

# Country Systems Report 1 | **Argentina**

Policies and regulatory systems for  
environmental & social licensing and enforcement



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## Country Systems Report 1 | Argentina

Policies and regulatory systems for environmental licensing and enforcement



### I. Constitutional and policy framework for sustainable development

#### A. Constitutional basis for environmental protection

The Constitution of Argentina provides the foundation for environmental protection at the national level, including proclaiming in Section 41 that:

“All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall result in the obligation to repair it, according to law. Authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education.”

#### B. National policies on the environment and sustainable development

Argentina’s national environmental policy was established through Law 25,675 of 2002 (the General Law of the Environment, or “LGA”), which elaborated on the Section 41 of the Constitution, stating that the Law establishes “the minimum standards for achieving sustainable and adequate management of the environment, the preservation and protection of biological diversity, and the implementation of sustainable development.”<sup>1</sup> Article 2 of the LGA provides a list of policy objectives that encompass the essential purpose of environmental assessment and public participation, as well as the compliance and enforcement functions that ensure their implementation. In particular, Article 2 provides that the national environmental policy must “ensure the preservation, conservation, recovery and improvement of the quality of environmental resources, both natural and cultural, in the realization of the different human activities.”<sup>2</sup> Likewise, it states that the country’s environmental policy must “prevent the harmful or dangerous effects that human activities generate,” and “establish adequate procedures and mechanisms for the minimization of environmental risks.”<sup>3</sup>

Argentina is still in the process of developing a formal climate change policy at the national level.<sup>4</sup> In 2016, a *National Climate Change Cabinet* was created by presidential Decree 891/16 for the purpose of preparing a National Plan for Response to Climate Change, as well as proposing Sectoral Action Plans. The Sectoral Action Plans will include mitigation plans for sectors that strongly influence greenhouse gas emissions, as well as adaptation plans for sectors that are vulnerable to the effects of climate change. The cabinet is composed of representatives from twelve national

<sup>1</sup> Ley 25.675 de 2002 (Política Ambiental Nacional), Art. 1.

<sup>2</sup> Ley 25.675, Art. 2(a).

<sup>3</sup> Ley 25.675, Arts. 2(g) and (k).

<sup>4</sup> In 2011, Argentina adopted a *National Climate Change Strategy* involving an earlier approach to working towards a national climate policy. The work was carried out by the Climate Change Directorate (part of the Secretariat (SAyDS), which was the precursor to the Ministry of the Environment and Sustainable Development (MAySD)).



ministries and meets periodically to further the policy-making objectives. The National Cabinet's work is organized according to a 5-tiered process that begins with thematic technical roundtables and then progresses toward broader consensus-building at a National Roundtable, where decision-making requires high-level coordination.

Lastly, Argentina adopted its current National Renewable Energy Policy (Renovar) in 2015 by enacting the *Law on Promotion of Renewable Sources of Energy for Electricity Production* (Law 27,191). The Law reaffirmed the objective of renewable energy contributing up to 8 percent of the national electric energy consumption by 2016 and 20 percent by 2025.<sup>5</sup> Regulatory Decree 531 (2016) provided a regulation for Law 27,191 and detailed provisions for its implementation. The new legal framework aims to reduce Argentina's dependence on fossil fuels, while providing predictability for investments in connection with long-term planning and market development of renewable energy.<sup>6</sup>

### C. Provincial environmental policy

Argentina's provincial authorities have a high level of autonomy for creating and implementing their own environmental policies, provided that they are congruent with minimum federal standards. Provincial environmental policies generally have their bases in provincial constitutions. For example, Article 28 the Constitution of the province of Buenos Aires provides a foundation for provincial goals and legislation, beginning with the proclamation that "the inhabitants of the Province have the right to enjoy a healthy environment and the duty to preserve it and protect it for their benefit and that of future generations."

Building upon the provincial Constitution, provincial Law No. 11,723 establishes a foundation for the realization environmental policy goals. Similar to federal Law 25,675, this law defines the overarching principles that guide the implementation of the environmental regulatory system for the province. Article 6 of Law 25,675 charges the provincial government and its municipalities with the obligation of exercise control over human activities that have the potential to impair the environment, taking responsibility for actions and omissions which may cause environmental harm.

The **Provincial Agency of Sustainable Development** (OPDS) of the province of Buenos Aires is an example of a provincial authority that has responsibility for developing environmental policy for the its jurisdiction.<sup>7</sup> Since its inception, the OPDS has developed policies and plans for realizing three interdependent green growth objectives: sustainable development, economic environmental planning, and renewable energy development, while also carrying out environmental regulatory functions within its jurisdiction.<sup>8</sup>

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<sup>5</sup> Targets for the contribution of renewable energy to national demand were first established in Law 26,190 (2006), which was amended by Law 27,191 of 2015.

<sup>6</sup> Ministerio de Energía y Minería, Argentina (2016), *Renovables Argentina 2016-2025—Plan Nacional de Energías Renovables 2016- 2025*.

<sup>7</sup> The OPDS (*Organismo Provincial para el Desarrollo Sostenible*) carries out policy-making and planning through its Under-Secretariat for Environmental Planning and Sustainable Development. Law No. 11,737 transferred authority from the OPDS' predecessor (the Provincial Institute of the Environment) to the OPDS in 1995.

<sup>8</sup> Coordinación Ejecutiva para el Desarrollo Sostenible, la Planificación Económica Ambiental y el Desarrollo de Energías Alternativas, <http://www.opds.gba.gov.ar/index.php/paginas/ver/misionesyfunciones>.

## II. Legislative and institutional framework for environmental licensing and enforcement

### A. Legislative framework

The General Law on the Environment or “LGA” (Law No. 25,675 of 2002) defines Argentina’s current institutional framework for environmental governance. The LGA provides that each member of Argentina’s federation (the federal government, the provinces, and the City of Buenos Aires) are coequal partners in carrying out environmental protection functions, with the exception that all members must adhere to the minimum environmental standards that are established by the federal government.<sup>9</sup>

#### 1. Environmental licensing and enforcement at the federal level

With the exception of projects of national importance or whose impacts straddle jurisdictional boundaries, environmental licensing and enforcement functions are governed by provincial and/or municipal legislation. Section 41 of Argentina’s Constitution grants the federal government the authority to establish minimum environmental protection standards that apply to the entire country.<sup>10</sup> The LGA provides that “any work or activity that is likely to degrade the environment, any of its components, or affect the quality of life of the population in a significant manner” is subject to a mandatory environmental impact assessment process prior to its execution. However, no ESIA regulation exists at the federal level. Instead, Section 41 of the LGA provides that provinces must promulgate their own regulations to implement and enforce these standards.<sup>11</sup> Differences exist between provinces with respect to procedural and substantive requirements for the ESIA process and for establishing licensing provisions, however provinces must adhere to the Principle of Congruency with environmental standards mandated by the federal government.<sup>12</sup>

#### 2. Environmental licensing and enforcement at the provincial level

*Example: Province of Buenos Aires*

Provincial rules and procedures for administering the ESIA and environmental licensing process for the Province of Buenos Aires were established by Law 11,459 of 1993 (the Environmental Law of Industrial Establishments), its Regulation (Decree 1,741/96), and Law 11,273 of 1995 (the Comprehensive Law of the Environment and Natural Resources) and its subsequent amendments.

Law 11,459 focused on establishing an environmental assessment and authorization process for “industrial establishments” as well as industrial parks. The Law defines *industry establishments* as any type of activity that transforms “the form, character, quality, or quantity” of a raw material or component into a final product, using industrial methods (manufacturing).<sup>13</sup> Article 2 of Law 11,459 states that all industrial establishments must obtain the appropriate **Environmental Viability Certificate** (a type of environmental license) as a mandatory prerequisite for receiving authorization

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<sup>9</sup> Ley 25.675 de 2002 (LGA), Arts. 4 and 23.

<sup>10</sup> LGA, Art. 1.

<sup>11</sup> LGA, Art. 11.; Provinces and municipalities have discretion to enact environmental standards of their own that are more stringent than those prescribed by the federal government.

<sup>12</sup> Ley 25.675, Art. 4, Principle of congruency.

<sup>13</sup> Law 11,459, Art. 2

from *municipal* authorities to begin operation. Small and medium-sized enterprises are not exempted from this requirement, so many small businesses have been subject to the Law's requirements.

Article 15 of Law 11,459 defined three categories of impact, based on the Level of Environmental Complexity (NCA) of the proposed activity, representing the extent to which an industrial activity poses an environmental risk. For Category 3 activities, the Environmental Viability Certificate must be issued by the provincial enforcement authority. For the other categories, the municipality will process applications for certificates.<sup>14</sup>

The regulation for Law 11,459 provides comprehensive details relating to the environmental assessment process, including guidelines for executing an ESIA study, requirements for obtaining a certificate, special provisions regarding the location and modification of industrial establishments, project feasibility, and the revocation of the certificates, as well as defining sanctioning procedures and the classification of sanctions. The regulation also creates a **Special Registry of Environmental Viability Certificates** within the jurisdictional scope of the Enforcement Authority (designated later as the Provincial Agency for Sustainable Development (**OPDS**)).<sup>15</sup> The regulation for Law 11,459 (Decree 1,741/96) was enacted in 1996 and provides greater detail and specificity to the environmental assessment and enforcement provisions of Law 11,459.

Law 11,723, which was enacted two years after Law 11,459 (1995), is broader in scope, while supplementing the earlier law's focus on the industry sector. Law 11,723 prescribes rules for environmental protection in general, as well as specifically regulating many aspects of the ESIA process and enforcement in connection with a broad range of human activities beyond the industry sector. Collectively, Law 11,459, its regulation, and Law 11,723 define the principal legal requirements for environmental assessment. A number of subsequent resolutions by the OPDS have provided additional clarity.

### 3. Environmental licensing and enforcement at the municipal level

#### *Example: City of Buenos Aires*

The city of Buenos Aires, through its Environmental Protection Agency, has enacted its own body of legislation on environmental qualifications for activities within its jurisdiction. These rules apply to types of activities that are not within the competence of the federal or provincial government and activities for which responsibility has been expressly delegated to the municipality by the OPDS. In the city of Buenos Aires, Law 123 (1998) and supporting regulations provide a set of rules for the ESIA process that parallel those of the Province. Law 123 applies to activities whose environmental impacts have "relevant effects," defined as impacts that are extended over time.<sup>16</sup>

It is important to note that provisions for bidirectional coordination between provincial and municipal environmental authorities are built into the environmental legal framework at both levels of government. Those provisions include rules for the delegation of tasks, delegation agreements, and the right of provincial and municipal entities to request assistance from each other when

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<sup>14</sup> Id., Art. 3.

<sup>15</sup> Decree No. 1.741/96 (Regulation of Law No. 11.459, Art. 69.

