

**THE COMMON
SYSTEM OF**
ENVIRONMENTAL ENFORCEMENT

OEFA 
AGENCY FOR ENVIRONMENTAL
ASSESSMENT AND ENFORCEMENT



National Environmental Assessment and Enforcement System (SINEFA, by its initials in Spanish)

By virtue of Law No. 29325, amended by Law No. 30011, the SINEFA was created to specify the functions of the environmental enforcement at national, regional or local level.

Agency for Environmental Assessment and Enforcement (OEFA, by its initials in Spanish)

The OEFA is a public specialized technical agency, attached to the Ministry of Environment and responsible for the environmental enforcement. Furthermore, the OEFA is the governing body of the SINEFA.

Environmental Enforcement Entity (EFA, by its initials in Spanish)

It is any public entity at national, regional or local level which has been conferred some or all of the environmental enforcement actions in a broad sense. Exceptionally, and pursuant to the legal provision, any agency pertaining to an entity empowered to perform the functions of environmental enforcement may be considered as EFA.

Power to impose penalties

The power to impose penalties shall be only executed by the administrative authorities who have been expressly conferred such power by legal provision or rule. However, this power may not be conferred or delegated to another different body.

Principle of classification

It is one of the principles governing the Power to Impose Penalties, in which only the offenses expressly provided by a legally binding rule, according to their nature, are considered as administratively punishable conducts, without any further interpretation. The regulatory provisions of development may specify or adjust those focused on identifying the punishable conducts to those stipulated under law, except in cases which the law allows the classification by regulation.

Supplementary rule

This rule allows the EFA to use only the classifications approved by the Board of Directors of the OEFA in order to apply them within the scope of their jurisdiction.

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| ISO9001 | Quality management |
| EMAS, ISO1400 | EU environmental management/certification scheme |
| DIN6738 | Archive properties, LDK class 24-85 (> 200/g years) |
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AGENCY FOR ENVIRONMENTAL
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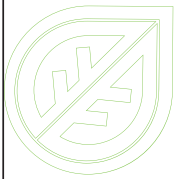
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THE COMMON SYSTEM OF ENVIRONMENTAL ENFORCEMENT

Prepared by the Agency for Environmental
Assessment and Enforcement (OEFA)

This document was prepared to explain the basic concepts on the Common System of Environmental Enforcement in order to ensure that the Environmental Enforcement Entities (EFA) exercise their functions of environmental enforcement in a homogenous, integrated and harmonic manner.

The provisions of the Common System of Environmental Enforcement have to be met, on a mandatory basis, by the national, regional or local EFA, as well as by the OEFA.

In the content of said system, the principles of environmental enforcement, the conditions to be complied by the EFA in order to exercise such function, as well as the duty of the OEFA with regard to the Common System of Environmental Enforcement are included.

The common system of environmental enforcement

The Common System of Environmental Enforcement is a regulatory instrument that establishes the common foundations, principles and guidelines of the environmental enforcement in Peru, as well as the general provisions that have to be met, on a mandatory basis, by the EFA within the framework of the National Environmental Assessment and Enforcement System (SINEFA).

The referred Common System has been approved by Ministry's Order No. 247-2013-MINAM, dated August 28, 2013, and has the purpose of ensure a homogenous, effective, efficient, harmonic and coordinated environmental enforcement.

What does environmental enforcement mean?

It is the control action performed by a public entity in order to verify the compliance with the environmental obligations to be controlled in charge of a company, whether it is a natural person or legal entity under either private or public law. It also covers the environmental enforcement actions that are exercised by the OEFA and EFA according to their jurisdiction, and may be understood in a broad and strict sense.



1

ENVIRONMENTAL ENFORCEMENT IN A BROAD SENSE

It covers the actions of surveillance, control, monitoring, follow-up, verification and other such actions that are set within the functions of assessment, supervision, enforcement and imposition of penalties in order to ensure the compliance with the environmental obligations to be controlled.

In a broad sense, the environmental enforcement may be understood as a macro-process that has the purpose to ensure the compliance with the environmental obligations.

Assessment

Supervision

Enforcement and Penalty

2

ENVIRONMENTAL ENFORCEMENT IN A STRICT SENSE

It covers the power to investigate the commission of potential administrative offenses, as well as impose penalties and corrective measures.

In a strict sense, it may be understood as the power of State to impose penalties for the non-compliance with the environmental obligations.

What does SINEFA mean?

It is the National Environmental Assessment and Enforcement System created by Law No. 29325, Law on the National Environmental Assessment and Enforcement System, amended by Law No. 30011, and has the purpose of specify the environmental enforcement functions at national, regional or local level.

