

SUPERINTENDENCY OF THE ENVIRONMENT: FULL OPERATION

Although Law N° 20,417, that created the Superintendency of the Environment (“SoE”), was published in the Official Gazette on January 26, 2010, its powers and faculties were suspended until Environmental Courts start functioning, which happened last December 28th. Therefore, and from then on, the SoE will be entitled to perform the following functions:

a) Compliance Supervision¹

The SoE is in charge of exclusively implementing, organizing and coordinating the supervision of the compliance with the following:

- i. Provisions, conditions and measures under which an Environmental Approval Resolution (“EAR”) was granted;
- ii. Measures and tools set forth by prevention and decontamination plans;
- iii. The content of quality and emission standards;
- iv. Management plans;
- v. Laws, regulations and norms related to the discharge of liquid waste; and,
- vi. Others environmental instruments set forth by law.

Notwithstanding the exclusivity granted to the SoE, Law N° 20,417 does not supersede other laws that assign environmental compliance supervision powers

to others agencies, which maintain their faculties in all those matters not expressly conferred to the SoE.

Within the Environmental Impact Assessment System (“EIAS”), the SoE is in charge of securing the correct functioning thereof and the compliance with applicable law. For example, it may require a project to be assessed within the EIAS or to change the assessment tool

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when it detects project segmentation. Likewise, it may require the Environmental Assessment Agency the caducity of an EAR when the project execution has not been initiated within five years or in cases where the magnitude, reiteration or effects of the infringements make it applicable.

b) Sanctioning

Law N° 20,417 contains a catalogue of infringements which are classified depending on their seriousness, and respect of which the SoE may impose the following sanctions: (i) written warning, (ii) a fine up to 10,000 UTA (approximately US\$10,000,000), (iii) provisional or definitive closure of facilities, and (iv) EAR revocation. Please note that in case the offender is a legal entity, its legal representative will be subsidiary liable for the payment of fines.

Once a sanctioning procedure is initiated, the Superintendent may decree provisional measures to stop the damage to the environment or people's health such as (i) corrective, control or safety measures, (ii) seal of equipment, (iii) monitoring program or lab tests, (iv) provisional closure of facilities (total or partial), (v) stop of works, and (vi) EAR provisional suspension. The last three measures must be previously authorized by the relevant Environmental Court.

It is worth noting that Law N° 20,417 also set forth mechanisms and instruments to foster compliance with environmental regulations such as self-reporting ("autodenuncia") which allows exempting or reducing the amount of fines when the offender voluntarily reports his infringement to the SoE and obliges to comply with a compliance program.

c) Regulation

Finally, the SoE is in charge of issuing general regulations for the exercise of its powers and faculties and technical instructions regarding procedures, protocols and analysis methods that supervision agencies and audit companies must apply for the examination, control and measurement of quality and emission standards.

It is in the exercise of this function that the SoE has issued Resolution No. 844, dated December 14, 2012, which establishes "General Rules on the Information to be Provided regarding Conditions, Obligations and Measures established by an Environmental Approval Resolution".

This resolution imposes an EAR holder the obligation to inform the compliance with monitoring, measurements, analysis, studies, audits, and in general any information aimed at the following up of a project².

1 The SoE will perform its supervision faculties according to the parameters set forth by Resolution No.769, dated November 26, 2012, that establishes “General Regulations for the Environmental Compliance Supervision Procedure”, available at <https://www.leychile.cl/Navegar?idNorma=1046462>

2 Available at <https://www.leychile.cl/Navegar?idNorma=1047590>.

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