<sup>16</sup> Law No. 123 (1998), Annex – Glossary of terms and abbreviations.

needed. Decree 1741/96 prescribes rules for the delegation and coordination of tasks with municipalities.<sup>17</sup> Before the OPDS may enter into a delegation agreement with APRA or an agency of another municipality, the municipality must demonstrate that it has the operational capacity to carry out delegated tasks (e.g., minimum number of qualified inspectors, an adequate and functional administrative body, a properly equipped laboratory, sufficient financial and material resources, etc.).<sup>18</sup> The Regulation for Law 11,459 directs the OPDS to hold exchange meetings with the municipalities of the province to harmonize criteria for inspection procedures for industrial activities, including the frequency of inspections, the issuance of certificates, and any issues that need to be coordinated for the consistent implementation of the Law. Conversely, municipal authorities may request technical assistance from the OPDS on an as needed basis.<sup>19</sup>

## B. Competent government institutions

Although most ESIA, licensing, and enforcement functions are implemented at the subnational level, federal environmental authorities play a central oversight role in establishing minimum standards for all of Argentina's political subdivisions. Federal authorities also have a direct oversight role in connection with projects of national importance or whose impacts span more than one province.

### 1. Environmental licensing and enforcement authorities: federal level

In September of 2018, Argentinian President Mauricio Macri reorganized the hierarchy of the national government, reducing the number of ministries from twenty-two down to eleven.<sup>20</sup> As part of this reorganization the former Ministry of the Environment and Sustainable Development (MAyDS) was dissolved and its functions transferred to the new **Government Secretariat for the Environment and Sustainable Development (SGAyDS)**—a new deconcentrated organ under Argentina's General Secretariat.<sup>21</sup> The new organization remains under the leadership of Rabbi Sergio Alejandro Bergman.

At the federal level, the SGAyDS is the government agency that has top-level responsibility for protecting the environment and ensuring sustainable use of natural resources.<sup>22</sup> It is responsible for a broad range of functions, including the development of national environmental and climate change policies, ensuring that human activities do not degrade the environment, and enforcing legal requirements for activities that are reserved to federal oversight.<sup>23</sup> The SGAyDS is also responsible for providing administrative support to the Federal Council on the Environment.

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<sup>17</sup> Decree No. 1741/96 (Regulation of Law No. 11.459), Chapter III, Art. 78.

<sup>18</sup> Decree No. 1741/96, Arts. 78, 79. (The regulation for 11.459).

<sup>19</sup> Id. at Art. 80.

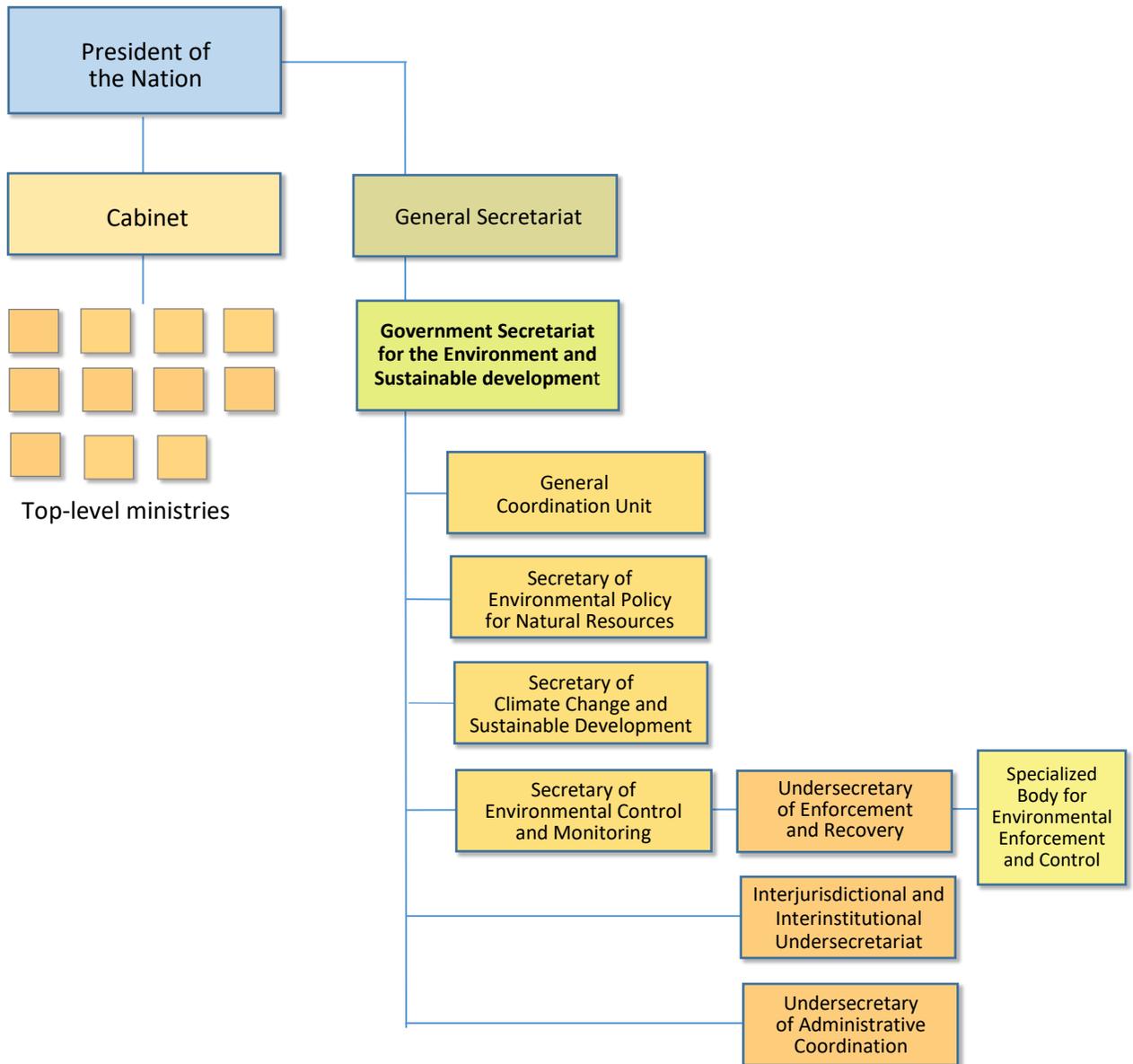
<sup>20</sup> Jaime Rosemberg (3 September 2018), *Reducen de 22 a 11 los ministerios, pero no hay cambios de nombres, La Nación*, <https://www.lanacion.com.ar/2168378-reducen-22-11-ministerios-pero-no-hay>. Last accessed 1-14-2018.

<sup>21</sup> The SGAyDS was created through Decree 802 of 5 September 2018, Arts. 4 and 5.

<sup>22</sup> The functions of the SGAyDS are defined in the Annex to Decree 802, Art. 4.

<sup>23</sup> Decreto Nº 13/2015, Art. 23–septies (2).

## Organizational Chart Environmental licensing and enforcement at the national level



The **Secretariat of Environmental Control and Monitoring** is one of four secretariats within SGAYDS. Among its key competencies of the Secretariat is its responsibility to assist SGAYDS in formulating and implementing policies, programs, and projects related to environmental preservation, prevention, monitoring, enforcement, and control. The Secretariat is also responsible for directing the design, preparation, and dissemination of technical and management tools for implementing environmental enforcement policy and undertaking comprehensive environmental diagnosis, prevention, preservation, and restoration. In addition, the Secretariat is responsible for promoting public awareness concerning environmental enforcement and control issues, as well as participating in the preparation of environmental monitoring information at the national level.<sup>24</sup>

The **Undersecretariat of Enforcement and Recovery** is a body within the Secretariat of Environmental Control and Monitoring. Its functions include overseeing the application of environmental regulations in carrying out environmental enforcement and control functions, designing and disseminating regulations and tools for environmental preservation, control, and policy, and coordinating with national, provincial, and municipal public bodies in the control and preservation of environmental quality in their respective areas. In performing the latter function, the Undersecretariat of Enforcement and Recovery must coordinate with the **Undersecretary of Interjurisdictional and Interinstitutional Coordination**, another entity within the Secretariat of Environmental Control and Monitoring.

The **Specialized Body for Environmental Enforcement and Control (CEFCA)**. Established in October of 2018, CEFCA is a rapid response unit that operates within the Undersecretariat of Enforcement and Recovery and provides auxiliary assistance, where needed, at the national, regional, and municipal level.<sup>25</sup> CEFCA's agents have police power to undertake interventions in cases where immediate responses are necessary to stop activities that are causing environmental harm.<sup>26</sup> In cases where environmental violations are detected (in connection with harm to air, water, soils, subsoils, fauna, or flora), CEFCA may order the immediate cessation of an activity, close the site where the harmful activity is operating, and seize machinery and other assets that are involved in causing the harm. In addition, CEFCA may conduct investigations, periodic monitoring and inspections. CEFCA may communicate with the judicial branch to expedite the prosecution of illegal activities causing environmental harm.

The **Federal Council on the Environment (COFEMA)** is a government facilitating organization that helps shape federal environmental policy and aims to harmonize the interests of the various sectors and government administrative bodies. COFEMA plays a central coordinating role in Argentina's environmental governance, facilitating the joint participation of a wide number of government entities, including environmental authorities at the federal and provincial governments and the city of Buenos

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<sup>24</sup> Decreto N° 174/2018.

<sup>25</sup> Resolution 41 of 22 October 2018 (RESOL-2018-41-APN-SGAYDS#SGP), Arts. 1 and 2; Government of Argentina (24 October 2018), *Nuevo cuerpo especializado para la fiscalización y el control ambiental*, <https://www.argentina.gob.ar/noticias/nuevo-cuerpo-especializado-para-la-fiscalizacion-y-el-control-ambiental-0>.

<sup>26</sup> Resolution 41 of 2018, Arts. 3(d) and (e).

Aires.<sup>27</sup> COFEMA manages Argentina's **Federal Environmental System**, in accordance with a mandate under Law 25,675.

The **Technical Body for Enforcement and Control** was an entity under the former Ministry of the Environment and Sustainable Development (MAyDS), composed of inspectors and charged with systematic enforcement tasks involving sectors, enterprises, and activities where SGAYDS has enforcement authority.<sup>28</sup> The Technical Body was created under Resolution 97 (2007), which mandates that the inspectors receive ongoing training within the framework of the National Program for Continuing Training for Inspectors. The Body's agenda is steered by engineers, technicians, lawyers, biologists, and other professionals with relevant skills.<sup>29</sup>

## 2. Environmental licensing and enforcement authorities: provincial level

In Argentina, most environmental impact assessment, licensing, monitoring, and enforcement functions are carried out by provincial environmental authorities. The Province of Buenos Aires provides an example of a comprehensive legal and institutional framework for environmental oversight that exists at the provincial level.

### Province of Buenos Aires – Competent licensing and enforcement authorities

#### Provincial Sustainable Development Agency (OPDS)

This is the government authority responsible for planning and coordinating the execution of the environmental policy the Province of Buenos Aires.<sup>30</sup> It is the agency that administers the ESIA process and granting environmental licenses for activities that pose a high risk of significant negative impacts. The OPDS is also responsible for monitoring and enforcing environmental performance obligations arising from the ESIA and licensing process, as well as imposing administrative sanctions in the case of violations. In addition, the OPDS coordinates its efforts with other provincial entities and municipalities in connection with other environmental matters, such as the supervision of natural resources that may be affected by pollution.

