

GUIDELINES ISSUED BY THE ENVIRONMENTAL ASSESSMENT SERVICE ON ENVIRONMENTAL APPROVAL RESOLUTIONS EXPIRATION

As of January 26, 2015, the Environmental Assessment Service ("SEA") may declare the expiration of the Environmental Approval Resolutions ("EAR") for those projects which have not initiated its execution within the terms established in Law 19,300 ("LBGMA") and the Regulations of the Environmental Impact Assessment System (the "Regulations").¹

In order to establish the criteria to verify when a project or activity has started its execution, the SEA issued the Guidelines on "Expiration of the Environmental Approval Resolution" (the "Guidelines").²

1. OBLIGATION OF EAR HOLDERS

According to the LBGMA and the Regulations, if the project or activity has not initiated its execution, the EAR will expire five years after its notification date. The execution of a project or activity will be deemed initiated when acts or works towards construction are carried out in a systematic, continuous and permanent manner.³

The notice of initiation of the construction phase shall be made to the Executive Direction of SEA. However, the Superintendency of the Environment ("SMA") is responsible for overseeing compliance with this legal provision and legally entitled to require the SEA to declare the expiration in the case of breach.

2. TERMS FOR NOTICE THE START OF CONSTRUCTION

The Regulations sets forth a distinction depending on the time of the EAR's approval:

- (i) Projects or activities environmentally approved before January 26, 2010, which have not initiated execution as of the date of enactment of the Regulations (December 24, 2014), shall demonstrate to the SEA the actions or minimum works towards such initiation **before January 26, 2015**.

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

- (ii) Projects or activities environmentally approved after January 26, 2010 and which have initiated execution before the enactment of the Regulations, shall demonstrate to the SEA the actions or minimum works towards such initiation **within five years counted as from the notice of the relevant EAR.**

Holders of projects approved after the enactment of the Regulations are not obligated to report the initiation of its execution to the SEA because the actions or minimum works will be contained in the relevant EAR.

3. CASES OF AMENDMENT AND REVIEW OF AN EAR

According to the Guidelines, the modification of a project or activity which was granted with an EAR does not change the term of expiration of the environmental permit, because the original EAR and its modification resolution are independent. Therefore, if the original EAR expires, only the works approved in the second EAR could be implemented.

Regarding the EAR revision and the consolidated, coordinated and systematized new EAR, in SEA's opinion, it refers to valid EARs, therefore the expiration does not apply in this case.

1 Executive Decree No. 40/2012, of Ministry of the Environment, EIAS Regulations.

2 Instructions No. 142034/2014, of SEA. Available in:
https://www.sea.gob.cl/sites/default/files/4514_001.pdf

3 Article 73, EIAS Regulations.

Authors: Rafael Vergara