

## LADIES AND GENTLEMEN

### SECRETARIAT FOR SUBMISSIONS ON ENVIRONMENTAL ENFORCEMENT MATTERS OF THE USA-PERU TRADE PROMOTION AGREEMENT

We, the undersigned, address you as citizens, and representatives of non-profit organizations of Peru, as established by the chapter on Environment of the aforementioned trade agreement that, in its article 18.8, establishes that "*Any person of a party may file a submission asserting that a Party is failing to effectively enforce its environmental law*" and article 18.9, which refers to factual records.

#### A. SUBMISSION

We request that a factual record be prepared for **the failure to effectively enforce in Peru of air quality protection standards and the approved climate emergency standards.**

It is important to highlight that compliance with air quality standards is closely related to mitigation/reduction measures for greenhouse gases emissions. The transition to a clean energy matrix based on renewable energy will significantly reduce air pollution, while compliance with adequate air quality standards will drive investment in cleaner energy.

#### 1. NONCOMPLIANCE OF AIR QUALITY PROTECTION STANDARDS

The air quality protection standards in Peru are based on three types of legal standards: air quality standards, the maximum permissible limits of atmospheric emissions, and the standards referring to air quality surveillance and public dissemination of the results, as is the case in most countries of the world.

1.1. The norm that approved the first environmental air quality standards was the Regulation of Environmental Air Quality Standards through D.S. 074-2001 PCM. In its article 10, the vital importance of the permissible limits is observed in order to comply with basic policies such as the "*Continuous improvement of the quality of fuels*" as well as the "*promotion of the best available technology for an industry and clean vehicles...*"

Likewise, the National Regulation for approval of environmental quality standards and maximum permissible limits requires the preparation and publication of an annual program. (D.S. No. 044-98-PCM of November 11, 1998) in its Articles 4 and 6. The first plans for the approval of standards are shown below<sup>1</sup>:

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<sup>1</sup> Source p. 69 dissertation by Torres Portilla, retrieved from [https://tesis.pucp.edu.pe/repositorio/bitstream/handle/20.500.12404/9874/TORRES\\_PORTILLA\\_A\\_PROPOSITO\\_D\\_EL\\_PRINCIPIO\\_DE\\_GRADUALIDAD\\_ANALISIS\\_DEL\\_PROCESO\\_DE\\_ADECUACION\\_DE\\_LOS\\_ESTANDARES\\_NACIONALE\\_S.pdf?sequence=1&isAllowed=y](https://tesis.pucp.edu.pe/repositorio/bitstream/handle/20.500.12404/9874/TORRES_PORTILLA_A_PROPOSITO_D_EL_PRINCIPIO_DE_GRADUALIDAD_ANALISIS_DEL_PROCESO_DE_ADECUACION_DE_LOS_ESTANDARES_NACIONALE_S.pdf?sequence=1&isAllowed=y)

Table No 4: List of Annual Plans for Environmental Quality Standards (ECAs) and Maximum Permissible Limits (LMPs)

N°	ANNUAL PLAN	PRESIDENTIAL RESOLUTION	DATE OF PUBLICATION
1.	The resolution declares the start of activities leading to the application of the annual program for the approval of environmental quality standards and maximum permissible limits.	N°025-99-CONAM-PCD	25.03.1999
2.	The resolution declares the start of the activities for the Annual Program 2000 for the approval of environmental quality standards and maximum permissible limits.	N°088-99-CONAM-PCD	12.12.1999
3.	The resolution declares the start of the activities for the Annual Program 2001 for the approval of environmental quality standards and maximum permissible limits.	N°054-2001-CONAM-PCD	06.07.2001
4.	The resolution declares the start of the activities for the Annual Program 2002 for the approval of environmental quality standards and maximum permissible limits – 2002	N°032-2002-CONAM-PCD	09.06.2002
5.	The resolution declares the start of the activities for the Annual Program 2003 for the approval of environmental quality standards and maximum permissible limits— 2003	N°083-2003-CONAM-PCD	13.09.2003
6.	The resolution declares the start of the activities for the Annual Program for the approval of environmental quality standards and maximum permissible limits 2004.	N°062-2004-CONAM-PCD	20.06.2004
7.	The resolution declares the start of the activities for the Annual Program for the approval of environmental quality standards (ECA) and maximum permissible limits (LMPs) 2005.	N°089-2005-CONAM-PCD	31.05.2005

Table developed by the authors of this submission.

We have accessed the content of Presidential Resolution 088-99-CONAM PCD where it can be seen that the permissible limits for boilers and turbines are mandated to be approved. Although 23 years have passed, but this approval is still pending.