THE SINEFA IS COMPRISED OF THE FOLLOWING ENTITIES:

a.

The Agency for Environmental Assessment and Enforcement (OEFA) acting as governing body.

b.

The Ministry of Environment (MINAM, by its initials in Spanish).

c.

The National Enforcement Entities (EFA) at national, regional and local level.

SUPERVISORY FUNCTION OF THE OEFA

1

DIRECT SUPERVISION

The direct supervisory function covers the power to monitor and verify the compliance with the environmental and social-environmental obligations to be controlled in charge of the companies, which are established in the rules, in the environmental management instruments and in the provisions and orders issued by the competent bodies of the OEFA, as well as other obligations created by the subsequent rule or according to the transfer processes of powers to the OEFA.

a. MINING SECTOR

(Large and medium-sized mining in exploration, exploitation, transport, general work, benefit and storage of concentrates).



b. ENERGY SECTOR

Hydrocarbons subsector

(Exploration, exploitation, transport, refining, storage and distribution and commercialization).



Subsector electricidad (Generación, transmisión y distribución).



c. FISHING SECTOR

(Aquaculture of larger scale and fishing industrial processing).



d. INDUSTRY SECTOR



Manufacturing industry subsector (Beer, paper, cement and tannery).

2

SUPERVISION TO THE EFA

The supervisory function to the EFA covers the power to monitor and verify the performance of the controlling functions of EFA at national, regional or local level.

What does EFAS mean?

The EFA are those public entities at national, regional or local level that are responsible for some or all the actions of environmental enforcement in a broad sense.

1

NATIONAL EFA:

Some ministries and specialized technical agencies exercise the functions of environmental enforcement through their head offices, areas or environmental offices, or by the entity acting as such.

Example: The National Authority of Water supervises the environmental quality of the water resources.

2

REGIONAL EFA:

The regional governments exercise the functions of environmental enforcement through the areas of natural resources, energy, mining and hydrocarbons, environmental health, artisanal fishing and aquaculture, or by the entity acting as such.

Example: the regional governments are responsible for the enforcement of small-mining sector and artisanal mining.

3

LOCAL EFA:

The province and district municipalities exercise the functions of environmental enforcement through the environmental organizational units, the areas of enforcement and other entities acting as such.

Example: the province municipalities are responsible for the environmental enforcement of a proper management of solid waste within the scope of their jurisdiction.

Supervision to the **EFA**

The **OEFA** is empowered to:

- **Verify the performance of the EFA**
This can be achieved through supervisions made from the OEFA (documentary) or at the offices and/or facilities of the EFA (on site), which may involve visits to the zones in which the environmental enforcement in charge of the EFA is made.
- **Request the presence of an EFA representative**
Within the scope of the supervision, if necessary, the OEFA is empowered to demand the presence of the person responsible for the area which performs the environmental enforcement function of the EFA, or who acts as such, in the office and/or facility where the referred supervision is made.
- **Issue provisions which compliance shall be verified *ex post***
To issue provisions that, on a mandatory basis, have to be complied by the EFA and subsequently to make the pertinent monitoring and control.

- **Request information from the EFA**

Request the documents and/or access to the pertinent information for the exercise of its supervisory function of the EFA, setting a specific period of time for its submittal. The information and documentation submitted may be verified and reviewed by the OEFA.

- **Inform to the Office of the Auditor General**

Inform to the Office of the Auditor General those situations where the EFA proved the non-compliance with the functions of environmental enforcement, leading; therefore, to the functional administrative responsibility.

The OEFA provides technical assistance to the EFA with regard to the environmental enforcement functions which are within its jurisdiction.

As the governing body of the SINEFA, and according to the regulatory function, the OEFA is empowered to issue rules that regulate the actions of environmental enforcement in charge of the EFA.

The OEFA provides legal opinion with regard to the regulatory projects submitted for consideration by the EFA.

Modalities of supervision of the **EFA**

According to the place in which the supervision is made

On-Site Supervision

It is the supervision made by OEFA within the geographic jurisdiction of the EFA (offices and/or facilities). It also includes the visits to the zones in which the environmental enforcement in charge of the EFA is made.

Documentary Supervision

It is the supervision made by OEFA and consists of requesting and analyzing the documentary information in order to verify the performance of the environmental enforcement functions in charge of the EFA.

According to the opportunity

Regular Supervision

It is the supervision made by OEFA according to the established in the Annual Environmental Assessment and Enforcement Plans (PLANEFA, by its initials in Spanish) of the OEFA.

