

**Public policies for environmental licensing: a study on municipalization in
the state of São Paulo**

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ABSTRACT

This article analyzes the implementation of the policy to decentralize public environmental management, focusing on the municipalization of environmental licensing. The mechanisms adopted by the municipality of Araraquara, SP, for its environmental licensing were methodologically compared to the mechanisms used in the municipality of São Carlos, SP, by the state of São Paulo, through the CETESB, which is the state environmental control agency. A bibliographic survey and document analysis of the public agencies were conducted. The research elucidated that municipalized environmental licensing did not decrease the time required to approve licenses and that no investments were made to update the analysis processes, unlike the state, which went through a process to virtualize its license requests. However, the municipality of Araraquara conducts a more thorough analysis of licensed businesses to mitigate environmental impacts. This municipality also has greater contact between municipal public officials and the community, which demonstrates benefits in decentralization.

KEY WORDS: Public environmental management. Municipalized environmental licensing. Decentralization

1 INTRODUCTION

Throughout most of the Brazilian history, public environmental management was highly centralized under the authority of the federal government and was very pragmatic. The environment was altered to stimulate economic development or, at best, protected to avoid greater harm to the human population. There was no real effort to integrate public policies for economic development with environmental protection. However, with the advent of the National Environmental Policy, through Law No. 6938 of August 31, 1981, and the creation of the National Environmental System (SISNAMA – *Sistema Nacional de Meio Ambiente*), the ideal of environmental management is now shared with the other spheres of government, and municipalities now have a major responsibility in preserving the environment.

Later, the Federal Constitution of 1988 highlighted the decentralization of environmental management, giving common authority to the federal state, and municipal governments, among other responsibilities, to protect the environment and combat pollution in any of its forms and preserve the forests, fauna, and flora (BRASIL, 1988).

With the justification that municipalities can better manage their natural resources due to the greater proximity of their government officials to the population and the environment in which they live, in addition to a supposed greater agility to solve problems and issue licenses and permits, cities were given greater responsibilities in environmental management. However, this responsibility often came without compensation to enable them to perform this task properly (AZEVEDO, 2007). It was gradually and asymmetrically assumed by municipalities and municipal public agencies, especially in large cities, which had to adapt to meet the legislation, with the creation of environmental departments or other related departments.

In this context, the present article aims to analyze the development of public policies to decentralize environmental management operated by federal, state, and municipal governments, with a comparative study between two medium-sized municipalities in São Paulo with distinct management systems. These are namely São Carlos, which uses environmental licensing exclusively administered by the state, and Araraquara, which chose to municipalize the environmental licensing of small-sized activities.

2 METHODOLOGICAL CONSIDERATIONS

The municipality of Araraquara began in 2009 to license activities with low environmental impact. First, this was through an agreement with the Environmental Company of the State of São Paulo (CETESB) and later, as of 2014, through an authorization from the State Environmental Department itself, which found that the city met the minimum requirements for performing the task. Thus, in Araraquara, the CETESB continued to handle its licensing processes only for activities with medium and high environmental impact.

This permits an investigation about the effectiveness of the municipalization of environmental licensing, comparing the process carried out by the municipality of Araraquara with the one done by CETESB for activities of low environmental impact in cities which do not have decentralized environmental management. For this, we conducted methodologically comparative study between Araraquara and São Carlos. The choice of the latter municipality was due to its similarities with Araraquara. They both have very similar population and economic numbers and are located in the central region of the state of São Paulo, only 42 kilometers away from each other.

In addition to the bibliographic research on the theme, document research was done through the analysis of the archives of the public institutions involved, namely the DAAE Araraquara and the CETESB. The documents analyzed consisted of spreadsheets for the request and issue of environmental licenses, management reports, data on the number of occurrences harmful to the environment, inspections, complaints, customer service, information on the waiting time for receiving grants, licenses, and authorizations. Another document analyzed was the CONSEMA Normative 001/2018, an instrument through which the Secretary of Infrastructure and Environment of the State of São Paulo authorizes municipalities that meet certain conditions to license activities and business with potential local environmental impact.

In addition to the bibliographical and documental information, we sought to verify the *modus operandi* of each investigated entity with respect to the environmental licensing application processes. For this purpose, as already stated, the data from the municipal licensing of Araraquara was compared with the data generated by the environmental agency of CETESB in São Carlos.