The organizational hierarchy of the OPDS was restructured in March of 2018 by Decree 242/18, which created a number of new directorates and subdirectorates whose functions are dedicated to specific aspects of environmental protection in the Province, while eliminating or consolidating other departments.

The entities within the OPDS that play key roles in environmental assessment, licensing and enforcement are described below.

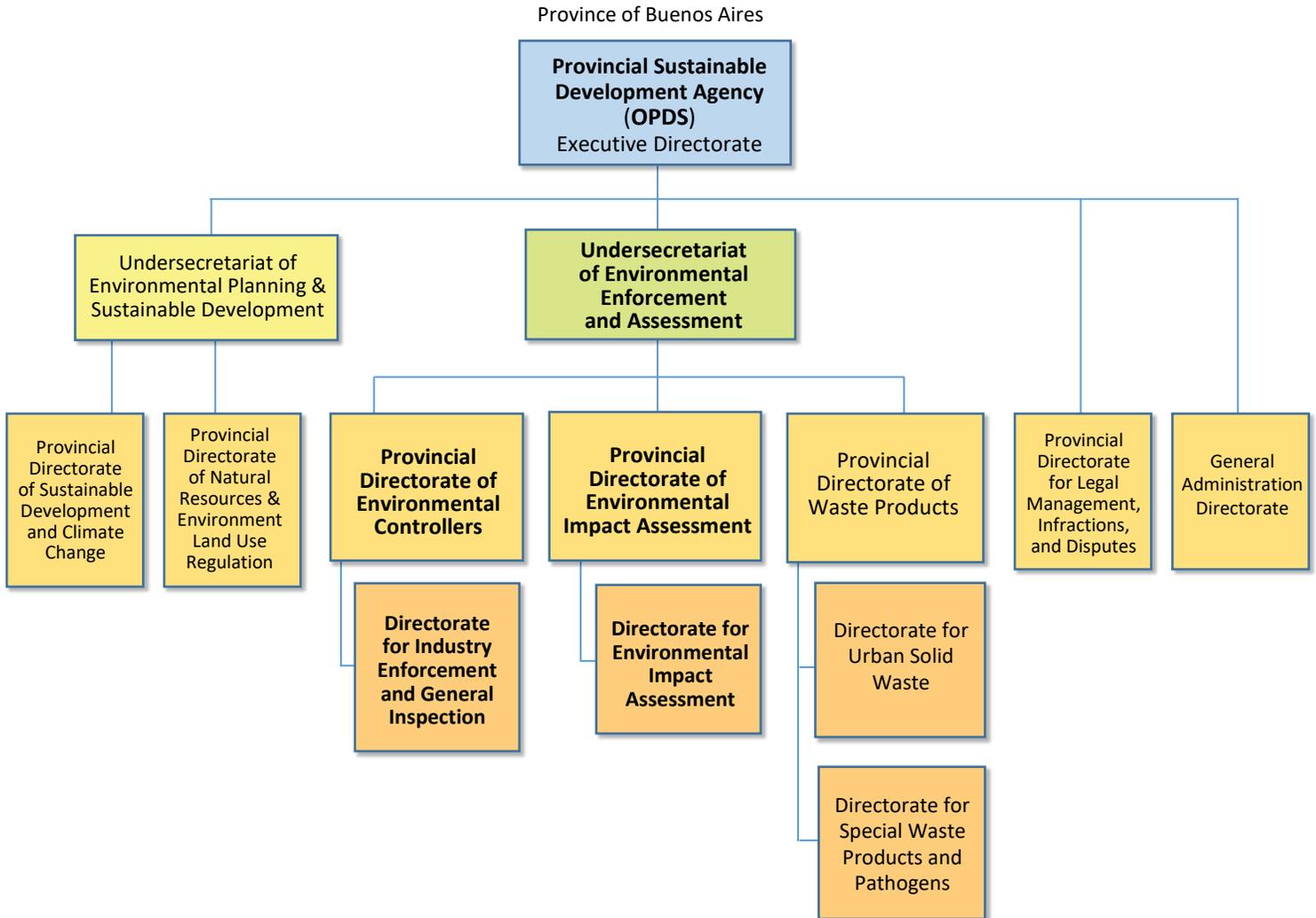
<sup>27</sup> Ley No. 25,673, Art. 9 and 23.

<sup>28</sup> The functions of the technical body are defined by Resolution 97/2007

<sup>29</sup> Resolution 97/2007, Art. 3.

<sup>30</sup> Organismo Provincial para el Desarrollo Sostenible (OPDS), *Ambiente Provincia, Institucional*, <http://www.opds.gba.gov.ar/contenido/institucional>; The OPDS was established by Article 44 of Law No. 14,989 with a mandate to administer all environmental matters in the Province of Buenos Aires.

## Organizational Chart Environmental licensing and enforcement at the provincial level



### **Undersecretariat of Environmental Enforcement and Assessment**

The functions of the Undersecretariat of Environmental Enforcement and Assessment include assisting the OPDS Executive Board in formulating and implementing policies, plans, programs, and projects for assessing environmental impacts caused by human activities, determining the environmental viability of proposed projects, and monitoring compliance with environmental requirements (including environmental regulations, and environmental license obligations). The Undersecretariat is also involved in resolving appeals related to administrative sanctioning procedures, overseeing the provision of testing laboratory services, protecting forest resources and natural areas, and coordinating other bodies within OPDS to work toward sustainable development objectives, among other responsibilities.

### **Provincial Directorate for Environmental Impact Assessment**

The Provincial Directorate is responsible for developing and implementing standardized procedures for assessing environmental impacts resulting from all types of public or private activities, overseeing laboratory accreditation procedures and sample testing protocols, and developing actions for preventing environmental risks. Its role also includes supervising the execution of infrastructure works and elaborating minimum technical requirements for project proposal documents. Under the *Provincial Directorate* is the **Directorate for Environmental Impact Assessment**, which is responsible for evaluating ESIA reports and granting or denying authorizations (Certificates) for high-impact (Category II) projects. This directorate also carries out monitoring and control activities to determine that actual environmental performance and conformity with environmental quality standards for activities that are in operation.

### **Provincial Directorate of Environmental Controllers**

This directorate is responsible for administering the exercise of environmental police power and applying sanctions in accordance with the needs of the Undersecretariat and applicable regulations. It is responsible for coordinating and resolving procedures for preventative closures that are necessary for projects that pose an immediate threat of serious environmental harm, as well as enforcing pollution control measures in coordination with municipalities for industrial activities, services, or public works.

Under the *Provincial Directorate* is the **Directorate of Industry Inspection and General Inspection**, the executing body that sends enforcement teams to perform on-site inspections of facilities, as well as monitoring and conducting surveillance of waste generation, storage, and disposal actions of specific industries and the practices of companies that transport, dispose of, and treat hazardous and pathogenic waste.

## **3. Environmental licensing and enforcement authorities at the municipal level**

### **Environmental Protection Agency of the City of Buenos Aires (APrA)**

APrA is a body within the city's Ministry of Environment and Public Spaces. The municipal government of the city of Buenos Aires has developed its own ESIA system and promulgated a comprehensive body of legislation to regulate its implementation. Within the municipal Environmental Protection Agency (APrA) are a number of departments that are responsible for different aspects of environmental assessment, the issuance of Environmental Viability Certificates (licenses or "CAAs"), and enforcement of environmental obligations derived from them.

The **General Directorate of Technical Assessment** is the body within APrA that is responsible for reviewing ESIA studies submitted by developers and formulating mandatory environmental management (preventative measures and mitigation) requirements that accompany project approvals and the issuance of CAAs. This directorate also maintains a registry of entities that generate, transport, and work with hazardous substances.

The **General Control Directorate** is responsible for verifying that enterprises and project developers that have obtained environmental licenses (CAAs) have complied with environmental management requirements established by the General Directorate of Technical Assessment. The inspections it performs may look for violations such as odors, noise, vibrations caused by fixed or mobile sources, non-ionizing radiation, gas leaks, hazardous chemicals, and liquid effluents.<sup>31</sup>

The **Interfunctional Commission on Environmental Authorization** is composed of representatives of the sectoral departments of the city government, whose role is to coordinate the criteria and procedures for the authorization of certificates of conforming use and other authorizations required by the departments within the municipal government (including those responsible for technical-administrative procedures for the ESIA process).<sup>32</sup> The Commission also ensures that there are no duplications of efforts or overlapping administrative fees charged to applicants.

APrA's **Permanent Advisory Board** is responsible for responding to consultations concerning the technical environmental impact study documents submitted by developers.<sup>33</sup> It also has a consultative role in formulating policies, regulations, evaluating the application of new technologies and their environmental impacts, drafting proposals for environmental standards, adopting environmental parameters, and appointing members for ad hoc technical commissions.

### Table 1. Inter-agency coordination

#### 1. Coordinating functions of environmental agencies

Under Argentina's system of federalism, the provinces and federal government have equal authority for administering environmental affairs, except for implementing federal standards that are applicable to all government bodies, including federal, provincial, and municipal environmental authorities. Two federal government institutions play important roles in facilitating inter-agency coordination on environmental licensing and enforcement issues:

- a. The **Federal Council on the Environment (COFEMA)** has the role of coordinating the functions and policies of all environmental authorities, including authorities at the federal and provincial governments and those of the city of Buenos Aires.<sup>34</sup> COFEMA also manages Argentina's **Federal Environmental System**, in accordance Law 25, 675 and coordinates strategies and programs with all economic sectors involved in environmental issues.

<sup>31</sup> Environmental Protection Agency, *Informe Anual Ambiental 2008*, as required by Law No. 303 (Decree No. 1325/06), City of Buenos Aires, ISBN 978-987-1037-81-0, 30.

<sup>32</sup> Law No. 123, Arts. 46, 47 (ESIA framework law for the city of Buenos Aires).

<sup>33</sup> Id. at 48.

<sup>34</sup> Law No. 25,673, Art. 9 and 23.



- b. The **Undersecretary of Interjurisdictional and interinstitutional Coordination** was created for the purpose of ensuring that the various deconcentrated *federal* environmental authorities coordinate their environmental functions relating to the ESIA process, licensing, and enforcement. The Under-Secretariat's roles include directing and coordinating the development of legal, technical, and administrative support activities, as well as intervening in all bills, decrees, administrative decisions within the scope of its competence.<sup>35</sup>

## 2. Interjurisdictional working group for coordinating environmental enforcement tasks

The **Coordination Board for Environmental Control Activities** – The Coordination Board is an interjurisdictional working group whose purpose is to coordinate actors in Argentina's capital region that have an environmental enforcement role.<sup>36</sup> The Coordination Board is comprised of SGAYDS, OPDS, the Water Authority for the province of Buenos Aires (ADA), and the Environmental Protection Agency (APrA) of the City of Buenos Aires.<sup>37</sup> In addition, the Board includes the Matanza Riachuelo Watershed Authority (composed of municipal, provincial, and federal authorities). The Board aims to promote environmental regulatory changes that provide greater transparency to the regulated community.<sup>38</sup>

The Coordination Board has adopted four axes for its effort:

- a) Coordinated programming
- b) Scheduled (announced) inspections
- c) Standardization of technical criteria, and
- d) Inspector training.