The subsequent plans for the approval of quality standards and maximum permissible limits in the years 2005, 2009, 2010, 2012, 2019 and 2021 reiterate the need for their approval, but this has not been done. The following graph shows the inexplicable delay.

### Environmental air standards pending approval

Type of environmental management instrument	First legal mandate approved	Last legal mandate approved	Time elapsed without approval
Maximum Permissible Limits for the Brick Manufacturing Industry	Ministerial Resolution N° 225-2010-MINAM	Ministerial Resolution No. 111-2021-MINAM	11 years
Maximum Permissible Limit For Foundry Emissions	Ministerial Resolution N° 121-2009-MINAM		13 years
Maximum permissible emission limits for boilers and turbines	Presidential Resolution N° 088-99	Supreme Decree No 020-2021-MINAM	23 years
Maximum permissible limits for steel industries	Presidential Resolution N° 089-2005	Supreme Decree No 020-2021-MINAM	17 years
Approval of the Environmental Air Quality Standard for Cadmium, Arsenic, Antimony, Bismuth and Thallium	Ministerial Resolution N° 121-2009-MINAM		13 years
Approval of the Environmental Quality Standard for Volatile Organic Compounds	Presidential Resolution N° 054-2001.	Supreme Decree N°020-2021-MINAM	22 years
UPDATE OF THE QUALITY STANDARD FOR SULFUR DIOXIDE	Supreme Decree 020-2021-MINAM		1 year and 9 months

1.2. On the other hand, the non-compliance with the update of the national air quality standard for sulfur dioxide is quite serious, which suffered a serious setback in the protection of health in 2017. Therefore, the D.S. 003-2017-MINAM reduced the requirement of the sulfur dioxide standard for 24 hours of exposure to 250 µg/m<sup>3</sup>. The goal of this lowering in standards was to successfully auction one of the most polluting smelters in the world, such as the La Oroya metallurgical complex. The auction failed and now the ownership of the metallurgical complex has passed from Doe Run Corporation to the workers, leaving no solution to the fact that it is one of the most polluted places in the world, according to Live Science <https://www.livescience.com/30353-most-polluted-places-earth.html>

The change of the sulfur dioxide standard from 20 and 80 µg/m<sup>3</sup> (micrograms per cubic meter) to 250 µg/m<sup>3</sup> has resulted in the detriment of people's health and is in open contradiction with the guidelines of the World Health Organization.

In this regard, through D.S. 020-2021-MINAM dated July 24, 2021, as part of the Environmental Quality Standards (ECA) and Maximum Permissible Limits (LMP) Plan for the period 2021-2023, the Ministry of Environment ordered the updating of the sulfur dioxide standard, but it has not yet been approved. This should be based on the precautionary principle and taking into account the 2013-2014 national air quality report from Ministry of Environment <https://www.minam.gob.pe/wp-content/uploads/2016/07/Informe-Nacional-de-Calidad-del-Aire-2013-2014.pdf> , which indicates that in most cities of Peru, the value of 80 ug/m<sup>3</sup> is not exceeded.

A clear political decision is required to protect the health of the population and to collaborate in the mitigation of greenhouse gases. As it is known, sulfur dioxide emissions come from burning fuels with high sulfur content, which also generates carbon dioxide.

Likewise, the approval of the standard for particulate matter less than 1 micron (PM1) is pending, which is essential for the preparation of greenhouse gas emissions inventories, given the double effect that this pollutant has both in terms of health risk and climate change. The mandate to approve this standard was provided by the aforementioned D.S. 020-2021- MINAM and the term expires in December 2023.

A recent study places Lima and Santiago, Chile among the ten most polluted cities in South America<sup>2</sup> with particulate matter.

1.3. Regarding environmental information relevant to air quality, we emphatically request that the right of access to citizen environmental information be complied with and that the status of air quality in Lima and other Peruvian cities be published in a transparent manner in real time, as it is done in the vast majority of countries and cities in the world in order to protect the health of citizens. Even after more than 12 years had elapsed since the creation of the Ministry of Environment, in accordance with the provisions of the regulations of the National Environmental Information System (SINIA) approved by D.S.034-2021-MINAM and the Environmental Quality Index (INCA) approved by R.M. 181-2016-MINAM, it is essential to provide adequate public information and in real time on the levels of air pollution in the country, through the necessary investment projects that lead to this purpose, so that the population will be duly informed of air pollution levels, as an act of transparency in the government's environmental management. To this end, with Ministerial Resolution 339-2012-MINAM, the Ministry of Environment has prioritized 31 cities for the protection of air quality. It is therefore necessary to fully apply what is established by article 35 of the General Environmental Law, which literally says:

