administrators respecting the ethical, philosophical, and moral principles of citizenship, democracy, co-responsibility and solidarity.

For the construction of the process of shared management it is essential to exploit the wisdom of the retailers, to monitor the processes of constant evaluations of all the actions taken by the involved parties, to appeal to cultural characteristics of the population and to work with educational institutions.

The city of Araguari beginning the innovative management with the PGIRSU – Management Plan of Solid Waste. This plan was implanted and implemented with the participation of the waste retailers organized in association, with the participation of the civil society, of the business management, beyond the Local Public Power (Legislative, Executive and Judiciary). There was search for the development sustainable.

The PGIRSU that's possible because of the Law n° 3.774/02 elaborated by the administration. This Law stabilizes the regular and selective collection of solid waste in the city of Araguari. The objective of this Law was to make possible the practical that was being constructed concomitantly. This is an original aspect, therefore what normally it is observed is the posterior elaboration of the law making it consequence of a practical existence or, in other way, a previous elaboration, remaining in the two cases distant of the reality that intends legitimate.

The vision of the administration of this city, in this direction, is an example of social-legislative interaction. This text of the law made possible the separation process of residue waste. This Law born in the same time to the actions implemented in the city of Araguari, however some waste retailers don't know about your existence.

The established practices of the model city and the principles of environmental law inspired the proactive legal instrument proposed by this research. Principles are managing proposals of a science (BUENO, 1986). In the definition of Silva (2002), the principles are some fix rules that serve to a norm for all species of legal action, they are the basic reason to being of the legal things, converting them into perfect axioms. The same author still explains that the legal principles are a vital element or starting point of the proper Law, indicating your base.

The Brazilian environmental law is based in some principles, however, exists some that need detach. Amongst them they are the principle of the sustentabilidade, the principle of the prevention, the principle of the participation, the principle of the limit and the principle of the responsibility.

The principle of the sustentabilidade has for content the recognition of the degrading custom of the society, the requirement is the necessity change of paradigm with the consequent creation and application of alternatives that have as an essential objective to balance and to conciliate the diverse complexities, social and ambient. The principle of the precaution is that one that determines that do not produce interventions before having the certainty of that will not be adverse for the environment. The principle of the participation still constitutes one of the elements of the Social State of Law, also call of Environmental State of Law, "all the social laws are the essential structure of a healthful quality of life, that, [...], is one of the points cardinals of the ambient law" (FIORILLO, 2000). For the principle makes reality in application, it must have "in a relation of complementarily", the simultaneous action of the "information" and the "environmental education" (FIORILLO, 2000). The search of the environmental balance, in that it relates to the intervention of the human being, has a necessary part of a passage the setting of limits. The Principle of the responsibility is that one that demands that the polluting agent answers for his action or omissions. This principal objective identifies the borders, or either, to delimit the human beings actions with intention to project the measure of the interference that the environment supports. The infractions of law imply to responsible a corresponding sanction to the broken law (ANTUNES, 2004).

FUNDAMENTALS OF PROACTIVE ENVIRONMENTAL LAW

The proposed law deals generally with the municipal administration of solid waste and pretends to be applicable in any city. Its target is to motivate a behavior pattern in line with the necessities of a sustainable community.

The "Proactive Legislation for Municipal Solid Waste" is the suggested alternative to collaborate in the perfection of the legal-environmental paradigm. For this, was used the "Project of Federal Law" nº 265 of 1999 as an idealizes aspect of the national politics of solid waste, therefore doesn't validity, and the "legal experience of the city of Araguari-MG" as inspired source about the reciprocity between the practical and the law.

In the solid waste management model effective in the city of Araguari, in despite of the concomitance in the instauration of the practical and the legal elaboration, it's could be

concluded that good practices had been installed before the elaboration law for solid waste. The legal alternative that was elaborated is a suggestion for any municipal for the management of the urban solid waste. It is possible to affirm that it is the result of a new reading of the direction of the law, or either, it suggests a magnifying accomplishment of the purpose of the law. In the same way, the proactive legislation for municipal solid waste adds the objective to induce, to stimulate, to diffuse the knowledge, to diffuse the information, a practical that reflects the sustainable development. It is important to say that some of these subjects had been already elaborated but others still remain for being elaborated, therefore, the both directly are related benefices to the augmented scientific-ambient knowledge.

The proactive legislation for municipal solid waste was intended to institute the periodic interchange between the involved administration, scientists and technician in the process. In this way, the approach of the public performances with the information supplied for the waste retailers will be facilitated. This law contemplates the principles related to the subjects environment and solid waste; definitions such as producer of urban solid waste, waste retailers, reuse etc; created some direction for promotions of goals, transparency, interchange, besides stipulating sanctions in case that it has not obey. It is important to say that environmental education constitutes a subject that demands of the municipal administration the spreading and the training according to the model of management of urban solid waste. The pro-active legislation still makes use of the responsibilities that municipal administration, that producer of the solid waste, besides foreseeing a periodic revision.

CONCLUSIONS

The proposal intends to demonstrate that a Law may well be active on its own, substituting the reactive aspect to social disorder and anticipating possible damages to the environment. In light of this type of reasoning, the proactive law pretends to avoid environmental pollution by attacking its causes. It succeeds in doing this by forcing its own periodic revision in order to remain proactive. The proposed law deals generally with the municipal administration of solid waste and pretends to be applicable in any city. Its target is to motivate a behavior pattern in line with the necessities of a sustainable community. The proactive law is presented as a contribution to increased effectiveness of environmental management.

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