The three jurisdictions will adopt a set of uniform inspection criteria that will be listed on a single form.<sup>39</sup> Each government body will train its staff members in the use of the uniform criteria, with the objective of minimizing arbitrary findings during inspections. Both scheduled and surprise inspections will be included as part of each entity's regular functions, with surprise inspections generally triggered by complaints.

The Coordination Board will utilize a coordinated programming platform to optimize the deployment of human and material resources to these activities, share information in an efficient and systematized manner, perform mutual cross-checks when undertaking enforcement actions, and avoid duplication of inspections. The Coordination Board's work will also result in the development of an inspector's manual of technical environmental criteria.

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<sup>35</sup> Resolución 232/2015.

<sup>36</sup> SGAYDS, *Control ambiental e infracciones*, <https://www.argentina.gob.ar/ambiente/preservacion-control/infracciones>. Last visited May 16, 2018.

<sup>37</sup> Casa Rosada (Argentina), Control ambiental: empezaron las inspecciones conjuntas entre Nación y provincia de Buenos Aires, <https://www.caserosada.gob.ar/informacion/actividad-oficial/9-noticias/36783-control-ambiental-empezaron-las-inspecciones-conjuntas-entre-nacion-y-provincia-de-buenos-aires>.

<sup>38</sup> Comunica RSE (13-6-2016), *Organismos nacionales, provinciales y de la Ciudad de Buenos Aires unificarán criterios ambientales*, <http://www.comunicarseweb.com.ar/noticia/organismos-nacionales-provinciales-y-de-la-ciudad-de-buenos-aires-unificaran-criterios>

<sup>39</sup> SGAYDS, *Control ambiental e infracciones*. (Supra).

### III. Issuance of environmental licenses and formulation of licensee obligations

#### A. Overview of the environmental licensing process at the provincial level

##### 1. ESIA and the issuance of environmental licenses in the Province of Buenos Aires

In the province of Buenos Aires, ESIA requirements were first prescribed by Law 11,459 to businesses (“industrial establishments”) and industrial parks where production processes are utilized to transform raw materials or components into finished products. Law 11,459 requires that all businesses in this category obtain an Environmental Viability Certificate (CAA) as a prerequisite to obtaining other applicable permits and to operation. The Law defines three Levels of Environmental Complexity (NCA), a system that classifies industrial establishments according to their level of potential environmental harm.<sup>40</sup> New industrial facilities that are classified as belonging to level 3 (including existing facilities for which significant modifications are proposed) are subject to the ESIA process under the administration of the provincial enforcement authority (the Provincial Directorate for Environmental Enforcement and Assessment).<sup>41</sup>

**Table 2. Classification of industries** under Article 15 of Law No. 11,459

<p>Article 15 divides all “industrial establishments” into three <b>levels of environmental complexity</b> of according to the <i>nature of the materials</i> that they handle, produce, or store, the <i>quality or quantity of the effluents</i> they produce, the <i>surrounding environment</i>, and the <i>characteristics of their operation and facilities</i>: (Emphasis added)</p>	
a) <b>Category 1</b>	Includes establishments that are <b>considered harmless</b> because their operation does not pose a risk or nuisance to public safety, health, and hygiene, and does not cause damage to the material goods of others or to the environment.
b) <b>Category 2</b>	Include establishments that are <b>considered to make others uncomfortable</b> because their operations pose a nuisance to public health, and hygiene of the population or causes serious damage to property and the environment.
c) <b>Category 3</b>	Includes establishments that are <b>considered dangerous</b> because their operations pose a risk to public safety, health, and hygiene or causes serious damage to property and the environment.

Although Law 11,459 continues to provide the basic framework for ESIA and licensing process in Buenos Aires province, the passage of Law 11,723 in 1995 broadened the range of activities that are subject to the ESIA process. Article 10 of Law 11,723 (1995) provides that any activities that are prone to causing a negative impact to the environment and natural resources of the Province of Buenos Aires must obtain a **Declaration of Environmental Impact (DIA)** granted by the competent provincial or municipal authority, according to the categorization system established by the applicable regulation in Annex II of that Law. A DIA is an administrative resolution issued by the competent environmental authority, which approves, conditionally approves, or denies the granting of an environmental license and provides a technical basis for the decision.<sup>42</sup> The requirement applies to both public or private entities.

<sup>40</sup> Law No. 11,459, Arts. 6. In every case, the enforcement authority assigns the applicable level of complexity.

<sup>41</sup> Decree No. 1.741/96, Art. 4.

<sup>42</sup> The Declaration of Environmental Impact (*Declaración de Impacto Ambiental*) constitutes what is commonly referred to in international practice as a “record of decision.”

Annex II of Law 11,723 provides two lists: (1) “work or activity projects” that are subject to environmental impact assessment by the provincial environmental authority (susceptible to significant environmental impacts) and (2) those which are subject to assessment by the municipal environmental authority (primarily construction-related activities). The first list, as amended by subsequent legislation, is provided below.

**Activities subject to the ESIA process under the Provincial Directorate (Buenos Aires) for Environmental Impact Assessment:**

1. Generation and transmission of hydroelectric, nuclear, and thermal energy.
2. Urban and suburban wastewater management.
3. The siting of industrial parks and complexes.
4. Industrial establishments that are listed in Category 3 of Article 15 in Law 11,459.
5. Exploration and exploitation of hydrocarbons and minerals.
6. Construction of gas pipelines, pipelines, aqueducts, and any other conduit of energy or substances.
7. Water distribution and treatment.
8. Construction of dams, dams and dams.
9. Construction of roads, highways, railways, airports, and ports.
10. Exploitation of natural and planted forests.
11. Plants used for the treatment and final disposal of hazardous waste.
12. Projects that include one or more tasks involving the creation of ditches, reservoirs and levees, dredging, backfilling, excavation, lagoons, alteration of water courses, modification of coastlines, and other features.<sup>43</sup>

The required documentation that project proponents must provide to the Provincial Directorate for Environmental Impact Assessment was updated in 2015 through OPDS Resolution No. 15. The Resolution provides a checklist of required materials and specific formats in which they must be provided, as well as forms that must be used by project applicants when submitting the information.

**Table 3: Environmental licensing instrument**

**Environmental Viability Certificate** (*Certificado de Aptitud Ambiental*).

**Document that approves or denies a license:** Declaration of Environmental Assessment (*Declaración de Evaluación Ambiental*) an administrative technical report issued by the OPDS or the Environmental Evaluation Department of a Municipality which provides an approval, conditioned approval, or rejection and which documents the basis for the decision.

**Mechanism for legally-binding commitment:** The proposed environmental mitigation and preventative measures contained in the final ESIA become legally-binding environmental performance obligations once the Environmental Viability Certificate is granted.

**Term of validity:** Two years.

<sup>43</sup> The twelfth category of the list below was added by Resolution 29 of 2009.



## 2. ESIA and the issuance of environmental licenses in the municipality of Buenos Aires

The municipality’s Law No. 123 of 1998 and its amendments establish the specific technical procedures for undertaking the ESIA process.<sup>44</sup> The procedures for applying for a CAA, which were simplified in May of 2018, can be accessed through a [user manual](#) published by APRA. The Environmental Protection Agency of the city of Buenos Aires (APRA) is responsible for issuing administrative decisions (Environmental Impact Declarations) to grant or deny environmental licenses (*certificados de aptitud ambiental*) for activities in Categories 1 and 2 (low or moderate impacts) or activities for which the OPDS has assigned this task to the municipality through a delegation agreement.<sup>45</sup>



Before developers may initiate an application for a proposed project, the project must be categorized to determine the type of environmental assessment process that will be required. According to Law 123 and its corresponding regulations, the criteria for determining the categorization of a project is whether a project is likely to have a “substantial effect” (*efecto relevante*) on the environment.<sup>46</sup> This is determined based on factors (*environmental assessment indicators*) included in Resolution No. 171-APRA-2017, including the legal classification of an activity, its location, the potential risk to air, water, and soil, the scale, the public infrastructure to be used, and potential urban and environmental alterations.

<b>Table 4. Categorization of activities</b> under Annex I of Decree No. 222/GCBA/2012	
One of four designations are used in the <i>categorization table</i> in Annex I of Decree No. 222/GCBA/2012 for any proposed activity:	
<b>Law 123: SRE</b>	<b>Without substantial effect:</b> Activities in this group must obtain an Environmental Viability Certificate (CAA), but no environmental management conditions apply and the Certificate does not expire.
<b>Law 123: SRE c/C</b>	<b>Without substantial effect, with conditions:</b> Activities in this group have been pre-classified as requiring conditions and must obtain a CAA, but are not required to undertake an ESIA study.
<b>Law 123: SRE s/C</b>	<b>Subject to categorization:</b> Based on the Environmental Assessment Indicator score, the enforcement authority (OPDS/Undersecretariat) will classify the activity as having or not having a substantial effect, determine the conditions that must be met, and specify the documentation that must be submitted. Activities in this group are subject to undertaking the ESIA process before being eligible for a CAA.
<b>Law 123: CRE</b>	<b>With substantial effect:</b> he activity obtains a total score higher than 8.5 from the Environmental Assessment Indicators from Resolution No. 171-APRA-2017. Activities in this group are subject to undertaking the ESIA process before being eligible for an Environmental Viability Certificate.

<sup>44</sup> Ley Nº 123 - Procedimiento técnico y administrativo de Evaluación de Impacto Ambiental (EIA) (1999).

<sup>45</sup> Article 15 of Law 11,459 establishes three categories of environmental impact that are based on an activity’s “Level of Environmental Complexity” (NCA), as defined by criteria described in that provision. ESIA studies for Category 3 activities must be supervised by the OPDS, with the Undersecretariat for Environmental Enforcement and Assessment having primary responsibility for enforcement. It may only delegate certain parts of this role.

<sup>46</sup>

Under municipal law, one of the key documents that project proponents must submit during the ESIA process is an **Environmental Impact Manifest** (*Manifiesto de Impacto Ambiental*).<sup>47</sup> The Manifest contains a descriptive synthesis of all the planned environmental management actions that the proponent will carry out. It must be sufficiently specific to allow the Enforcement Authority (the **Environmental Protection Agency** of Buenos Aires) to evaluate—in conjunction with the Technical Environmental Impact Study—whether the environmental impacts and the plans for mitigating them are in accordance with environmental regulations. The Manifest can include voluntary environmental commitments that go beyond what is required by regulations, but those provisions become legally binding once the proponent commits to them.