Special Supervision

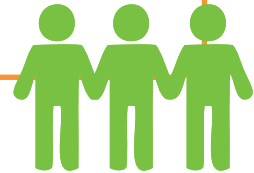
It is the supervision made by OEFA at a non-scheduled date and according to the complaints filed or before the assumption of non-compliance with the functions of the EFA

Principles of Environmental Enforcement

In order to implement a process that secures the compliance with the environmental obligations in balance with the development of the economic activities, the environmental enforcement is based on six principles, which has been established by Article No. 3 of the Common System of Environmental Enforcement, approved by Ministry's Order No. 247-2013-MINAM, dated August 28, 2013:

Principle of coherence

The entities with jurisdiction in environmental enforcement coordinate the exercise of their functions for a proper organization, by joining efforts, avoiding overlaps, duplicities and gaps in the exercise of such functions.



Principle of transparency

The information related to the environmental enforcement is of public access. In the case when information is classified as confidential for being related to the power to impose penalties, the EFA may publish reports and summaries of public access.



Principle of efficacy

The environmental enforcement entities to properly exercise the enforcement, which is within their jurisdiction, shall have the necessary tools and resources for an adequate planning, execution and assessment of their exercise.



Principle of efficiency

The environmental enforcement shall be performed at the lowest possible cost in terms of society and environment, increasing the use of existing resources.



Principle of effectiveness

The environmental enforcement shall be exercised in such manner that the companies comply with the environmental obligations.



Principle of continuous improvement

The entities of environmental enforcement contribute to the process of continuous improvement of the environmental legislation by proposing to the competent authorities the regulatory changes which are considered as necessities.



Conditions for the regular exercise of the **environmental enforcement** by the **EFA**

Pursuant to Article No. 5 of the Common System of Environmental Enforcement, approved by Ministry's Order No. 247-2013-MINAM, dated August 28, 2013, for the regular exercise of the environmental enforcement, the EFA have to comply with certain conditions.

The EFA shall:

1

APPROVE A CLASSIFICATION OF OFFENSES AND ENVIRONMENTAL PENALTIES

The EFA, in order to exercise the function of environmental enforcement in line with the power to impose penalties which have been conferred, shall have a scale of offenses and administrative penalties.

In the absence of such rules, the EFA will apply, in a supplementary manner, the scale of general and transversal penalties and offenses approved by the OEFA.

The power of classification shall be exercised according to the conferred jurisdiction within the framework of the following principles and rules:

Principle of classification

The EFA shall have the power to impose penalties to exercise the functions of environmental enforcement (in a strict sense), which is only conferred to the entities by legally binding rules, in compliance with Number 1, Article No. 230 of the Law No. 27444, Law on General Administrative Procedure. However, for its exercise is not only necessary to have the power to impose penalties conferred, otherwise, a legal impediment for the exercise of the function of enforcement (in a strict sense) would be produced since the principle of classification, set forth by Article No. 230 of the Law No. 27444, Law on General Administrative Procedure, would be violated.





Supplementary rule

The absence of classification of offenses and penalties in the EFA requires the use of the “complementary rule” established in the Law No. 30011 (which amends the Law on SINEFA), allowing the EFA to use the classifications approved by the Board of Directors of OEFA to apply them in a supplementary manner to the activities which are within the scope of their jurisdiction.

Classification of transversal offenses and scale of penalties approved by OEFA

Classification of administrative offenses and the scale of penalties related to the efficiency of the environmental enforcement applicable to economic activities which are within the scope of jurisdiction of the OEFA.

Decision of Board of Directors
No. 045-2013-OEFA/CD (10/16/2013).

Classification of administrative offenses and the scale of penalties related to the environmental management instruments and to the development of activities in prohibited zones.

Decision of Board of Directors
No 049-2013-OEFA/CD (20.12.13).

Classification of offenses and the scale of penalties related to the non-compliance with the Maximum Permissible Limits (LMP, by its initials in Spanish).

Decision of Board of Directors
No 045-2013-OEFA/CD (13.11.13).



2

APPROVE THE LEGAL AND TECHNICAL INSTRUMENTS

The exercise of the function of environmental enforcement by the EFA requires the approval of legal and technical instruments for such purpose; however, the absence of this approval does not constitute an impediment for the exercise of the function of environmental enforcement since it requires the supplementary application of various complementary rules on the matter established by the OEFA.

