New Environmental Regulation for Hydrocarbon Activities

Supreme Decree N° 023-2018-EM

As part of a bigger legislative package that includes the revamping of the Hydrocarbon Law- expected to be approved in the Peruvian Congress in the next weeks - on September 7th, was published the Supreme Decree N° 023-2018-EM, which amends and adds several sections to the Regulations of Environmental Protection in the Hydrocarbon activities (hereinafter, "the Regulation").

The introduced changes include (i) specific provisions easing the abandonment plans requirement for off-shore seismic or drilling activities and concerning waste disposals from the same, (ii) the components variations that would not trigger an EIA amendment, (iii) the possibility of presenting a Detailed Environmental Plan (PAD) to regularize facilities installed without adjusting the applicable EIA, among others.

Specifically, through Article N°1 of the aforementioned Decree, the Articles N° 51, 58, 97, 100 and 102 of the Regulation are -among others- modified. Such modifications could be summarized as follows:

- With respect to Article 51°, the original text established that, for the management and storage of Hydrocarbons, the Holder of Hydrocarbon Activities was obliged to comply "with the measures established in the corresponding applicable regulations". However, the new text provides the specific requirements to be met, such as:
  - Hydrocarbons or production water shall not be placed in open containers or in unsorted
pools of land, except in cases of proven contingency and subject to reporting to the Competent Authority in Environmental Enforcement Matters within a period not exceeding twenty-four (24) hours. Once the contingency is over, the hydrocarbons shall be collected and deposited in closed containers and the dirt pools shall be remediated and closed. The remediation of the ground pools shall be carried out following the methods provided in the Contingency Plan or the respective Environmental Study. The production waters must be reinjected.

- Each tank or group of tanks must be surrounded by a dam that allows to retain a volume at least equal to 110% of the total volume of the tank of greater capacity. The walls of the containment dams around each tank or group of tanks and those of the watertight areas must be properly waterproofed, guaranteeing the containment of the hydrocarbons.

- Facilities or equipment such as pipelines, tanks, processing units, instruments, separators, pumping equipment, control valves (automatic / manual), safety valves, flow meters, among others, shall be subject to regular maintenance programs, in order to minimize risks of accidents, leaks, fires and spills.

- In the case of Article 58º, it is specified that the environmental monitoring reports must only be presented before the Competent Authority in Environmental Enforcement Matters, and no longer before the Competent Environmental Authority (DGAAE, originally). Additionally, it stipulates that the respective physical-chemical monitoring and analysis must be carried out "through methods accredited by the National Institute of Quality - INACAL".

- Regarding Article 102º, which addresses the norms for the presentation of Plans of Partial Abandonment, it states that the Holders of the Hydrocarbon Activities, and not any Holder, are responsible for the presentation of the plan. Additionally, the modification of the regulation establishes that the obligation to present the Partial Abandonment Plan is no longer required, in case the Hydrocarbons Activities Owners have timely informed of the suspension of their activities.

In addition, the Supreme Decree N ° 023-2018-EM, through its Article N° 2, adds to the Regulation -among others- the Articles N ° 22-A, 42-A, 101-A; as well as the Eighth and Ninth Final Complementary Provision. In this regard, the aforementioned articles provide the following:

- In Article 22-A, the hierarchy of environmental mitigation is established, which must be adopted by the Holder of the Hydrocarbons activities through the design of the Environmental Management Strategy -as part of its environmental instruments-, in the following order of priority:
  - Prevention measures.
  - Minimization measures.
  - Rehabilitation measures.
  - Compensation measures.

- In Article 42-A, some activities are considered - within a hydrocarbon project - whose execution "will not require the modification of an environmental study". Among the main ones are the following:
  - The change in the location of stationary or mobile machinery and equipment within the facilities, site area or project area and / or right of way for linear components depending on the development of activities.
  - The renewal of equipment that fulfills the same function, as well as the incorporation of equipment as backup, considering the protection or environmental control devices that were necessary and evaluated in the current Environmental Study.
The total or partial non-execution of main or auxiliary components that were not associated with components for prevention, mitigation and control of adverse environmental impact, without entailing any reduction or elimination of environmental or social commitments assumed in the environmental study approved.

The elimination of monitoring points due to the non-execution of the activity subject to control or the elimination of the source. The exemption does not include the relocation or elimination of control points of active components of the operation that need to be monitored in compliance with the approved Environmental Study.

Modifying the schedule for the execution of activities in cases it does not imply changes in the commitments assumed in the approved Environmental Study.

Others as may be established by the Ministry of Energy and Mines, prior favourable opinion of the Ministry of Environment

The same article establishes that it is imperative that these actions be brought to the attention of the Competent Environmental Authority and the Competent Authority on Environmental Enforcement before being implemented. It should also be noted that these measures will not apply in the event that the project would find itself in protected areas, buffer zones and/or Territorial Reserves or Indigenous Reservations.

Article 101-A, states that the process of technical abandonment of wells previously approved by PERUPETRO S.A., regulated by Supreme Decree N° 032-2004-EM, will not be considered as an execution of environmental abandonment activities as such.

The Eighth Final Complementary Provision establishes the suspension of the deadlines that the competent Environmental Authority has to issue a statement, during the period granted by the Hydrocarbons Activities Holder for the correction of observations of those environmental assessment procedures established in the Regulations.

