The private sector calls for consistency


Rio de Janeiro city

Photo: Andre Durão.

Solange Monteiro

IF THE PRIVATE SECTOR is to participate in expanding basic sanitation in Brazil it will be important for municipalities to define how they will regulate their services, as required by the Sanitation Law, which also sets out rules that go beyond the four basic activities: water supply, sewage collection and treatment of solid waste, waste water management, and drainage of storm water. "Regulation is an essential factor for effective services. We have not looked into these requirements with due care, and today hundreds of sanitation plans may be questioned for not enforcing the law properly," warns Édison Carlos, president, Trata Brasil Institute.

Currently, according to the Brazilian Association of Regulatory Agencies (ABAR), 50 agencies—most of them state agencies—have legal authority to regulate sanitation. Although the legislation has driven creation of new municipal agencies in recent years, that does not necessarily mean there has been a proportional increase in regulatory quality. "Many of the agencies are precarious; some exist on paper only to meet the requirement of the law," says Marilene Ramos, former president of the National Environmental Institute (INEA) and professor at the Brazilian School of Public and Business Administration (EBAPE) of the Getulio Vargas Foundation (FGV). Adds Joisa Campanher Dutra, coordinator of the FGV Centre for Studies in Regulation and Infrastructure (CERI), "We need formulas to strengthen regulation."

In May, CERI organized a seminar on "Regulation and Sustainability of Water and Wastewater Services" at the request of the Secretary of Strategic Affairs of the Ministry of Cities. The seminar discussed issues related of how water and sewerage services can be appropriately expanded. Today, the law allows for a variety of local, state, and intermunicipal regulatory arrangements. Ramos points out the threat that regulation may become fragmented given the huge number of small agencies that have little technical capacity to regulate services. However, if the scale is appropriate, state and other agencies can enforce regulations more efficiently.

Regulatory framework

Vinicius Benevides, ABAR president, points out that clear and stable regulation is essential for private companies: Surveys, he says, show that "The regulatory framework is the third most important factor for companies wanting to invest, behind only market size and political stability, and ahead of such other elements as macroeconomic stability."

"Currently, investors are concerned about risk, return, and regulation," adds Patrick Mullen, of the International Finance Corporation (IFC), which is part of the World Bank Group. "Private investment flows to countries with political support, funded projects, and a favorable regulatory environment." The World Bank estimates that in coming years private investments in the sanitation sector will accelerate in emerging countries, especially China and Brazil.

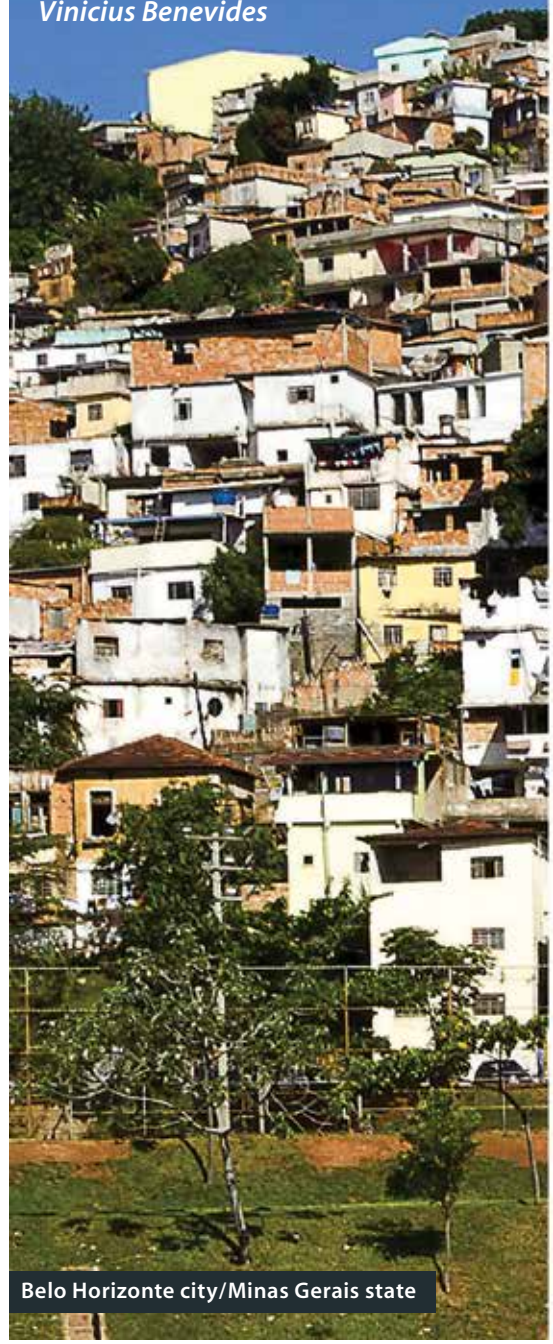
Carlos Henrique da Cruz Lima, director of institutional relations, National Union of Private Dealers in Public Water and Wastewater, estimates that Brazilian sanitation companies, public and private, currently generate nearly US$17 billion in revenues annually, but potential revenue, he says, is US$30 billion, adding "No single country has an untapped market of this magnitude; this shows the importance of regulation that promotes peaceful coexistence between public and private companies." The need for sound regulation that supports predictability for new projects is reinforced by Carlos Alberto Rossito, of consultants GO Associates, who says, "Only then we will be able to break through today's ceiling of US$4.5 billion annual investment."