Legal Instruments

Examples:

- Independent Administrative procedure to impose penalties
- Regulation for direct supervision
- Register of environmental offenders
- Register of administrative acts issued by the EFA

Technical Instruments

Examples:

- Methodology for the calculation of applicable fines
- Protocol of intervention

Rules that may be applied in a supplementary manner by the EFA, approved by the OEFA

Examples:

- Methodology for the calculation of base fines and the application of aggravating and mitigating factors for using in the adjustment of penalties, in compliance with Article No. 6 of the Supreme Decree No. 007-2012-MINAM, approved by President's Order of the Board of Directors No. 035-2013-OEFA-PCD (03/01/2013).
- General Regulation for the exercise of the power to impose penalties of the OEFA, approved by Decision of Board of Directors No. 038-2013-OEFA-CD (09/18/2013)
- Regulation for Direct Supervision of the OEFA, approved by Decision of Board of Directors No. 007-2013-OEFA-CD (02/28/2013)

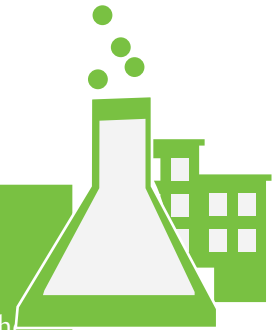
3

HAVE THE PERTINENT TECHNICAL EQUIPMENT AND GO TO ACCREDITED OR WELL-KNOWN TECHNICAL COMPETENCE LABORATORIES

To properly perform the environmental enforcement, the EFA shall have the appropriate equipment for the development of the function. Furthermore, the EFA must have the proper technical equipment, go to accredited or well-known laboratories, and hire specialized and trained staff to exercise the environmental enforcement and employ the equipment to be used.

Accredited and/or well-known technical competence laboratories

* Legislative Decree No. 1030, Law on the National Standard and Accreditation System.



Technical equipment

GPS, sound level meter, meter of volatile organic compounds, spectrophotometer, potentiometer, analyzer, portable microbiological, and high-volume and low-volume particle measurement equipment.

4

COMPLY WITH THE PREPARATION, APPROVAL, EXECUTION AND REPORT OF ITS PLANEFA

A further condition that has to be complied by the EFA for exercise the environmental enforcement functions is the one related to preparation, approval, execution and report of its PLANEFA, according to the established by the OEFA as governing body of the SINEFA.

Guidelines for the elaboration, approval and assessment of the PLANEFA

These guidelines determine a number of parameters which shall serve to guide the EFA for the preparation of their pertinent PLANEFA.

If the EFA do not present their PLANEFA or their Report of Activities, the OEFA may complain before the Office of the Auditor General about the non-compliance with such obligations by the officers of the EFA that, due to the disregard or non-compliance, would have incurred in a functional administrative responsibility.

5

INFORM THE OEFA ABOUT THE EXERCISE OF THE ENVIRONMENTAL ENFORCEMENT ACTIONS PERFORMED

The EFA shall annually inform the OEFA on the execution of the assessment and supervision actions which are contained in their PLANEFA, as well as the execution of the special supervisions, including the non-scheduled ones.

The OEFA in the exercise of its function of supervision of entities may request the information from the EFA on their actions of environmental enforcement, and establish various procedures for the delivery of technical reports, documents of diverse nature, as well as any kind of information with regard to Environmental Enforcement which is under the jurisdiction of the EFA (Law on SINEFA), such as the number of procedures to impose penalties already started, the report of the special supervisions, among others.



Planned exercise of environmental enforcement

Pursuant to Article No. 6 of the Common System of Environmental Enforcement, approved by Ministry's Order No. 247-2013-MINAM, dated August 28, 2013, for the planned exercise of the environmental enforcement, the EFA shall prepare the PLANEFA and execute the actions thereof.



The guidelines for the elaboration, approval and assessment of the Annual Environmental Assessment and Enforcement Plan (PLANEFA), approved by Decision of Board of Directors No. 004-2014-OEFA-CD, dated January 24, 2014.

It is a planning instrument in which each EFA sets the actions of environmental enforcement that are within their jurisdiction, which will be executed during the corresponding calendar year.

The EFA shall execute the activities contained in their approved PLANEFA; however, the regular exercise of the environmental enforcement, which is within their jurisdiction, is not limited to what is established in their respective PLANEFA because the execution of the special supervisions may be produced despite the fact these are not contained in the PLANEFA

Legal basis

LAW No. 28611 - GENERAL LAW ON ENVIRONMENT

“Article No. 131 - System of Environmental Enforcement and Control (...)

131.2. The Ministry of Environment, pursuant to the Ministry’s Order, approved the Common System of Environmental Enforcement.
(...)”