Through the Ninth Final Complementary Provision, the rules are established for the integration of permits to the environmental studies approval process, within the framework of the First Transitory Complementary Provision of Law N° 30327 and Supreme Decree N° 005-2016-MINAM, which approves the Regulation of Title II of Law N° 30327. This provision indicates that, during the period of time in which the Competent Environmental Authority does not establish proper guidelines for its application, the provisions established in Supreme Decree N° 005-2016-MINAM, will be additionally applied, establishing for such cases that the owner of the activity may file an application for approval of the Environmental Impact Study (sd), accompanied by the requirements applicable to obtain the following permits:

- Water availability certification.
- Authorization for the execution of works regarding water use.
- Water use rights.
- Authorization for discharges of treated industrial, local and domestic wastewater.
- Authorization for reuse of treated industrial, local and domestic wastewater.
- Deforestation authorization.

Additionally, the same Supreme Decree approves several final and transitory provisions of its own. Among the main ones we encounter the Second and Third Final Complementary Provisions; the First and Second Transitory Complementary Provisions; as well as the only Complementary Derogatory Provision that can all be summarized as follows:
The Second Final Complementary Provision indicates that while the new contents of the Environmental Impact Statements and Terms of Reference of the Environmental Impact Studies for Hydrocarbon Activities are not approved, Annex 3 of the Regulations for Environmental Protection in Hydrocarbon Activities will be kept in force.

The Third Final Complementary Provision, indicates that the Ministry of Energy and Mines, by means of a Ministerial Resolution, within the maximum term of ninety (90) business days from the entry into force of this regulation, and counting on the technical opinion of the Ministry of the Environment, must approve the Terms of Reference of the Abandonment Plans for Hydrocarbon Activities.

In the First Transitory Complementary Provision, it is decreed that the Holders of Hydrocarbon Activities, exceptionally and only once, may submit a Detailed Environmental Plan (PAD) in the following cases:

- In the case of hydrocarbon commercialization activities that have carried out extensions and / or modifications or develop hydrocarbon commercialization activities, without having previous approval of their modification procedure or an Environmental Management Instrument, respectively.
- In the case of hydrocarbon activities, not contemplated in the previous case, that have an Environmental Management Instrument and have made extensions and / or modifications to the activity, without having previously made the corresponding modification procedure.
- In both scenarios, the Holders of the Hydrocarbon Activities that intend to benefit from this environmental amnesty shall communicate said decision, attaching information on the components built to the Competent Environmental Authority, within a term of sixty (60) business days for the Holders that find themselves in scenario a) and within thirty (30) working days for the Holders that find themselves in scenario b), counted from the issuance of this Supreme Decree. After approval of the aforementioned guidelines, the Holder of the Hydrocarbon Activities that is in the scenario a) of the first paragraph of this provision must submit the PAD within a period of six (6) months, which must be prepared by natural persons or a consultant registered in the National Registry of Environmental Consultants.
- Likewise, the Holder who is in scenario b) of the first paragraph of this provision must submit the PAD within a period of one (1) year, which must be prepared by a consultant registered in the National Registry of Environmental Consultants.

In the Second Transitory Complementary Provision, it is provided that the Holders of Hydrocarbon Activities who do not have the Environmental Certification of their project and require the approval of an Abandonment Plan may request, in an exceptional and duly substantiated manner, the approval of said Plan.

Complementarily, said provision states that it will be the Ministry of Energy and Mines, through a Ministerial Resolution, after a favourable opinion from the Ministry of the Environment, which must approve guidelines for the formulation of the aforementioned Abandonment Plan, within a period of no more than ninety (90) business days counted from the approval of this rule. It is also noted that the Holder of Hydrocarbon Activities has a maximum term of ninety (90) business days from the approval of the guidelines mentioned in the preceding paragraph for the presentation of the Abandonment Plan.

Finally, by means of the Single Complementary Repeal Provision, Article N° 63 of Supreme Decree No. 039-2014-EM, referring to the opinion of OSINERGMIN regarding the Risk Study and the Contingency Plan.
Plan, is hereinafter repealed. In addition, Annex No. 3, which included the Environmental Impact Statement Format -DIA, for the establishment of the sale of liquid fuel, LPG for automotive use, CNG and CNG, is also repealed.

Finally, the aforementioned Supreme Decree No. 023-2018-EM, modifies a series of articles applicable to offshore upstream hydrocarbon activities. In that sense, we have the following:

- **Regarding Article 74°:**
  - By means of its second paragraph, it is established that 2D or 3D seismic offshore activities do not require the presentation of an Abandonment Plan (detailed), and that must solely comply with the measures for abandonment envisaged in its approved Environmental Study.

- **Regarding Article 83° establishes the following:**
  - In section 83.2, e, it is added that the food wastes, previously passed by a shredder may be disposed from the fixed or floating platforms, in accordance with the provisions of the MARPOL Convention.
  - Section 83.3 is added, which mentions that for exploratory drilling activities developed in deep waters using mobile drilling units, shall not need the submission of an Abandonment Plan (detailed), in which case they shall comply solely with the abandonment measures established in its approved Environmental Study.

- **Finally, Article 99° states that:**
  - With respect to its numeral 1, that in the case of facilities located in the sea or within the beach area established in Law N° 26856, Law that declares that the beaches of the coast are public, inalienable and imprescriptible property; when the abandonment of activities occur, including a partial abandonment and it does not contemplate the total removal of facilities, the prior technical opinion of the General Directorate of Captaincies and Coastguards (DICAPI) will be necessary.
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