3 FEDERAL DECENTRALIZATION: GENERAL CONTEXT OF MUNICIPAL ENVIRONMENTAL LICENSING

The procedures adopted for environmental licensing generally require a license to conduct activities and establish businesses that use natural resources or could degrade the environment. Thus, licensing has a preventive role, aiming to avoid environmental impacts. In short, the functions of environmental licensing are to discipline and regulate the access and use of environmental resources and to prevent environmental damage (SÁNCHEZ, 2013).

As for the businesses subject to licensing, CONAMA Resolution 237 of 1997 includes a list of activities considered effectively or potentially polluting or that could cause environmental degradation. Therefore, these require prior licensing from the competent environmental agency.

This resolution includes a licensing requirement both for construction and installation and for the expansion of existing establishments and activities, as well as for their operation (MINISTRY OF THE ENVIRONMENT, 1997).

In the state of São Paulo, municipalities have the option to adhere to an agreement with the State Environmental Council (CONSEMA). This state agency authorizes them to exercise the prerogative of licensing activities with local impact. At least in theory, this is a way to harmonize the actions of the federated entities, to avoid duplicating attributions, and make public management more efficient, as well as reinforce the cooperative ideal of Brazilian federalism (MOURA, 2017).

There are many justifications for the municipality being the main entity to implement an environmental policy and environmental licensing. Municipal public officials supposedly have greater contact with environmental problems and with the population. Therefore, the municipality can act with greater agility to resolve conflicts. The municipality may also have greater agility to issue the environmental license for low environmental impact enterprises, which would reduce the bureaucratic burden for small businesses.

The decentralization of public policies has been focused on as a way to achieve a variety of objectives. Until recently, the perceived consensus focused on the virtues of decentralization. Over the last few years, different political orientations have linked decentralization proposals with various expectations of overcoming problems identified in state and national political systems. Decentralization has been perceived as a kind of panacea capable of solving many ills of public life (ARRETCHÉ, 1996). However, the benefits of decentralization of public management are currently contested by several scholars, even though there are some virtues.

Analyzing decentralization in a broader sense, Arretche (1996) indicated that its objectives were democratization and more efficient public services, which would bring about a general improvement in the quality of life of the population as a whole. However, the author also demonstrated that decentralization, by itself, may not meet the expected expectations.

For some researchers, the importance of popular participation to achieve effective gains is related to the decentralization of management. In the words of Jacobi (2000):

Participation should be understood as a continued process of democratization of municipal life whose objectives are: a) to promote initiatives from programs and special campaigns aimed at the development of objectives that have collective interest; b) to strengthen the associative structure and expand the technical and administrative capacity of associations; and c) to develop participation to define programs and projects and manage municipal services (JACOBI, 2000, p. 29).¹

Thus, social participation should be based on the redistribution of power to favor the social strata that generally do not have access to power and thus minimize the limitations of

¹ Translated from the original: “Participação deve ser entendida como um processo continuado de democratização da vida municipal cujos objetivos são: a) promover iniciativas a partir de programas e campanhas especiais visando ao desenvolvimento de objetivos de interesse coletivo; b) reforçar o tecido associativo e ampliar a capacidade técnica e administrativa das associações; e c) desenvolver a participação na definição de programas e projetos e na gestão dos serviços municipais”.

representative democracy. The idea is that these strata should have more access to the various state institutions and, thus, can have their ideas and opinions taken into account in the formulation and implementation of public policies. Hence, decentralization can be understood as a way to strengthen the representation of citizens by placing them closer to those responsible for managing public services, which strengthens participatory democracy and, in theory, makes these services better.

For Arretche (2005), a greater degree of autonomy can give subnational entities the option of not adhering to federal policies. However, some municipalities and states with low tax collection capacity “tend to incorporate into their agenda the policy guidelines of the level of government that actually has control over such resources” and, even if they have resources, they “may have limited autonomy to define their own agenda, because their policies are mostly financed with discretionary funds”² (ARRETCHÉ, 2005, p. 71).

Therefore, the analysis of decentralization of environmental licensing in Araraquara, comparing it with the state procedures of São Carlos becomes a complementary instrument to verify if the strengthening local environmental management institutions has contributed to better quality services for the population. The objective of decentralization is to democratized public services and make them more efficient (ARRETCHÉ, 1996). In turn, society would have gained greater environmental awareness by having greater contact with municipal public officials.