LAW No. 29325 - LAW ON NATIONAL ENVIRONMENTAL ASSESSMENT AND ENFORCEMENT SYSTEM, AMENDED BY LAW No. 30011

“Article No. 6 - Agency for Environmental Assessment and Enforcement (OEFA)

The Agency for Environmental Assessment and Enforcement (OEFA) is a public specialized technical agency, with legal personality under domestic public law, establishing itself as a state-funded public body; furthermore, it is registered with the Ministry of Environment

and is responsible for the enforcement, monitoring, assessment, control and imposition of penalties with regard to environmental matters, as well as for the application of incentives, and exercises the functions set forth by Legislative Decree No. 1013 and by the Law in force. The OEFA is also the governing body of the National Environmental Assessment and Enforcement System”.

“Article No. 11 - General functions

11.1. The exercise of the environmental enforcement covers the function of assessment, monitoring, enforcement and imposition of penalties in order to ensure the compliance with the environmental obligations to be controlled which are established in the environmental legislation, as well as the commitments derived from the environmental management instruments and from the orders or provisions issued by the Agency for Environmental Assessment and Enforcement (OEFA) in compliance with the Article No. 17, as follows:

- a) Assessment function: it covers the surveillance, monitoring actions and other such actions in order to secure the compliance with the environmental regulations.
- b) Direct supervisory function: it covers the power to make verifications and monitoring actions in order to secure that the companies comply with the obligations set forth by the environmental legislation. In addition, it covers the power to issue precautionary measures. The supervisory function also aims to promote the voluntary amendment of the alleged breach of the environmental obligations provided that the administrative procedure to impose penalties has not been initiated; it is a breach that may be amended; and the act or omission has not produced any risk, damage to the environment or health. In such cases, the OEFA may get the corresponding investigation file. By virtue of the Decision of Board of Directors, the foregoing is regulated.

c) Controlling and penalty function: it covers the power to investigate the commission of potential administratively punishable offenses and impose penalties for the non-compliance with the obligations and commitments derived from the environmental management instruments, environmental rules, environmental commitments of concession agreements and orders or provisions issued by the OEFA, in compliance with the Article No. 17. Furthermore, it covers the power to issue corrective and precautionary measures.

11.2. The OEFA, acting in its capacity as governing body of the National Environmental Assessment and Enforcement System (SINEFA), exercises the following functions:

a) Regulatory function: it covers the power to issue, within the scope of its jurisdiction, the rules that regulate the exercise of the environmental enforcement within the framework of the National Environmental Assessment and Enforcement System (SINEFA), and others of general nature related to verification of compliance with environmental obligations by the

companies, as well as those necessary to exercise the supervisory function of the entities of environmental enforcement, which are binding upon such entities in the three levels of government.

In the exercise of the regulatory function, the OEFA is empowered, among others, to classify the administrative offenses and approve the corresponding scale of penalties, as well as the criteria for their adjustment and the scopes of the preventive, precautionary and corrective measures to be issued by the pertinent authorities.

b) Supervisory function of the national, regional and local environmental enforcement entities (EFA): it covers the power to monitor and verify the performance of the controlling functions that are within the jurisdiction of the environmental enforcement entities at national, regional and local level, according to the established in Article No. 07.

The OEFA, in the exercise of its supervisory function, may establish the procedures for the submission of reports, technical papers and any information

related to the compliance with the functions that are within the jurisdiction of the environmental enforcement entities (EFA).

The non-compliance with the abovementioned functions will constitute functional responsibility, which is reported to the corresponding body of the National Control System”.

“Article No. 17 - Administrative offenses and power for imposing penalties

The following are considered as administrative offenses, within the scope of jurisdiction of the Agency for Environmental Assessment and Enforcement (OEFA):

- a) Fail to comply with the obligations set forth by the environmental regulation.
- b) Fail to comply with the obligations in charge of the companies, which were established in the environmental management instruments and detailed in the current environmental regulation.
- c) Fail to comply with the environmental commitment made in the concession agreements.
- d) Fail to comply with the precautionary, preventive or remedial measures as well

as the orders or provisions issued by the competent authorities of the OEFA.

- e) Others which are within the scope of its jurisdiction. The non-compliance with the abovementioned environmental obligations to be controlled are binding upon all natural persons and legal entities performing the activities that are within the jurisdiction of the OEFA, even when they do not have the permit, authorization or license for their exercise. This provision is applicable to all the environmental enforcement entities (EFA) regarding their jurisdiction, as the case may be.

