

CHANGES IN FEDERAL ADMINISTRATIVE PROCEDURE TO INVESTIGATE ENVIRONMENTAL INFRACTIONS

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AUTHORS

MARIANA RODRIGUES DA SILVA
LAWYER / SÃO PAULO

Federal Decree No. 9,760, published in April of this year, amends certain provisions of Federal Decree No. 6,514/08, which deals with environmental infractions and sanctions and establishes the federal administrative procedure to investigate them.

Effective as of next October 8 (180 days after its publication), the text provides for the creation of the Environmental Conciliation Center (NCA) and modifies the Environmental Fines Conversion Program.

The first big change presented was a summons for the defendant to appear at the establishment of the responsible environmental agency in order to participate in an environmental conciliation hearing. This summons will be sent after the preparation of an infraction notice and preferably by electronic means (when there is express agreement by the defendant and technology available confirming the receipt thereof). With the ultimate goal of closing administrative proceedings quickly, the defendant should attend a single hearing.

It is important to note that the 20-day time limit for filing a defense against the infraction notice is stayed until the date of the conciliation hearing. Only if the hearing is unsuccessful will the time limit be counted per the terms of Decree No. 6,514/08.

The NCA was created precisely to conduct a preliminary review of assessments and to hold environmental conciliation hearings. The body will be composed of at least two permanent public servants, at least one of them being part of the federal environmental Public Administration entity responsible for drawing up the assessment in question. On the date of the hearing, the NCA will: present the reasons of fact and law that led to the issuance of the infraction notice; explain the possible legal solutions for termination of the proceeding (for example, discounts on payment, payment via installments, or conversion of the fine into rendering of services, improvement, and recovery of environmental quality); and carry out any approval of detailed consent orders indicating the choice made by the defendant.

Detailed consent order resulting from conciliation hearings shall contain the solution chosen and the commitments assumed by the defendant to fulfill the obligation. It is the responsibility of the defendant to file a request for termination of the proceeding, with a resolution on the merits against any lawsuits filed within 15 days of the hearing.

In the event that a hearing is not held, either due to non-attendance by the defendant or lack of interest in environmental conciliation, the defendant may opt for legal remedies through the website of the responsible entity of the federal administration.

Under the Environmental Fines Conversion Program, the decree establishes the possibility of converting simple fines into the rendering of services, improvement, and recovery of environmental quality. An exception is fines resulting from violations that have caused human deaths.

If a defendant chooses to convert a fine, the procedure may be requested of the NCA during the environmental conciliation hearing, as mentioned above. The request may also be made to the adjudicating authority (until the issuance of the trial level decision) or to higher authority (until the appellate level decision is issued).

Discounts from the fine will be staggered according to the phase of the proceeding in which conversion of the penalty was requested. If the request is made during the environmental conciliation hearing, the discount will be 60%; if it is referred to the adjudicatory authority, it will be 50%; and if addressed to the higher authority, it will be 40%.

The taxpayer may also adhere to the conversion of fines through the implementation of a project for services for the preservation, improvement, and recovery of environmental quality or by joining a project previously prepared by another public or private body, as may be decided by the environmental body.

Finally, defendants who have requested the conversion of a fine under Decree No. 9,179/17, in any of its modalities, may request adjustment of the request for conversion, guaranteeing the 60% discount, or report withdrawal of the request, whereupon they may opt for one of the other alternatives in order to terminate the proceeding by the cut-off date of January 6, 2020. If the defendant does not submit a request by that date, the environmental agency will consider it to constitute tacit waiver of the request for conversion of a fine and notify it of the regular continuation of the administrative proceeding.

Keywords:



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