4 DAAE Araraquara and CETESB: two experiences of environmental licensing at different scales

The environmental management of the municipality of Araraquara is currently under the responsibility of the Autonomous Department of Water and Sewers (DAAE –*Departamento Autônomo de Água e Esgotos Araraquara*), through its Environmental Management Board (DGA –*Diretoria de Gestão Ambiental*). The DGA is also responsible for the management of solid waste and includes the departments of Environmental Management and Sustainability, Environmental Inspection and Licensing, Biodiversity, Urban Cleaning and Waste Service, Solid Waste, and Special and Voluminous Waste.

The employees of DGA include environmental inspectors, municipal inspectors, agricultural and civil engineers, environmental analysts, administrative and operational officials, and young apprentices. They have academic backgrounds as biologists, engineers, public administrators, geographers, chemists, environmental technicians, among others.

The Environmental Licensing and Registration Unit is directly responsible for the municipalized licensing of activities with low local environmental impact, which is carried out according to the determinations of the State Environmental Council (CONSEMA), through the Regulatory Decree No. 001/2018 (SECRETARIA DE MEIO AMBIENTE, 2018). Paragraph 1 of this Decree states that “the Municipality, under the terms of Annex III, completes the environmental

²Translated from the original: “tendem a incorporar à sua agenda as orientações políticas do nível de governo que de fato tem controle sobre tais recursos” e “dispor de limitada autonomia para definir sua própria agenda, porque suas políticas são financiadas basicamente com transferências vinculadas.”

licensing of businesses and activities carried out in its territory that cause or may cause local environmental impact.”³

Therefore, the Decree establishes the rules for the municipality to exercise its prerogative to license the referred activities, which are divided between low, medium, and high local environmental impact.

The municipality of Araraquara is registered with the State Department of Environment (Process SMA 6.557/2014) to license activities considered to have low environmental impact, as defined by the degree itself. These include businesses that conduct certain industrial activities and have a built area of up to 2,500 m².

In turn, the CETESB has 46 agencies distributed throughout the state of São Paulo. In the municipality of São Carlos/SP, the CETESB has an agency in which seven inspectors work. In addition to São Carlos, it serves the cities of Ribeirão Bonito, Ibaté, Dourado, Torrinha, Brotas, Descalvado, and Itirapina. As the municipality does not have authorization from the State Environmental Department to conduct municipalized environmental licensing, the state agency is also responsible in the city for licensing activities with low environmental impact, according to CONSEMA Degree 001/2018.

Data from the CETESB technicians in São Carlos obtained through a formal request from the authors. This elucidated that environmental licenses for activities with low environmental impact, which are defined by CONSEMA Degree 001/2018, are issued immediately by a system called the Environmental Fast-track (VRA – *Via Rápida Ambiental*), as long as the requesting company meets all the requirements of the system.

To better understand the functioning of the environmental licensing processes in the state sphere and in the municipality of Araraquara, the two types of processes conducted by their respective environmental agencies to issue an environmental license were compared.

In the municipality of Araraquara, the stages of the licensing process were defined by internal regulations and technical instructions from the DAAE. To apply for an environmental license for activities with low environmental impact, a business must provide the necessary documentation and forms. Available on the municipality’s virtual portal, these forms must be filled out and presented in person at the agency’s headquarters. A difference between the *modus operandi* for environmental license applications of activities with low environmental impact between the CETESB and the DAAE is that DAAE requires the physical documentation to be submitted in person at the Department, while the state agency requires that all documentation be submitted for analysis through the VRA service.

At the DAAE, after delivering the documentation, inspection, and adjustments to the business, the required environmental license is issued. The business must publish the local newspaper and in the Official State Government Gazette publicize the receipt of the license, as well as present the proof of payment of the municipal fee. Another difference is that the fee is charged

³ Translated from the original: “Compete ao Município, nos termos do Anexo III, o licenciamento ambiental de empreendimentos e de atividades executados em seu território que causem ou possam causar impacto ambiental de âmbito local”.

for the analysis of the environmental licensing process for DAAE services, whereas CETESB does not charge fees for activities with low environmental impact that are licensed through the VRA.

A major difference is that, in the municipalized environmental licensing, all the businesses are inspected during the licensing process. This ensures that potential environmental impacts are prevented more effectively, since the license is issued only after the analysis of the need for technical adjustments in the business and the verification of their compliance.

However, unlike the DAAE, many public agencies issue the license based on the applicant's statements. The inspection is only conducted afterward to verify if the statements are true and if the business has any environmental impacts. Sometimes, depending on the type of activity and the degree of its environmental impact, the inspection may not even be conducted (ARAÚJO, 2019), which is what occurs in the simplified environmental licensing procedure conducted by the CETESB, in the state of São Paulo.