When the OEFA get verifiable and prima facie evidence of the non-compliance with the conditions for an activity is within the jurisdiction of the regional governments, and therefore its current condition should be within the jurisdiction of the OEFA, it is empowered to develop the pertinent actions of environmental enforcement”.

Final Supplementary Provisions

“Seventh. The Common System of Environmental Enforcement, contained in paragraph 131.2, Article No. 131 of the Law No. 28611, General Law on Environment, establishes the common foundations, principles and guidelines of the environmental enforcement in the country, as well as the general provisions that have to be complied by the EFA on a mandatory basis within the scope of the SINEFA, regulating their coordination, in order to secure a harmonic exercise of the environmental enforcement that is within their jurisdiction and the coordinated and efficient intervention of such provisions as a means to ensure the respect of the environmental rights of the citizens.

Any reference made to the Common System of Environmental Enforcement and Control or to the Regulation for the Common System of Environmental Enforcement and Control is understood as made to the Common System of Environmental Enforcement.

The incentives system contained in Article

No. 150 of the Law No. 28611, General Law on Environment, and the regulation for the Register of Good Environmental Practices, contained in Article No. 139 of the General Law on Environment, are approved by the ministry’s order of the Ministry of Environment, and its application is monitored and controlled by the Agency for Environmental Assessment and Enforcement (OEFA) and the environmental enforcement entities (EFA).

The establishment, regulation and management of the register of environmental offenders, contained in Article No. 139 of the Law No. 28611, General Law on Environment, are in charge of the OEFA”.

COMMON SYSTEM OF ENVIRONMENTAL ENFORCEMENT, APPROVED BY MINISTRY’S ORDER No. 247-2013-MINAM

“Article No. 1 - Purpose

1.1. The purpose of this rule is to approve the Common System of Environmental Enforcement established in Number 131.2, Article No. 131 of the Law No. 28611,

General Law on Environment, and contained in the Seventh Final Supplementary Provision of Law No. 29325, Law on National Environmental Assessment and Enforcement System (SINEFA), amended by Law No. 30011 and in the Legislative Decree No. 1013, Legislative Decree that approves the Law on Creation, Organization and Functions of the Ministry of Environment

1.2. The Common System of Environmental Enforcement establishes the common foundations, principles and guidelines of the environmental enforcement of the country, as well as the general provisions that have to be complied by the EFA on a mandatory basis within the scope of the SINEFA, regulating their coordination, in order to secure a harmonic exercise of the environmental enforcement that is within their jurisdiction and the coordinated and efficient intervention of such provisions.

1.3. The referred System wants to ensure an environmental enforcement in a homogenous, effective, efficient, harmonic and coordinated manner, in order to improve the quality of the people's lives and the sustainable development of the country as a means to secure the respect of the rights related to the protection of the environment”.

“Article No. 2” - Scope of application

2.1. The provisions of the Common System of Environmental Enforcement are applicable to:

- a) The national, regional or local EFA, this means, to any public entity at national, regional or local level which has been conferred some or all of the actions of environmental enforcement in a broad sense, which is referred to in paragraph 2.2 of the rule in question.
- b) The Agency for Environmental Assessment and Enforcement (OEFA), both in its capacity as governing body of the SINEFA and in its functions of assessment, direct supervision, enforcement and imposition of penalties that are within its jurisdiction.

2.2. The environmental enforcement, detailed in this rule, covers the actions of environmental enforcement that are exercised by the OEFA and EFA, according to their jurisdiction

The environmental enforcement, in a broad sense, covers the action of surveillance, control, monitoring, follow-up, verification, assessment, supervision, enforcement in a strict sense and other such actions, in order to ensure the compliance with the environmental obligations to be controlled

and those derived from the exercise of the environmental enforcement.

The environmental enforcement, in a strict sense, covers the power for investigating the commission of potential administratively punishable offenses and imposing penalties, subject to the beginning of the administrative procedure to impose penalties.

When in this rule is referred to the environmental enforcement, it shall be understood in a broad sense.

2.3. The environmental obligations to be controlled are established in the environmental legislation issued by the corresponding bodies from the authorities at the three levels of the government, in the environmental management instrument, and, likewise, in the orders and provisions issued by the EFA and OEFA, among other sources of obligation. The obligations to make or not to make are the ones related to the protection of the environment, as well as the sustainable use of the natural resources, including the social-environmental aspects.

2.4. In order to ensure the constitutional right of any person to live in a balanced environment suitable for the development of their live, the compliance with the

abovementioned environmental obligations to be controlled is extended to those that do not have any permit, authorization and license for the exercise of the activities that are within the jurisdiction of the EFA and OEFA”.