### ***b. Public consultation and conflict avoidance***

The General Law on the Environment (LGA) provides a mandate for public consultation, stating that everyone has the right to be consulted and to have provide an opinion concerning administrative procedures that relate to preserving and protecting the environment, particularly during the ESIA and planning stage.<sup>48</sup> To support that right, the LGA directs environmental authorities to institutionalize public consultation procedures or public hearings as mandatory conditions for the authorization of activities that may cause negative and significant environmental impacts.<sup>49</sup> However, requirements for public consultation and access to information are not well defined at the provincial level, where most applications for environmental licenses (CAAs) are processed. In some provinces, public consultation is even optional.<sup>50</sup>

In the Province of Buenos Aires, Resolution No. 538/99 (an annex to Law No. 11,723) prescribes a generalized set of requirements for the participation of interested stakeholders.<sup>51</sup> Article 17 of the Resolution requires that provincial or municipal environmental authorities provide the means for publishing the list of environmental impact statements that have been submitted for approval, as well as the contents of statements. Prior to the issuance of the environmental impact statement, the competent environmental authority must receive and respond to all the substantiated observations that have been submitted by interested parties within thirty days and, “when appropriate,” convene a public hearing to facilitate the public consultation process.<sup>52</sup> Likewise, Resolution 538/99 requires that Declarations of Environmental Impact be based, in part, on the recommendations resulting from the public hearing, when appropriate, and that all residents of the Province of Buenos Aires have access to the environmental impact statements that emanate from this process.<sup>53</sup> Further investigation is needed to determine the criteria for when it is appropriate to convene a public hearing or include public comments in the formulation of the Declarations of Environmental Impact.

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<sup>47</sup> Ley Nº 123, Arts. 17-19.

<sup>48</sup> General Law on the Environment (Law 25,625 of 2002), Arts. 19, 21.

<sup>49</sup> Id., Art. 20.

<sup>50</sup> IFC (2014), Legal Framework for Environmental Impact Assessment in Latin America, [www.worldbank.org/lac](http://www.worldbank.org/lac).

<sup>51</sup> Resolution No. 538/99. ANNEX I. Law No. 11,723 (Annex II, Item 2).

<sup>52</sup> Id. at Art. 18.

<sup>53</sup> Id. at Arts. 19, 21.

## IV. Monitoring and enforcement of environmental license requirements

### A. Overview

#### 1. Monitoring and enforcement at the national level

Under Argentina's federal system of shared environmental governance, most environmental enforcement functions for high-impact activities are carried out at the provincial level. However, the General Law of the Environment states that "the different levels of government must integrate their anticipated environmental decisions and activities in order to ensure compliance with the environmental principles contained in the present law."<sup>54</sup> Each level of government may request assistance from authorities in the other levels of government, within circumscribed conditions, in implementing environmental enforcement functions.

#### 2. Monitoring and enforcement at the provincial level: Province of Buenos Aires

Rules and procedures for environmental monitoring and enforcement are established in Law 11,457 and its regulation, as well as Law 11,723. Under Law 11,459, which applies to manufacturing industries and industrial parks, environmental enforcement personnel are authorized to have access to any industrial establishment in the Province of Buenos Aires and carry out the following actions when undertaking inspection visits:

1. Require the owner or representative of an establishment to provide the legal documentation concerning the environmental viability and authorization for that industry in general.
2. Require the owner or representative of an establishment to provide information that the inspection team deems pertinent in relation to the specific objectives of the inspection.
3. Check the condition of buildings, their facilities, and machinery in terms of safety, hygiene, the treatment of effluents, environmental pollution, or any other relevant purpose related to fulfilling their enforcement tasks.
4. Require the assistance of the public force (police or other authority) when access to a facility or the requested documents are denied. Reports written by inspectors will provide public confidence regarding their content, which will bear the signature of the inspected party or provide proof that s/he refuses to do so.

The Regulation for Law 11,459 provides that the enforcement authority (the Undersecretariat) will carry out permanent, ongoing assessments and enforce compliance with its provisions and those of the Law, for the following purposes, among others:<sup>55</sup>

- Monitoring and intervening, through a planned inspection schedule or as a result of complaints, in necessary inspection and audit procedures.
- Requesting additional and/or complementary information relating to any technical-administrative procedure carried out by municipalities.
- Delegating tasks to municipalities, when circumstances warrant it.

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<sup>54</sup> LGA (2002), Art. 5.

<sup>55</sup> Decree No. 1.741/96 (Regulation of Law No. 11.459), Art. 77.

- Implementing joint tasks with municipalities to perform environmental assessments, including follow-up, control, monitoring, and any other action that, the enforcement authority deems appropriate.
- Executing any other actions aimed at achieving compliance with Law 11,459 and its regulation.

Article 6 states that the Provincial Government and the municipalities have the obligation to undertake enforcement actions in response to human activities that cause the degradation of the environment, being responsible for the acts and omissions in which it occurs. Similarly, Article 22 provides that provincial and municipal environmental authorities must periodically monitor all activities that were approved following the ESIA process in order to verify that project owners are complying with the environmental requirements contained in their license.<sup>56</sup>

Law No. 11,723 broadens the scope of the mandate for provincial and municipal authorities to carry out enforcement functions, as established by Law 11,459, expanding the enforcement role to include activities outside of the manufacturing sector. In particular, this concerns activities that are listed in Annex II, but also encompassing activities that do not require the full ESIA process and supervised by municipalities. The Law does not contain a list of enforcement functions similar to those in Law 11,459, but simply states that each provincial enforcement entity must carry out their tasks in accordance with the roles that it performs under article 2 of Law 11,459.<sup>57</sup>

### 3. Delegation and the operational capacity of municipalities

The OPDS/Undersecretariat may delegate tasks relating to activities that fall under Category 2 of Article 15 to a municipality, as long as the municipality can demonstrate that it has operational capacity to perform the delegated functions. If the activity is within Category 3, only a partial delegation to a municipality is permitted.<sup>58</sup> The Regulation for Law 11,459 provides a list of minimum capacities that a municipal enforcement authority must possess:<sup>59</sup>

a) <b>Staffing</b>	A minimum body of inspectors and professionals that is properly trained and equipped.
b) <b>Laboratory</b>	Municipality has its own properly equipped laboratory or can demonstrate the ability to contract these services with third parties (identifying the establishment(s) where the samples will be analyzed and the features of the laboratory).
c) <b>Dedicated enforcement body</b>	The existence of a dedicated municipal enforcement unit with a supporting administrative body.
d) <b>Budget</b>	A sufficient budget allocation, in order to cover the costs that inspection activities require.

<sup>56</sup> Article 22 of Law No. 11,723 (1995) charges the provincial or municipal authority that grants an Environmental Impact Declaration (the record of decision) with monitoring the terms of the Declaration.

<sup>57</sup> Law No. 11,723, Art. 73.

<sup>58</sup> Decree No. 1.741/96, Art. 78.

<sup>59</sup> Id., Art. 79.

In addition, the Regulation directs the OPDS to hold regular meetings with municipalities for the purpose of exchanging information and harmonizing monitoring and enforcement criteria, including the methodologies of inspecting industrial activities, inspection frequency, issuing certificates, and all issues that need to be coordinated for the homogeneous implementation of the Law.<sup>60</sup>

#### 4. Monitoring and enforcement at the municipal level: City of Buenos Aires

In addition to assigning responsibility for the ESIA process to the EPA, Law No. 123 prescribes the Environmental Protection Agency's enforcement role. Article 50 gives the EPA exclusive jurisdiction for monitoring and control of environmental performance requirements derived from the ESIA process.<sup>61</sup> The duties of the environmental authority include assuring strict compliance with the conditions declared in the different steps of the ESIA process (including public consultation), as well as carrying out legal proceedings, when appropriate, and referring them to the competent court of law. Article 50 also charges the EPA with undertaking any other actions that relate to its exercise of its police power in fulfilling the objectives of Law No. 123.

Articles 38 and 39 of Law 123 specify injunctive actions that the EPA may execute in response to infractions committed by project owners and their employees and contractors. These preventative actions include the suspension of activities and projects in the case of concealment, falsification, or manipulation of data or non-compliance with the environmental conditions imposed by the environmental license for the execution of the project.<sup>62</sup> The EPA will also suspend or close activities that have been initiated without having obtained an Environmental Impact Declaration, without prejudice to other environmental management responsibilities with which licensees must comply. In all cases, the EPA also has the discretionary authority to order the demolition or permanent cessation of work constructed in violation of the Law, at the expense of the offender.<sup>63</sup>

#### B. Environmental Enforcement Programs and the selection of enforcement priorities

Detailed information on criteria for the selection of enforcement and inspection priorities in Argentina are not publically available. Generalized sources of information provide basic guidance on this topic, stating that in Argentinian provinces, environmental inspections generally fall into two categories: planned (scheduled) inspections and surprise inspections.<sup>64</sup> The development of annual programs for both types are included in inspection plans. Planned inspections may be allocated according to several criteria for prioritizing industries and sectors for inspections:

- The probability that a type of violation that will harm the environment and human health.
- The probability that authorized activities in a particular industry or sector will present environmental risks or instances of noncompliance.

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<sup>60</sup> Id., Art. 80.

<sup>61</sup> (Municipal) Decree No. 138/08 designates the city's Environmental Protection Agency as the "Enforcement Authority," a placeholder term that is used throughout legislation.

<sup>62</sup> Ley No. 123, Art. 39.

<sup>63</sup> Ley No. 123, Art. 38.

<sup>64</sup> Admira (June 2016), *Boletín Informativo* N° 17,

<http://newsletter.adimra.org.ar/files/0YT9WiXs/Boletin%20Informativo%20SMAYSO%20N17%20Junio%202016.pdf>.



- The potential of an inspection to contribute to deterring noncompliant behavior.<sup>65</sup>

Since the OPDS (Buenos Aires province) does not have sufficient financial, human, and material resources to inspect every authorized facility regularly, the prioritization of inspections allow it to allocate its finite resources to sectors and activities where verification of compliance and the prevention of environmental harm is most urgent.

A manual for environmental inspectors published by the Secretariat of the Environment and Sustainable Development (the predecessor to SGAYDS) offers a similar description of the selection of inspection priorities, stating that the selection of installations to be included in an inspection plan will be based on an evaluation of the available resources available and may have the following characteristics:<sup>66</sup>

- Selected randomly or according to objective criteria, based on the list of all identified members of a regulated community. (e.g., National Registry of Hazardous Waste Generators and Operators.)
- Focused on a specific sector of the identified regulated community. This selection is usually based on compliance history, potential threat, or other clearly determined criteria. (e.g., petrochemical plants located near an area that may pose health risks to the population.)
- Defined from the available information on the potential damage that a company may cause or for a report made.
- In response to emergencies and unforeseen events.