In the state domain, the licensing of activities with low environmental impact is requested through the CETESB virtual portal, through which the documentation required to start the process is also sent. Thus, the main difference between the application for an environmental license in the state and in the municipality of Araraquara is that the latter has not virtualized the procedure. The processes are similar for the filing of appeals against notices of violation and denials of document requests. At the state level, the process must be done electronically, but for the municipal level, it must be filed in person.

For the specific licensing of activities with low environmental impact, the CETESB has a tool called the Environmental Fast-track (VRA), through which the business can obtain a License or Authorization in an automatic, self-declaratory manner, free of charge. Thus, the business applies for the license through the VRA portal, and it is approved after verification that the applicant's declarations meet the necessary requirements. In this type of licensing, businesses are exempted from paying the environmental licensing fee and not obligated to publish the actions in the Official State Government Gazette. This publicity is done directly by the CETESB, which periodically publicizes all the businesses that have applied for or received their environmental licenses, unlike what happens in the municipality, where this publicity is the responsibility of the applicant.

The activities and businesses that are entitled to be licensed through the VRA process are basically those that are also licensable by the municipalities that have municipal licensing, but that are located in cities which are not yet registered for this procedure.

The VRA has expedited the release of environmental licenses for these activities because it has inverted the traditional licensing order. The environmental license is released before the business is inspected, because the information declared by the applicant is considered to be true. If false statements or environmental impacts are later verified, these establishments are subject to sanctions and fines.

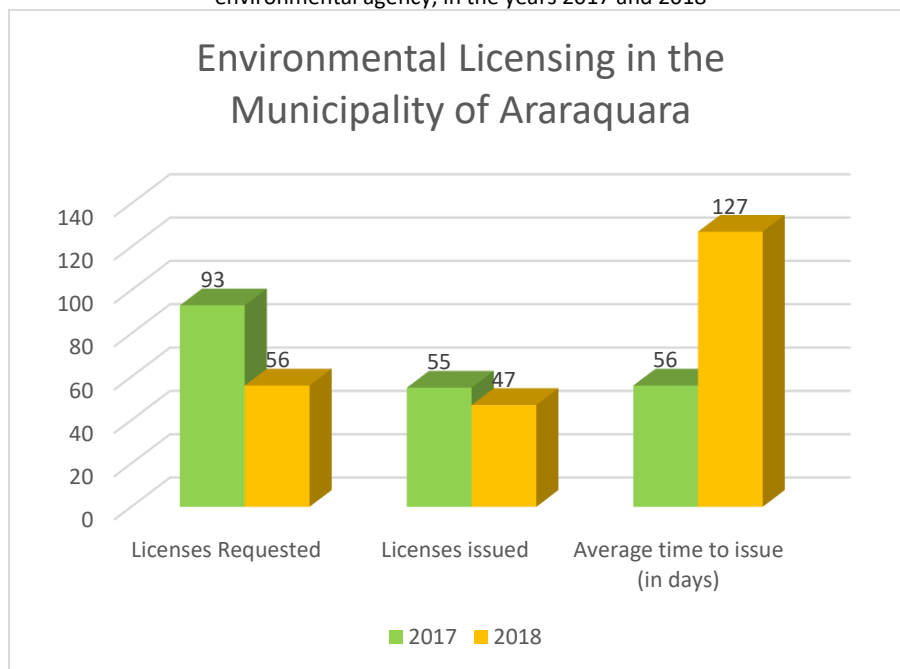
However, this procedure may not guarantee effective protection of the environment. Even if fines and other sanctions are issued, the risk of authorizing an environmental license for a business that actually pollutes the environment remains, which is contrary to the principles of prevention and precaution in environmental law.

Furthermore, through the VRA, the CETESB technicians inspect only if there are discrepancies in the statements provided by entrepreneurs or through reports of irregularities. Thus, not all businesses are inspected *in loco*, which increases the chances of fraud or delay in the containment or mitigation of environmental impacts.

Below is a comparison made through a survey conducted at the São Carlos CETESB agency and the Araraquara DAAE of the number of environmental licenses requested and approved for activities with low local environmental impact – according to the Regulatory Decree No. 001/2018 – in the two municipalities, as well as the time required for this approval.