“Article No.4-Duty of the OEFA with regard to the Common System of Environmental Enforcement

4.1. The OEFA is responsible for the management and supervision of the application of the Common System of Environmental Enforcement.

As the governing body of SINEFA, the OEFA exercises the regulatory and supervision function of the EFA in compliance with Article No. 44 of the Law No. 29158, Organic Law on Executive Branch, and Article No. 11 of the Law No. 29325, Law on National Environmental Assessment and Enforcement System, amended by Law No. 30011.

4.2. According to the regulatory function, the OEFA regulates the exercise of environmental enforcement within the framework of the National Environmental Assessment and Enforcement System (SINEFA) and approves the corresponding rules to exercise the supervision function of the environmental

enforcement entities, which are binding upon such entities in the three levels of the government.

4.3. Within the framework of the supervisory function of the environmental enforcement entities, the OEFA monitors and verifies the performance of the functions of environmental enforcement that are within the jurisdiction of the EFA, without affecting the duty that corresponds to the agencies of the National Control System”.

“Article No. 5 - Regular exercise of the environmental enforcement

The EFA, for the regular exercise of the functions of environmental enforcement which are within their jurisdiction, shall comply, as minimum, with the following:

a) Approve or propose, as the case may be, the provisions that regulate the classification of applicable environmental penalties and offenses, according to the rule issued by the OEFA on this matter, observing the maximum amount of the fine which is established in Article No. 136 of the Law No. 28611, General Law on Environment. In the absence of such rules, the EFA will apply, in a supplementary manner, the

classification of general and transversal penalties and offenses, the methodology for the calculation of environmental fines and other supplementary rules regarding the matter approved by the OEFA.

The power for making the classification shall be exercised in compliance with the jurisdictions conferred, within the framework of the principles of legality and classification.

- b) Approve the legal, operating, technical instruments and others required for the exercise of such functions.
- c) Have the necessary technical equipment and go to accredited laboratories to properly execute the actions of environmental enforcement which are within their jurisdiction, as the case may be.
- d) Have mechanisms to measure the effectiveness and efficiency of the exercise of the environmental enforcement which are responsible for, within the framework of the indicators established by the OEFA, as well as others made for such purpose.
- e) Comply with the preparation, approval, execution and report of the Annual Environmental Assessment and Enforcement Plans referred to in this rule.

f) Inform the OEFA on the exercise of their functions of environmental enforcement in compliance with the provisions issued by the OEFA for such purpose”.

METHODOLOGY FOR THE CALCULATION OF BASE FINES AND THE APPLICATION OF AGGRAVATING AND MITIGATING FACTORS TO BE USED IN THE ADJUSTMENT OF PENALTIES, IN COMPLIANCE WITH ARTICLE No. 6 OF SUPREME DECREE No. 007-2012-MINAM, APPROVED BY PRESIDENT’S ORDER OF BOARD OF DIRECTORS No. 035-2013-OEFA-PCD

“Article No. 4 - Supplementary Rule

While the Board of Directors of the Agency for Environmental Assessment and Enforcement (OEFA) do not approve the applicable methodology for the adjustment of penalties derived from the activities that are not included within the jurisdiction of Supreme Decree No. 007-2012-MINAM, the methodology approved by virtue of this Order may be applied in a supplementary manner in the adjustment of penalties

corresponding to such activities”.

REGULATION FOR THE DIRECT SUPERVISION OF THE AGENCY FOR ENVIRONMENTAL ASSESSMENT AND ENFORCEMENT (OEFA), APPROVED BY DECISION OF BOARD OF DIRECTORS No. 007-2013-OEFA-CD

Temporary Supplementary Provision

“**First.** This regulation may be applied in a supplementary manner by the national, regional or local environmental enforcement entities (EFA) to exercise the supervisory function which is responsible for, within the scope of their jurisdiction, provided that the model Regulation for the Environmental Enforcement is not approved by the OEFA”.

GUIDELINES FOR THE PREPARATION, APPROVAL AND ASSESSMENT OF THE ANNUAL ENVIRONMENTAL ASSESSMENT AND ENFORCEMENT PLAN (PLANEFA), APPROVED BY

DECISION OF BOARD OF DIRECTORS No. 004-2014-OEFA-CD.

“Article No. 1 - Purpose

These guidelines regulate the preparation, approval and assessment of the Annual Environmental Assessment and Enforcement Plan (PLANEFA) in charge of the environmental enforcement entities (EFA)”.