Credibility at stake

To succeed, however, regulators in the water and sanitation sector must find ways to mitigate a crisis related to the credibility of their activity. Experts point out that doubts about independence of regulatory agencies are already being reflected in new negotiated concessions. Mauricio Portugal, partner in the Portugal Ribeiro law firm, says the decrease in discretionary regulation "is reflected in more rigid contracts, with less space for regulatory decisions," he notes. "A prevalent condition in new contracts, for example, is

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Vinicius Benevides



Belo Horizonte city/Minas Gerais state



SANITATION GRANT

In the Getulio Vargas Foundation Seminar on the Regulation and Sustainability of Water and Sewer Services on May 16, Marcelo Neri, Minister of Strategic Affairs, argued for using the Family Grant program platform to improve sanitation. The idea is to encourage investments that meet the needs of Brazilians who do not have access to sanitation services. He points out that surveys show that the population sees the quality of sanitation service as much worse than that of water and garbage collection services. "The Family Grant is a fantastic platform for people lacking sanitation, because its data bank could be used as a shortcut for creating programs for poor families. We could, for example, pay sanitation companies upon delivery of a connection or routine maintenance with proper documentation," he suggested.

arbitration," he says. As a result, the role of the regulator is diminished. Silvia Calou, chief executive, Calou Consulting and former president of the São Paulo state Regulatory Agency for Energy and Sanitation, agrees with Portugal: "We have to recognize that there is a problem and discuss alternatives."

Renato Medeiros , who manages the operations of Odebrecht Environmental in the states of Rio de Janeiro and Espírito Santo, says that the company has to deal with three types of regulation: municipal, state, and multi-municipality consortiums. "We have no opinion on what the best model would be because we have the best and worst examples in all three situations," he says. But he notes that "We are better regulated where we have better contracts," arguing that clear goals and impartial mechanisms facilitate concession operations.

Helcio Tokeshi, director, GP Investments, believes the current Brazilian sanitation sector demands better technical ability and a more predictable vision. "Instead of insisting on the ideal model, one can have regulation by contract at the municipal level, close monitoring of services by the customers, and more complex issues addressed by the state," he says. "It's a mixed model with some complexity, but it seems totally manageable and possible.… It is not economically feasible to have branches in all counties or groups of counties."

Long term

Rui Marques, professor, Lisbon University, emphasizes that the important thing is that regulatory initiatives have a long-term perspective that invites public support. "Regulation should be transparent, clear, and rely on full disclosure," he says. For example, the government of Portugal now issues a performance rating of sanitation service providers in colors for easy understanding. Marques notes that because providers are clearly embarrassed when they receive the red rating, there has been a substantial improvement in services over time.