

## CONTACT:



**Vanessa Chávarry**  
Counsel  
vcm@prcp.com.pe



### **The Agency for Environmental Assessment and Enforcement approves the regulation for environmental control actions during the National Health State of Emergency declared due to the COVID-19 outbreak**

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On June 6th, 2020, the Agency for Environmental Assessment and Enforcement (*Organismo de Evaluación y Fiscalización Ambiental – OEFA*) published Resolution N° 8-2020-OEFA/CD (the "Regulation"), approving the regulation for environmental control actions and the monitoring of environmental control authorities during the current health emergency, setting the criteria to regulate the agency's environmental control faculties, without liberating supervised entities from environmental compliance. Peru is the only Latin American country that has set exceptional criteria for environmental control actions during the COVID-19 public health emergency, similar to the U.S. Environmental Protection Agency's (EPA) COVID-19 Temporary Enforcement Policy.

According to the Regulation, OEFA will be able to exercise its environmental control functions under the following scenarios:

- a) When the Supervised Entity, defined as a natural or legal person subject to compliance with environmental obligations supervised by OEFA, carries out essential activities within the framework of current laws.
- b) When the Supervised Entity restarts economic activities in compliance with applicable legal provisions.
- c) When OEFA notices that activities are being carried out without the proper registration in the SICCOVID-19 platform.
- d) The occurrence of environmental or catastrophic emergencies.
- e) When there is evidence of a circumstance that represents an imminent danger or high risk of serious damage to environmental components (water, air and soil), to natural resources, to people's health, and/or to actions to mitigate the causes of environmental degradation or damage.
- f) When the Supervised Entity carries out essential activities related to the collection and cleaning of solid waste, of which the municipalities are in charge, or waste management, either at solid waste treatment infrastructures or in areas degraded by solid waste that have been set for recovery or reconversion.
- g) When the Supervised Entity, that does not fall within the above-mentioned cases, agrees in writing (submitting such written consent to OEFA) to allow OEFA to carry out the environmental control faculties.

The main criteria included in the Regulation are as follows:

(i) Compliance

- Compliance with obligations related to the submission of reports, monitoring records and any other information of an environmental or

social nature that involves field work by OEFA, are suspended for the following periods:

Type of Activity by the Supervised Entity	Suspension period
Ongoing essential activities	From March 16, 2020 until OEFA verifies the registration of the Supervised Entity's Plan on the SICCOVID-19 platform.
Other activities	From March 16, 2020 until the respective activity restarts operations.

- The above-mentioned suspension periods do not apply when, prior to the beginning of the compulsory social isolation, the Supervised Entity has compiled the necessary information to be filed with OEFA.

In the case of non-compliance of the presentation of the required information, OEFA will evaluate exemptions from liability due to fortuitous events or force majeure.

(ii) Administrative proceedings deadlines

- The deadlines for administrative proceedings and for activities derived from the exercise of the environmental control functions by OEFA, have been suspended from March 16th, 2020 until the activity subject to supervision restarts.

- In the case of ongoing essential activities, the deadlines for administrative proceedings are suspended until the registration of the Surveillance, Prevention and Control Plan in the SICCOVID-19 Platform.

- The deadlines for the administrative proceedings, where OEFA is in charge, are resumed as of the date of the publication of the Regulation, when:

a) OEFA notices that the activities have been carried out without the registration of the Surveillance Plan in the SICCOVID-19 platform.

b) The Supervised Entity expresses its consent in writing to OEFA, for OEFA to continue with the administrative proceeding or environmental enforcement activity.

c) The final evaluation report, supervision report or administrative resolution does not hold the Supervised Entity responsible.

d) Supervised Entities carry out essential activities related to the collection and cleaning of solid waste of which the municipalities are in charge, or to waste management, either at solid waste treatment infrastructures or in areas degraded by solid waste that have been set for recovery or reconversion.

(iii) Administrative measures

- Deadlines for compliance with administrative measures issued prior to the declaration of the state of emergency are suspended from March 16, 2020 until the activity subject to supervision restarts, except when there is evidence of circumstances that represent imminent or high risk of serious environmental damage.

In the case of non-compliance with the obligations included in the administrative measures, OEFA will evaluate exemptions from liability due to fortuitous events or force majeure, if applicable.

Note: This article is intended to be a general summary of the Resolution. However, it does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.

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