“Article No. 2 - Scope of Application

These guidelines are binding upon all the EFA at national, regional and local level”.

“Article No. 4 - Approval of the PLANEFA

4.1. The PLANEFA is approved by the Order of the Head of the EFA.

4.2. The organizational units with jurisdiction in environmental enforcement matters as well as the planning and budgetary bodies will take part in the process to elaborate the project of the PLANEFA of the EFA in order to ensure the execution of the planned activities.

4.3. The EFA shall approve the PLANEFA within the first fifteen (15)

days of December of the year prior to its execution.

4.4. The PLANEFA shall contain, as minimum, a diagnosis of the environmental problems that are limited to the scope of action of the corresponding EFA, the identification of the organizational units in charge of the environmental enforcement as well as the detail of the environmental supervision and assessment actions to be executed by the EFA, in compliance with the Annex I of the Guidelines in question. (...)"

Final Supplementary Provision

“Single.- These Guidelines are binding upon all the environmental enforcement entities, with regard to the preparation, approval and assessment of their corresponding PLANEFA, from the year 2015”.

GENERAL RULES ON THE EXERCISE OF THE POWER FOR IMPOSING PENALTIES OF THE AGENCY FOR ENVIRONMENTAL ASSESSMENT AND ENFORCEMENT (OEFA), APPROVED BY

DECISION OF BOARD OF DIRECTORS No.038-2013-OEFA-CD

“Thirteenth - Supplementary Rules

13.1. In compliance with the last paragraph of Article No. 17 of the Law on National Environmental Assessment and Enforcement System, the classification of general and transversal penalties and offenses approved by the Board of Directors of the OEFA shall be applied in a supplementary manner by the national, regional and local entities in charge of the environmental enforcement.

13.2. What is not established in these general rules and in the regulation that, regarding the power to impose penalties, issue the Board of Directors of the OEFA, the provisions of the procedure to impose penalties, which are detailed in Law No. 27444, Law on General Administrative Procedure, shall be applied in a supplementary manner, without prejudice of the preferential application referred to in Number 229.2 of Article No. 229 of such law”.

CLASSIFICATION OF OFFENSES AND SCALE OF PENALTIES RELATED TO THE NON-COMPLIANCE WITH THE MAXIMUM PERMISSIBLE LIMITS (LMP) PLANNED FOR ECONOMIC ACTIVITIES THAT ARE WITHIN THE JURISDICTION OF THE OEFA, APPROVED BY DECISION OF BOARD OF DIRECTORS No. 045-2013-OEFA-CD

“Article No. 1 - Objective and Purpose

1.1. The purpose of this rule is to classify the administrative offenses and establish the scale of penalties related to the non-compliance with the Maximum Permissible Limits (LMP) planned for the economic activities that are within the jurisdiction of the Agency for Environmental Assessment and Enforcement - OEFA.

1.2. The provisions of this rule have the purpose of ensuring the effective application of the principles of proportionality, reasonableness, gradualness and non-confiscation”.

“Article No. 2 - Nature of offenses

According to this rule, the offending conducts are classified as minor, serious and major and are transversal, in compliance with the last paragraph of Article No. 17 of the Law No. 29325, Law on National Environmental Assessment and Enforcement System”.

“Article No. 7 - Adjustment of fines

7.1. To determine the fines to be applied in the ranges established in Article No. 3, No. 4 and No.5 of this Order, the Methodology for the calculation of base fines and the application of aggravating and mitigating factors for using in the adjustment of penalties, approved by Article No. 1 of the President’s Order of the Board of Directors No. 035-2013-OEFA-PCD or the rule replacing it, shall be applied.

7.2. Pursuant to the foregoing Number 7.1, the abiotic environmental components (water, soil and air) established in Number 1.1, Item f.1 of the Table of Values No. 2 expressed in

the abovementioned Methodology and that are included in the Annex II of the President’s Order of Board of Directors No. 035-2013-OEFA-PCD will not be considered as aggravating factors.

7.3. The fine to be applied shall not be more than the 10% of the gross annual income earned by the offender the year prior to the date of the offense, in compliance with the “General rules on the exercise of the power of the OEFA to impose penalties, approved by Decision of Board of Directors No. 038-2013-OEFA-CD”.

“Article No. 8 - Aggravating factor related to the excess of the Maximum Permissible Limits

The number of parameters that exceed the maximum permissible limits, and the quantity of points in which such excess may occur, do not constitute new offenses, but they constitute aggravating factors for the adjustment of the penalty”.

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for change*

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