This comparison only covers the years 2017 and 2018, because the digital files of the CETESB from previous years do not describe the type of activity undertaken by the licensed businesses, which makes it impossible to make a direct comparison with the type of licensing carried out by the municipality of Araraquara. This limited scope avoided comparing the licensing of activities with a higher level of environmental impact, or that require environmental impact assessments, as these procedures are more complex than those carried out by the municipalities.

Figure 1: graph of the number of licenses requested and issued by the municipality of Araraquara, SP, through its environmental agency, in the years 2017 and 2018

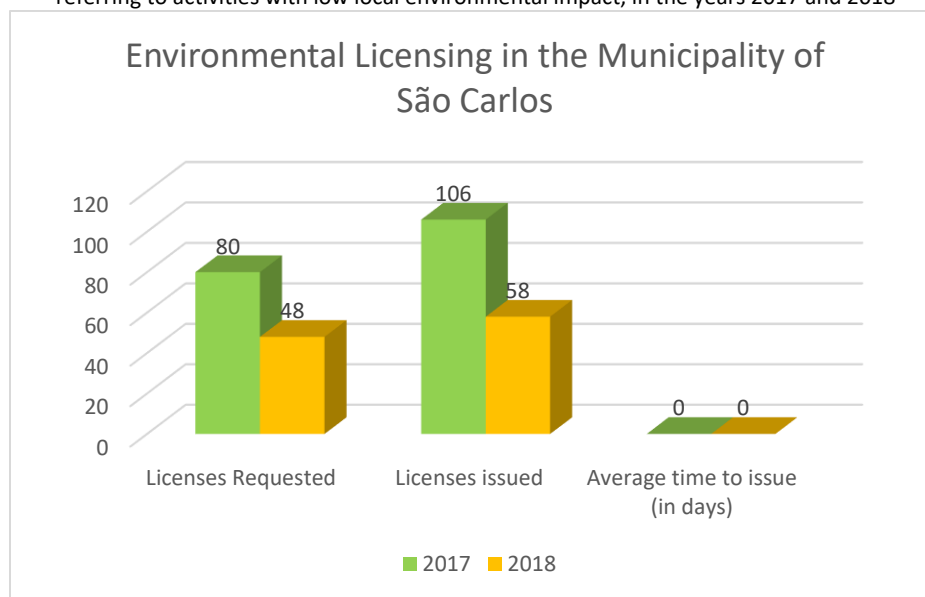


Source: Compiled by the authors, based on data provided by DAAE Araraquara

In the values in Figure 1, the requests and licenses issued for activities and businesses not licensed by the CETESB were excluded, such as automotive mechanical maintenance and repair services, as well as autobody repair and painting services.

The difference between the number of licenses requested and the number of licenses issued is because some licenses are issued in the following year, and some are not issued due to lack of documentation or the adequacy of the locations where they operate.

Figure 2: graph on the number of licenses requested and issued by CETESB for the municipality of São Carlos, SP, only referring to activities with low local environmental impact, in the years 2017 and 2018



Source: prepared by the authors based on data provided by CETESB, via virtual portal

Therefore, the state has prioritized the agility in the release of licenses and invested in technologies so that the whole process occurs virtually. However, the municipality of Araraquara still works in a traditional way, with all the documentation presented physically and personally at the DAAE. Furthermore, this agency conducts inspections in all ventures that request an environmental license and notifies them when irregularities are found, and licenses are not issued until the out-of-compliance procedures are normalized.

Table 01: Aspects of the decentralization of environmental management in the municipality of Araraquara/SP

Decentralization of environmental management in the municipality of Araraquara	
Positive aspects	Negative aspects
Greater ability to mitigate and prevent environmental impacts	Technologically behind in the attendance of the population
Technicians exclusively dedicated to services in the municipality	Longer time to acquire license than the service provided by the state
Greater autonomy to plan environmental actions	Greater financial cost to the business for their regularization

Therefore, decentralization, in the specific case analyzed here, increased tasks of municipal agencies, which did not adapt to the new technologies of administration and public service and

consequently did a slower job. However, the municipality gained greater autonomy to regulate its environmental management and to preserve the environment, as the municipal environmental agency does a thorough job investigating and mitigating the environmental impacts of licensed businesses.

If Araraquara had not municipalized their environmental licensing, the CETESB agency in the municipality would occupy the role of licensing agency also for low-impact activities, removing the central role of the municipal power in environmental management. Environmental licensing is a fundamental tool for planning, monitoring, and preserving the environment and should therefore be used well by public agencies.