### Shared regional computer platform for organizing and coordinating inspections

The Coordination Board for Environmental Control Activities, which serves the region encompassed by the Matanza Riachuelo Basin Authority and the province of Buenos Aires, performs an important role in coordinating planned environmental inspections. The Coordination Board's work has been facilitated by the **Advanced and Coordinated Programming System for Environmental Inspections** developed by Argentina's Ministry of Environment and Sustainable Development (SGAYDS).<sup>67</sup> The System utilizes a computer-based tool, which allows environmental agencies which comprise the Coordination Board to make the most efficient use of their resources, while avoiding overlapping inspection activities.<sup>68</sup> The system recognizes if more than one environmental authority will be making a planned inspection to the same facility during the same week, and makes inspection reports uploaded by one enforcement authority to be made available to the other authorities.

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<sup>65</sup> Argentina Ministry of Health, Programa Médicos Comunitarios, *Módulo 3: Salud y Ambiente*, <http://www.saludcolectiva-unr.com.ar/docs/M03-Ambiente.pdf>.

<sup>66</sup> SAYS (2010), *Manual Nacional para Inspectores Ambientales*, <http://argentinambiental.com/wp-content/uploads/pdf/1009-ManualInspAmb.pdf>.

<sup>67</sup> Eco-Sitio (7/10/2016), *Ambiente presentó nuevo sistema para inspecciones*, <http://noticias-ambientales-argentina.blogspot.com/2016/07/ambiente-presento-nuevo-sistema-para.html>; Bureau Veritas (12/10/16), *Lanzan un nuevo sistema informático para mejorar las inspecciones ambientales*, [https://www.bureauveritas.com.ar/home/news/latest-news/noticia-lanzan-sistema-informatico-para-inspecciones-ambientales?presentationtemplate=bv\\_master\\_v2/news\\_full\\_story\\_presentation\\_v2](https://www.bureauveritas.com.ar/home/news/latest-news/noticia-lanzan-sistema-informatico-para-inspecciones-ambientales?presentationtemplate=bv_master_v2/news_full_story_presentation_v2).

<sup>68</sup> Eco-Sitio (7/10/2016), *Ambiente presentó nuevo sistema para inspecciones*, <http://noticias-ambientales-argentina.blogspot.com/2016/07/ambiente-presento-nuevo-sistema-para.html>.



### C. Performance indicators for monitoring and inspections

In 2011, the former Ministry of the Environment and Sustainable Development (MAyDS) published the **National Manual for Environmental Inspectors**, a comprehensive 177-page document that systematically defines best practice procedures for environmental inspections in a variety of contexts. The *Manual*, which is intended to serve as the standard for environmental authorities at all levels of Argentina’s federal system, describes practices for performing inspections in connection with activities that are subject to the ESIA process; liquid, solid, and gaseous pollutants; environmental management and cleaner production; and general principles that apply to all inspections. The practices that are defined in the Manual primarily describe “outputs” in the performance indicator model developed by the OECD and the IMPEL Network, in that they qualify the actions carried out by enforcement authorities (such as inspections performed, the number and type of corrective measures imposed, etc.).<sup>69</sup>

### D. Citizen complaint mechanisms

Citizen complaint mechanisms are not uniformly implemented among Argentinian provinces and are not addressed specifically in core federal legislation. At the federal level, complaints involving environmental harm have generally fallen under the umbrella of other issues, such as human rights, social justice, or consumer protection. In the province of Buenos Aires, the Regulation for Law 11,459 states that enforcement actions may arise as a result of administrative planning by environmental authorities or as a response to citizen complaints.<sup>70</sup> The OPDS provides an easily accessible online form for submitting environmental complaints.

Most other provinces also facilitate the reporting of environmental complaints and have made the investigation of complaints an integral function of environmental supervision by provincial authorities. For example, the province of Chubut has implemented an **Environmental Complaint Reporting System**, which is administered by the Undersecretariat of Environmental Regulation and Control (MAyCDS) and may be used by any person to submit an environmental complaint. The System was established to allow MAyCDS to promptly follow up on information provided by local citizens and tourists by phone or through a form on its web interface concerning any observed situation that threatens to harm the environment.<sup>71</sup> As of 2013, MAyCDS reported that there are generally around 20 open investigations concerning pollution by the industry sector, often relating to the discharge of liquid waste.<sup>72</sup>



The Municipality of Salta has gone even further in its use of technology to encourage the general public to participate in environmental monitoring and submit information environmental

<sup>69</sup> INECE and OECD, *Measuring What Matters*, Proceedings from the INECE-OECD Workshop on Environmental Compliance and Enforcement Indicators 3-4 November 2003; Under the OECD model, “outputs” are a function of inputs, such as level of funding and staffing.

<sup>70</sup> Decree no. 1.741/96 (the Regulation for Law 11,459), Art. 77(a).

<sup>71</sup> MAyCDS (2013), *Informe Ambiental Anual*, 7, <http://www.ambiente.chubut.gov.ar/wp-content/uploads/2014/05/Informe-ambiental-2013.pdf>.

<sup>72</sup> Id. at 22.



threats. The city maintains two **WhatsApp** lines for receiving environmental complaints, which alerts environmental authorities concerning new environmentally harmful situations.<sup>73</sup>

## E. Sanctioning regime

### 1. Imposition of sanctions at the federal level

At the federal level, sanctions are generally established legislatively according to the applicable medium (i.e., air, water, soil, types of pollutants), since there is no federal ESIA or enforcement regulation. For example, federal Law 25,670-2002 on the management of PCBs (a type of hazardous pollutant) provides that the enforcement authority may impose one or more of the following sanctions for any infraction of the Law's provisions.

- a) Warning;
- b) Fines ranging from ten to one thousand times the prevailing entry-level wage for national public administration employees;<sup>74</sup>
- c) Suspension of operations for a determined period;
- d) Closure; and/or
- e) Civil and criminal penalties may also apply.

Sanctions will be imposed regardless of the civil or criminal liability of the offender and must be adjusted according to the nature of the infraction and the damage caused.<sup>75</sup> In the case of recidivism, the minimum and maximum levels of fines and length of work stoppage and closure are determined by the number of reoccurrences. If there are three or more incidences of recidivism within a three-year period, the environmental authority may require permanent work stoppage and closure.<sup>76</sup> If the offender is a corporation, the staff who are in charge of the oversight and management are jointly and severally liable for the sanctions imposed.<sup>77</sup>

The administrative remedies above may be imposed without prejudice to criminal penalties. If the offender's actions result in the contamination of the project site in a way that is dangerous to health, soil, water, the atmosphere, or the environment, and was committed through the offender's recklessness, negligence, or disregard for regulatory requirements, the offender may be sentenced to imprisonment for one or two years.<sup>78</sup>

### 2. Imposition of sanctions at the provincial level

Sanctions for most activities that have been subject to the ESIA process are determined by provincial or municipal legislation. Sanctioning provisions vary from province to province. Even within the province of Buenos Aires, legislative details are somewhat inconsistent. For example, the Regulation for Law 11,459 categorizes infractions according to five levels of severity, while Law

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<sup>73</sup> Gustavo Saenz (18-3-16), *Salta: la Municipalidad habilita WhatsApp para denuncias*, El Intransigente.com, <https://www.elintransigente.com/salta/2016/3/18/salta-municipalidad-habilita-whatsapp-para-denuncias-373940.html>.

<sup>74</sup> Law No. 25,670-2002, Art. 21(b) The prevailing level of the minimum wage functions as a floating index.

<sup>75</sup> Ley No. 24,051, Arts. 49 and 50.

<sup>76</sup> Ley No. 24,051, Art. 51.

<sup>77</sup> Ley No. 24,051, Art. 54.

<sup>78</sup> Ley No. 24,051, Art. 56.

11,723 establishes four levels.<sup>79</sup> Under Law 11,723 more than one sanction may be applied at the same time.<sup>80</sup> In addition, activities that are determined to be fully under municipal jurisdiction (usually construction projects) are subject to the municipal sanctioning regime defined in Law 123 and Decree N. 222. Under Law 11,723, the province of Buenos Aires is responsible for ensuring that each municipality has sufficient police power to enforce compliance with environmental requirements, guaranteeing them technical assistance that is needed.<sup>81</sup> The table below provides a comparison of sanctions under the three legislative sanctioning regimes.

<b>Table 6. Sanctions for environmental violations, Province of Buenos Aires</b>	
Regulation for <b>Law 11,459</b> (Industrial establishments):	
a)	<b>Warning</b> , which may be applied only once to a violator and never in conjunction with another sanction. If the violator does not remedy the violation within the provided time, a fine will be imposed.
b)	<b>Fine</b> , in an amount between one and one thousand times the minimum wage for public administration employees of the province, being dependent on the extent of the infraction, as well as the size or magnitude of the industrial installation.
c)	<b>Closure</b> - Temporary or permanent, full or partial closure of the establishment. It may be combined with a fine.
d)	<b>Revocation of the Environmental Viability Certificate</b> – It <i>must</i> be imposed jointly with permanent closure, and <i>may</i> be combined with a fine.
e)	<b>Suspension or elimination from business registries</b> and may be combined with a fine.
Law <b>11,723</b> (Annex II activities):	
a)	<b>Warning</b> .
b)	<b>Fine</b> of between one and one thousand times the minimum wage for public administration employees of the province, which may be imposed as the principal or accessory sanction. <sup>82</sup>
c)	<b>Full or partial suspension</b> of the concession, license, and/or authorization that was granted, with timeframes and conditions for rectifying the infractions that were detected.
d)	<b>Full or partial expiration</b> of the concession, license, and/or authorization that was granted.
e)	<b>Closure</b> - Temporary or permanent, full or partial closure of the establishment.
f)	<b>Obligation to make the sanction public</b> : The obligation to publish the operative part of the resolution that condemns the offender; and when applicable, the work plan for the purpose of rehabilitating the situation [altered area] to its previous state.

After determining the type and degree of the sanction, several factors must be taken into account, including the magnitude of the environmental harm or danger that has been caused, the offender's economic condition and capacity to remedy the situation, and the nature of any recurrence of the infraction.<sup>83</sup> Law 11,723 does not match specific sanctions with degrees of severity.

<sup>79</sup> Decree no. 1.741/96 (the Regulation for Law 11,459), Art. 86; Law No. 11.723, Art. 70.

<sup>80</sup> Law No. 11.723, Art. 70.

<sup>81</sup> Law No. 11,723, Art. 74.

<sup>82</sup> The amount of the fine is stated in terms of a floating value that is updated to reflect cost of living increases.

<sup>83</sup> Law No. 11.723, Art. 71.; Under the Regulation for Law 11,459, the recurrence of an infraction may lead to multiplication of a fine that has been imposed, while under Law 11,723, the provincial Law of Administrative Procedure determines increases in the amount of a fine.