Municipalization of licensing helps strengthen the actions of entities in the SISNAMA and generates the expectation of an improved licensing system and evaluation of the impacts caused by industrial activities in the country, in addition to reducing the overload of federal and state agencies. However, the lack of human and financial resources, not only in the specific case of Araraquara, but as a general problem of Brazilian municipalities, remains a hindrance for local entities to exercise their jurisdiction in a more adequate way.

Although the Federal Constitution of 1988 gives the jurisdiction over environmental issues to all entities of the federation, no stable and sufficient funding is available yet for public environmental management. These problems are worse in the municipal sphere, because the problems found here for the municipality are also true for other areas of public administration beyond environmental management. Environmental regulation is often not a priority of governments and must compete for discretionary funds that make up the general budget of the public administration (NEVES, 2016).

5 FINAL CONSIDERATIONS

The review of empirical studies related to environmental management and decentralization of public administration indicated that decentralization could provide better quality services to the population and allow them to have greater contact with municipal officials, as well as greater speed to resolve environmental problems and consequently agility in the release of environmental licenses, which could benefit the economic activities of the municipality. However, other studies found that the municipal sphere works with a reduced staff, especially in areas that are still not highly valued, as is the case with the environment. Thus, municipal environmental supervision may tend to be more overloaded, with a lack of capacity and training, in addition to the absence or lack of environmental management tools, which could compromise the quality of the services performed.

The analysis of the mechanisms used by the public power to carry out environmental licensing of low-impact activities elucidated that this process is conducted in a predominantly digital way by the state. Requests are made through a virtual portal, in which the necessary documents are submitted, and the required licenses are also issued, generating economy and speed for the users of this service. However, these activities are not normally inspected by the state agency, and licenses

are issued based on the declarations of the applicant, who, in case of falsehood, may receive fines according to the current legislation. However, according to the environmental law principles of prevention and precaution, it would be prudent to carry out inspections to verify the information provided and to correct any environmental impacts found by public officials.

The initial expectation of increased efficiency in the waiting time for the issuance of environmental licenses by the municipality in relation to the state was not fulfilled, due to the investment of the state in technologies to modernize its administrative system. However, the municipality shows greater interest in environmental control because it inspects all the businesses that apply for licenses. This demonstrates the approximation between public officials and the population that decentralization of public management can provide.

Therefore, there are potential benefits from municipalizing environmental licensing; however, this process is just beginning and requires more attention from the state to evaluate the peculiarities of each municipality and promote more customized actions and solutions that can meet their specific demands. Differences in capacity among municipalities can hinder the achievement of high-level and consistent results in different regions of the state.

Nevertheless, some actions can be proposed to improve the municipalization of licensing processes. The results obtained in this work point to three ways: i) the implementation of more flexible mechanisms for intergovernmental cooperation; ii) technology transfer from the state government to the municipal government; iii) commitment from the municipal administration.

First, the use of cooperation mechanisms is important to achieve minimum performance by the municipality. However, these mechanisms should not be factors that restrict municipal actions and autonomy but should work as an incentive for policies focused on the environment and the formation of a common agenda for environmental protection and sustainable economic development.

Technology transfer between entities is similar to intergovernmental cooperation mechanisms and could partially solve the lack of technological application by municipalities, improve aspects such as the training of municipal employees, and be a source of technical and administrative knowledge. Cooperation mechanisms for the transfer of technology to municipal licensing already exist in the legislation and could be used in the administration, with the implementation of protocols and the issuing of virtual licenses, for example.

But none of this will work if there is no political engagement in environmental actions and understanding that this area is fundamental to progress of the municipality and, therefore, must be managed in an integrated way with other agencies and include the continuity of programs and actions that show positive results.

This entails willingness of managers to put into practice the appropriate environmental management tools and seek the most efficient means to make the execution of these tools feasible, to facilitate the work of public officials and the service to citizens. Public administration must have a real commitment to environmental licensing, which must be seen not as a mere bureaucracy but as an essential tool to promote sustainable regional development and a support for economic development and preservation of environmental quality.

With this, the decentralization of environmental management should not become just an additional responsibility for the municipality and that only adds expenses to its already over-committed budgets, transferring problems from one entity to the other. Rather, it should be an opportunity to expand municipal autonomy to implement once and for all the importance of sustainable development for a more autonomous, modern, and environmentally responsible city.

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