Sanctioning resolutions may be reapplied by the relevant authority according to the Law of Administrative Procedure for the Province.<sup>84</sup>

### 3. Imposition of sanctions at the municipal level

Under Article 38 of Law No. 123, activities, projects, or programs that are undertaken without prior authorization (without an Environmental Impact Declaration) or which violate the terms of the Declaration, will be immediately suspended or closed. In any case involving either of these infractions, the Enforcement Authority has the discretionary authority to order the demolition or cessation of the activity.<sup>85</sup> Article 39 provides that the Enforcement Authority may order the suspension of any project if the owner has concealed, adulterated, falsified, or maliciously manipulated data during the ESIA process; or if the owner has not complied with the requirements imposed by the Declaration. Decree No. 222/GCABA/12 (2012) provided additional details concerning the implementation of Articles 38 and 39, which are summarized in the table below.

Decree 222/GCABA/12 of the Municipality of Buenos Aires	
Table 7. Elaborated rules for imposing sanctions established in Articles 38 and 39 of Law No. 123	
Article	Provision:
42	<b>Timeframe for determining sanctions (Law 123, Arts. 38 and 39):</b> If the Enforcement Authority detects a violation of Article 38 or 39 of Law No. 123 (above), it must determine the necessary measures and the sanctions that apply within 10 business days.
43	<b>Registration in Offenders Section of Registry:</b> Once an infraction has been verified, the owner of an activity, project, or program and the environmental consultant must be registered in the <i>Offenders Section</i> of the Environmental Assessment Registry. <sup>86</sup>
44	<b>Sanctions may be established in an administrative order for preventative measures:</b> In cases where urgent preventive measures are prescribed, the Enforcement Authority may require imposition of the sanctions below in the same administrative order as the prescribed measures, or within the ten subsequent days. Depending on the seriousness of the infraction committed, the following sanctions apply against the offender, as established in Article 38 of Law N ° 123: <ul style="list-style-type: none"> <li>a. <u>Demolition</u> of the building in violation;</li> <li>b. <u>Permanent cessation</u> of the work or activity.</li> </ul>
45	<b>Imposition of additional measures:</b> The Enforcement Authority may order additional measures, which include the suspension or closure of activities, projects, or programs that are in violation of Law No. 123, until their situation is corrected.
46	<b>Sanctions imposed on environmental consultants and professionals</b> The Enforcement Authority may impose sanctions on environmental professionals that include warnings, suspension, or exclusion of the professionals from the section of the Environmental Assessment Registry that lists Consultants and Professionals who are involved in environmental audits and drafting environmental impact studies.

<sup>84</sup> Law No. 11.723, Art. 72.

<sup>85</sup> Depending on the type of activity, the *Enforcement Authority* (a placeholder name) may be APRA's General Directorate of Control, OPDS, or another competent authority to which enforcement tasks have been delegated.

<sup>86</sup> The Environmental Assessment Registry was established by Article 41(c) of Law No. 123.

The Enforcement Authority must take several factors into account when applying the sanctions elaborated in the table above. These include the nature of the activity that caused the infraction, the means used to execute it, the extent of the damage, the danger caused, and whether the alleged offender has committed the infraction previously.<sup>87</sup> For environmental consultants, the sanctions imposed on a professional who is registered in the official registry of accredited consultants must be communicated to the applicable Professional Association or Board.

#### F. Prosecution and environmental tribunals

The establishment of environmental courts at the federal level is currently under discussion by legislators in Argentina. In 2017, a legislative bill was introduced for a proposed law that would allow complaints related to environmental crimes to be heard by courts that are familiar with applicable environmental legislation.<sup>88</sup> At the provincial level, Jujuy has led the drive to establish an environmental court, having adopted legislation (Law No. 5.899) in December, 2015 approving the creation of an environmental tribunal, with its seat in San Salvador de Jujuy.<sup>89</sup> The Law provides that “the Environmental Courts will be assisted technically and professionally by an interdisciplinary body of experts consisting of university professionals from the scientific field with specialization in environmental sciences and at least five years practicing in the profession.”<sup>90</sup> Proponents of environmental courts in Argentina have noted the need for specialized training for adjudication of environmental issues, since there were few existing members of the judiciary that have the requisite knowledge and experience.

#### G. Compliance promotion programs

In Argentina, the promotion of environmental compliance has primarily focused on cleaner production (CP), with impetus for cleaner production initiatives originating from the federal level. However certain provinces, such as Salta, have been particularly active in promoting cleaner production from an earlier point in time.

In 2014, COFEMA issued Resolution No. 288 /2014, (Declaring the Federal Environmental Interest in a Federal Program of Cleaner Production), based on the mandates of Law No. 25,675 (the LGA) and Decree No. 1289 (2010).<sup>91</sup> The LGA called for the implementation of systems that protect environmental quality, “voluntary commitments and self-regulation that is implemented through environmental management policies and programs,” and the adoption of promotion and incentive programs.<sup>92</sup> Argentina’s **Federal Cleaner Production Program**, which established a responsibility for all provincial environmental bodies to promote cleaner production practices, was launched with

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<sup>87</sup> Decree No. 222/GCABA/12, Art. 47.

<sup>88</sup> Parlamentario (18-4-2017), *Impulsan la creación de tribunales ambientales para todo el país*, <http://www.parlamentario.com/noticia-100327.html>.

<sup>89</sup> Liliana Alfaro (28-7-2018), *Juzgados ambientales próximos a funcionar*, El Tribuno, <https://www.eltribuno.com/jujuy/nota/2018-7-27-21-18-0-juzgados-ambientales-proximos-a-funcionar>.

<sup>90</sup> Province of Jujuy, Law No. 5.899 (December 2015), Art. 2.

<sup>91</sup> Through Decree 1289, Argentina committed to incorporate the provisions of MERCOSUR Decision CMC 26/07 into its legal framework, through which signatory countries resolved to promote and cooperate in practices of sustainable production and consumption in the productive sectors—particularly in connection with micro, small and medium enterprises (MSMEs), as well as within the ambit of government, labor and civil society institutions.

<sup>92</sup> Law No. 25,675 (2002), Art. 26.

funds from the Inter-American Development Bank and the National Treasury. The program helps small and medium-sized enterprises (SMEs)—the primary focus of the program—by providing training, technical assistance, and non-reimbursable contributions of up to 120,000 Pesos.

In order to take part in the Federal Cleaner Production Program, a group of businesses (normally between 10 and twenty) that wish to participate in the federal program must jointly form a **Cleaner Production and Business Competitiveness Program (PPLYCE)**.<sup>93</sup> Each member of the group must sign a letter of commitment to the Federal Cleaner Production Program, which must be endorsed by the province in which the member businesses reside. Each PPLYCE group will have the support of a Technical Consultant, which the Program hires, which will guide and assist the group in preparing and implementing an improvement plan that specifies the CP methodologies to be used.

#### H. Other environmental governance systems

Another recent feature of ECE in Argentina is the creation of the **Federal Network for Environmental Control**, which was initiated through Resolution 249-E in 2017. The Network is comprised of national or provincial public agencies responsible for environmental control and enforcement and holds monthly regional meetings.

A key objective of the Network is to provide effective channels for collaboration among environmental authorities throughout Argentina, by providing a forum for peer consultation and the exchange of knowledge and experiences among environmental control authorities from around the country.<sup>94</sup> The Resolution's preamble cites the need to harmonize and improve the environmental control capabilities among the diverse environmental authorities in Argentina's decentralized system. It also cites the need to foster the development of consistent, improved technical capacities with respect to sampling, analysis, and measurement of substances, in accordance with standardized testing methods that are recognized internationally or contemplated in the current regulations. The Network is coordinated by the **Secretariat of Environmental Control and Monitoring** of SGAYDS.

In addition to launching the Federal Network for Environmental Control, Resolution 249-E also created a **National Network of Environmental Laboratories**. Membership in the laboratory network is voluntary and includes public, private and research laboratories that carry out sampling and/or analysis of polluting substances.<sup>95</sup> The Secretariat of Environmental Control and Monitoring is responsible for defining the indicators that it considers necessary for measuring the compliance with the objectives of both Networks and must publish an annual report regarding new developments.

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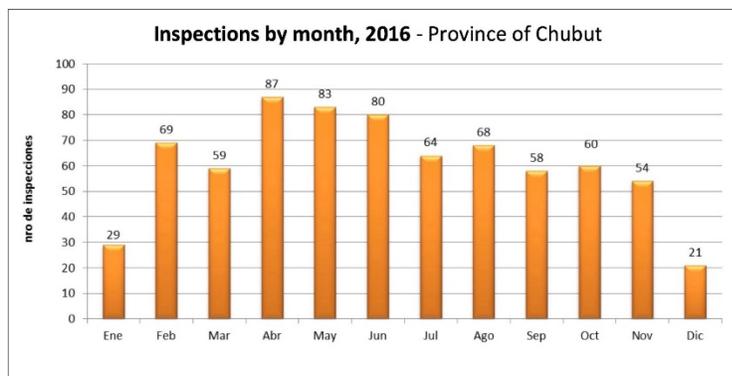
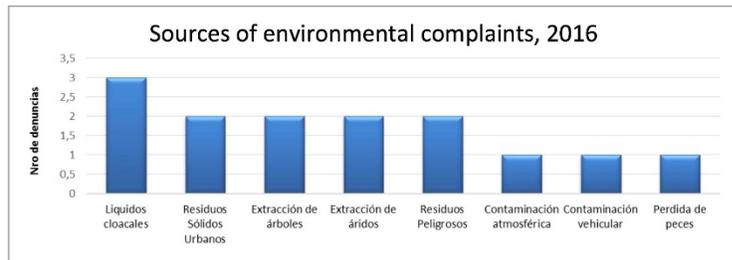
<sup>93</sup> Ecoticias.com, (13 junio 2012), *Presentaron el programa federal de Producción Más Limpia*, <https://www.ecoticias.com/eco-america/66922/Presentaron-programa-federal-Produccion-Limpia>; Victoria Beláustegui, *Estrategía y Política de Producción y Consumo Sustentable en Argentina*, [http://www.oas.org/usde/Documents/Argentina\\_Victoria\\_Belaustegui.pdf](http://www.oas.org/usde/Documents/Argentina_Victoria_Belaustegui.pdf).

<sup>94</sup> Preamble, Resolución 249-E.

<sup>95</sup> Resolución 249-E, Arts. 8-12.

### i. Keys statistics on environmental enforcement

Detailed statistics are not publically available concerning environmental inspections, complaints, and sanctions for the province of Buenos Aires, but were available for some other provinces. 2016 data from the province of Chubut were published in the annual report by the Ministry of the Environment and Monitoring for Sustainable Development for that province are provided below.<sup>96</sup> During that year, 732 environmental inspections were carried out, including those associated with planned compliance monitoring schedules, citizen complaints, and environmental emergencies.<sup>97</sup> During the same year, 1,854 corrective interventions were carried out, but insufficient information was available to cross-reference types of interventions with specific sectors, or to determine their relative effectiveness. Obtaining statistical data for meaningful indicators remains a key priority.



<sup>96</sup> Ministry of the Environment and Enforcement for Sustainable Development, Chubut (2016), *Informe Ambiental Anual*, <http://www.ambiente.chubut.gov.ar/wp-content/uploads/2017/07/Informe-ambiental-2016.pdf>.

<sup>97</sup> Ministry of the Environment and Enforcement for Sustainable Development, Chubut (2016), *Informe Ambiental Anual*, <http://www.ambiente.chubut.gov.ar/wp-content/uploads/2017/07/Informe-ambiental-2016.pdf>.



## V. Information systems and technology tools for case management and monitoring

### A. Development of a national environmental information system

Within Argentina's federal system of government, developing a national environmental information system has been a challenging task. In 1998, Resolution 459/98 mandated the creation of the National Environmental Information System (SIAN), in order to make environmental information available to the public. This has been problematic, due to diversity of information platforms used by Argentina's 24 provinces. Environmental information inherently involves technical data, as well as the technology for gathering, systematizing, and presenting it, which has created impediments to the integration of information on a common platform.<sup>98</sup> In addition, there has been a tendency on the part of provincial and municipal authorities to be protective of the information they have collected, due to a fear of erosion of their control ("knowledge is power").<sup>99</sup>

In 2009, the Secretariat of the Environment and Sustainable Development (SAyDS, the precursor to SGAYDS) attempted to restart the process of implementing SIAN by issuing Resolution 173/09. Under the provisions of the Resolution, SIAN is intended to serve as a platform for coordinating information management guidelines and computer programming, under the management of SAyDS.<sup>100</sup> In 2015, SAyDS formed the Environmental Spatial Data Infrastructure working group (IDE Ambiental), for the purpose of managing, developing, integrating, and disseminating geo-referenced information. To date, few publically accessible documents have been identified, through which to ascertain the progress that is being made in implementing SIAN.

### B. Registries of environmental information at the subnational level

Argentina's provincial and municipal government have established registries of information for compiling and sharing information, including records relating to the status of project applications, Environmental Viability Certificates issued, sanctions, accredited consultants, pollution, biodiversity, and many other topics. For example, the OPDS of the province of Buenos Aires maintains online databases for managing project applications, affidavits, dossiers on ESIA information, and laboratories, among others.<sup>101</sup> In addition, the OPDS website provides access to twenty-six registries on topics relating to environmental protection and oversight of entities involved in handling and transporting pollutants.

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<sup>98</sup> Susana Rigoz (2-2-2012), *La Información es Poder (Information is Power)*, DEFONLINE, <http://defonline.com.ar/la-informacion-es-poder/>.

<sup>99</sup> Ibid

<sup>100</sup> Resolución 173/09, Sistema de Información Ambiental, Art. 3.

<sup>101</sup> OPDS, *Acceso a Sistemas*, [http://www.opds.gba.gov.ar/contenido/acceso\\_sistemas](http://www.opds.gba.gov.ar/contenido/acceso_sistemas).



## VI. Cost recovery and funding for licensing and enforcement tasks

### A. Budget allocations

Information on the allocation of resources to specific aspects of environmental licensing and enforcement has been difficult to obtain. For the year 2018, the total budget for the OPDS is 382,385,000 Argentinian Pesos, 284,010,000 of which 74.3% represents a transfer from the federal treasury, and the other amounts coming from special taxes (essentially fees for services) dedicated environmental funds.<sup>102</sup> From the categories of expenditures listed in the 2018 budget, it is not entirely clear that the allocation for Law 11,459 activities (industrial establishments) is intended to encompass all activities subject to environmental licensing and enforcement functions that arise from the ESIA process.

<b>Table 8. Budget allocations for the OPDS, 2018</b> Province of Buenos Aires <sup>103</sup>	<b>2018</b> Pesos	<b>2018</b> US Dollars
Operating costs	376,885,00	\$ 10,175,895
Human resources (wages and salaries)	226,212,000	6,107,724
Goods and services	140,440,000	3,791,880
Current transfers to public sector/other government entities	9,233,000	249,291
Capital expenditures	6,500,000	175,500
Revenues from special taxes (Arising from specific legislation)	96,375,000	2,602,125
Law 11,459 (Industrial establishments / Activities subject to ESIA)	22,900,000	618,300
Law 5.965 (Water and atmospheric protection)	3,000,000	81,000
Law 11.720 (Special pollutants)	72,000,000	1,944,000
Revenues from sources other than special taxes (Special Funds)	475,000	12,825
Allocation from national treasury	284,010,000	7,668,270

### B. Fees for services and cost recovery

#### ESIA and the issuance of environmental certifications

Fees for ESIA review, the issuance of Certificates of Environmental Viability (CAAs), and inspections are updated periodically in legislation (see footnote on the 2014 Tax Law below) as mandated by Article 25 of Law 11,459. The revenue received as a result of the fees must be kept in a special dedicated account in the jurisdiction of the enforcement authority (OPDS or municipality) and must be used to strengthen the resources available to the authorities for enforcing the Law (11,459). The enforcement authority may agree to share revenues with municipal environmental authorities for cases that are delegated to city government in connection with the granting and renewal of the CAAs for the second category of industrial establishments listed in Law 11,459, Article 15. Any funds that are received as fines must be allocated to the general budget.

<sup>102</sup> Province of Buenos Aires, *Presupuesto de la Provincia de Buenos Aires 2018*, <https://www.gba.gov.ar/sites/default/files/presupuesto%202018.pdf>.

<sup>103</sup> The fees presented in this table were published in the Tax Law (*Ley Impositiva*) 2017-2018, Art. 76 – Services provided by the OPDS, Available at <http://ucrbuenosaires.org.ar/ucr/wp-content/uploads/2017/11/LEY-IMPOSITIVA-2017-2018.pdf>.



## Fees for ESIA review, inspections, and categorization procedures - Province of Buenos Aires

<b>Table 9: Type of service provided by the OPDS:</b> <sup>104</sup>	<b>AR Pesos</b>	<b>US Dollars*</b>
<b>ESIA review and analysis for activities covered by Law 11,723</b>		
Minimum fee (Cost of investment ≤ 780,000 Pesos)	9,240	249
Fee for project proposals where the cost of investment > 780,000 pesos \$9,240 plus \$2 per thousand on amount that the investment exceeds \$780,000	9,240 pesos plus \$2 per thousand	249
Maximum fee (100 x minimum fee)	924,000	24,948
Fee for electric power generation projects using renewable energy sources	FREE	FREE
<b>ESIA review and analysis for industrial activities covered by Law 11,459</b>		
Minimum Special Rate, Category 3	14,640	395
Minimum Special Rate, Category 2	7,320	198
<i>Additional charges may also apply, which are not mutually exclusive: (The total fee is capped at 193,200.00 pesos)</i>		
Establishments with more than 150 employees	+ 1,272	+ 34
Establishments with more than 300 HP of installed total power plus \$6.50 Pesos for each HP above that amount.	+ 2,436	+ 66
Fee for each square meter of installed facility space that exceeds 5,000 m <sup>2</sup>	+ 4.80/m <sup>2</sup>	.13/m <sup>2</sup>
<b>Inspections (verifying compliance with conditions established in the Environmental Viability Certificate)</b>		
Law 11,459 activities, Category 2:	2,700	73
Law 11,459 activities, Category 3:	5,400	146
<b>ESIA review and analysis for activities not included in Laws 11,459 or 11,723</b>	14,640	395
<b>Repeat Inspections</b> that are necessary due to noncompliance or delay after the initial finding, observation, or timeframe for corrective measures:	1,098	30
<b>Technical Administrative prior determination of Industrial Categorization</b> (level of environmental complexity, per Decree 1741/96 (Various services))	\$732 to \$3,540	20 to 96

\*The fee amounts are specified in Tax Law (*Ley Impositiva*) 2017-2018.

Under Argentina's decentralized system of environmental governance, fees for services provided by environmental authorities are usually implemented at the provincial or municipal level. Under Law No. 14,803 (and its amendments) of the province of Buenos Aires, the authority of the OPDS to charge for administrative services (including monitoring and inspections) or fines for violating regulations derives from its mandated role in enforcing Law 11,723 and other environmental laws relating to the issuance of environmental licenses.<sup>105</sup> The Fiscal Code (Law No. 10.397 and its amendments) and Resolution No. 383/17 of Buenos Aires province establish rules that include payments for the services of ESIA review, the renewal of environmental licenses, and audits and inspections.<sup>106</sup> Fees are differentiated according to the type of activity (sector) and impact level

<sup>104</sup> Id.

<sup>105</sup> In addition, Law 13613 mandates a Special Fee for the administration of the ESIA process.

<sup>106</sup> OPDS, Resolución 383/17 – Deudas por Tasas o Multas – Organismo Provincial para el Desarrollo Sostenible.



(categorization). Detailed fee schedules are updated each year, most recently being published in Tax Law 2017-2018 for Buenos Aires province.<sup>107</sup>

For large projects that have a high degree of complexity, the province of Buenos Aires has a **Commission for the Assessment of Large Works**, created by Resolution No. 739/2007. The Resolution addresses the significant capacity needs, time, and costs of evaluating ESIA studies for complex projects, recognizing that these are frequently dependent on the amount of the project proponent's investment.<sup>108</sup>

### C. Environmental guarantees

Under Argentina's General Law of the Environment 25.675 (2002), all entities that undertake activities that pose risks to the environment, ecosystems, or their component elements must secure insurance coverage that is sufficient to repair or restore any environmental damage that occurs.<sup>109</sup> OPDS Resolution No. 186/2012 of the province of Buenos Aires implements this mandate by requiring project and activity owners to obtain environmental insurance for sites that are polluted, pose a risk to public health, or are needed to mitigate adverse environmental impacts.<sup>110</sup> The environmental insurance ensures that the costs of rehabilitating a project site or repairing environmental damage are borne by the project's owner.<sup>111</sup> Under Resolution No. 186, every owner of an industrial facility must submit an affidavit to the OPDS that states the Level of Environmental Complexity, which determines the amount of environmental insurance needed and must be calculated according to a formula that is specified in Resolution No. 177 of 2007.<sup>112</sup>

At the national level, environmental legislation sets the minimum amount of coverage for entities that undertake activities which pose a risk to the environment. In 2008, the Secretariat of the Environment and Sustainable Development (the precursor to SGAYDS) issued Resolution No. 1398/08, which established rules for determining the Minimum Adequate Amount for Insuring an Entity (*Monto Mínimo Asegurable de Entidad Suficiente* or MMAES). In 2018, SGAYDS updated the formula for calculating MMAES by issuing Resolution No. 204/18, which establishes automatic annual adjustments of the Correlation Factor (a key variable in determining the minimum level of insurance) based on a cost of living index, starting in 2019.

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<sup>107</sup> Available at <http://ucrbuenosaires.org.ar/ucr/wp-content/uploads/2017/11/LEY-IMPOSITIVA-2017-2018.pdf>.

<sup>108</sup> Preamble of Resolución Nº 739/07- Grandes Obras.

<sup>109</sup> Ley 25.675/02 (LGA), Art. 22.

<sup>110</sup> Resolución 186/12 amends Resolución 165 of 2010.

<sup>111</sup> *Id.*

<sup>112</sup> Resolución 177/2007, Annex II.