*Article 35.- On the National Environmental Information System*

*35. 1 The National Environmental Information System - SINIA, constitutes a technological, institutional and technical integration network to facilitate the systematization, access, and distribution of environmental information, as well as the use and exchange of information for decision-making processes and environmental management*

Likewise, the SINIA Regulations approved by D.S. 034-2021-MINAM, establishes in article 6 that:

*"The public administration entities that generate or possess environmental information, at a national, regional and local level, have the following functions: a) Generate, systematize, update, and exchange environmental information within the scope of their competence, in accordance with what is established*

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<sup>2</sup> Modeling Air Pollution Using Partially Varying Coefficient Models with Heavy Tails <https://www.mdpi.com/2227-7390/10/19/3677>

*in this Regulation and its complementary regulations, b) Incorporate the information into the SINIA, without prejudice to environmental information that is protected by special regulations, using the digital platform of SINIA... e) Validate and ensure the quality and suitability of the environmental information generated that is incorporated into the digital platform of SINIA, f) Other functions established in the legislation on environmental information."*

Lastly, it should be mentioned that R.M. 181-2016-MINAM created the Air Quality Information System - INFO AIRE PERU, as part of the National Environmental Information System - SINIA, to consolidate and disseminate air quality information produced by public and private institutions through direct means or historical records.

## **2. NON-COMPLIANCE WITH CLIMATE EMERGENCY NORMS**

The Secretary General of the United Nations called on the international community in 2019 for Governments to declare a climate emergency and act decisively to comply with the commitments of the Paris Agreement (2015) on climate change.

On January 25, 2022, in Peru, D.S. 003-2022-MINAM that declared the national climate emergency of national interest was approved,

*... in order to urgently execute measures to implement climate action in accordance with the provisions of the Nationally Determined Contributions for the year 2030, contributing to the global objective of limiting the increase in temperature and aligned with compliance of the objectives of sustainable development, economic reactivation, reduction of socioeconomic gaps and the reduction of risks and vulnerability to the adverse effects of climate change.*

The aforementioned D.S. established priority actions with an implementation period that expired on October 19, 2022, having fulfilled only one of the measures, referring to a land classification regulation.

The competence of the Ministry of Environment to carry out the monitoring of what is indicated in this norm about climate emergency is found in this same regulation (article 4), as well as in article 5 of Law 30754 (2018) on Climate Change that establishes:

*"The Ministry of Environment is the national authority on climate change and the technical-regulatory authority at the national level in said matter within the framework of its powers; it monitors and evaluates the implementation of the comprehensive management of climate change in the three levels of government, promoting the participation of the public sector, economic agents and civil society, in order to strengthen the comprehensive management of climate change and sustainable development in harmony with nature".*

Below we list the 24 measures that have not been complied with:

### **By the Ministry of Environment:**

- 2.1. Update the National Strategy for Climate Change with a vision to 2050.
- 2.2. Design the process of reception, administration, and distribution of benefits, coming from different sources, national and/or international, that allows implementing the phases for the Reducing emissions from deforestation and forest degradation (REDD+), and assign the administration of the funds derived from this process to PROFONANPE.

**By the High-Level Commission on Climate Change:**

2.3. Propose mitigation and adaptation measures that make it possible to implement the Nationally Determined Contributions for a 40% reduction in greenhouse gas emissions and resilience to the adverse effects of climate change, respectively, in order to contribute to the reactivation of the economy, reduce socioeconomic gaps and poverty.

**By the Ministry of Health:**

2.4. Update the Tentative Programming of the Nationally Determined Contributions in Health Adaptation with a territorial approach together with the strengthening of the competencies of the human resources of the national health system for the implementation of the aforementioned Contributions.

2.5. Approve the guidelines for the incorporation of risk management in a context of climate change in investments related to establishments in the health sector within the framework of the National System of Multiannual Programming and Investment Management, prior favorable opinion from the Ministry of Economy and Finance.

**By the Ministry of Production**

2.6. Approve the guidelines for the incorporation of risk management in a context of climate change in the investment projects of artisanal fisheries landings within the framework of the National System of Multiannual Programming and Investment Management, prior favorable opinion of the Ministry of Economy and Finance.

**By the Ministry of Economy and Finance:**

2.7. Assess the appropriate instruments for determining the carbon price and, based on this information, identify the actions required for its progressive application according to national circumstances.

2.8. Support the efforts to promote the acquisition of electric vehicles (zero emissions) through tax policies aimed at favoring the introduction of said clean technologies that have been raised by the automotive unions and the MTC.

**By the Ministry of Energy and Mines:**

2.9. Guarantee the use of non-conventional renewable energy resources in the electricity generation matrix, under competitive and efficient conditions, progressively increasing the new requirements with non-conventional renewable energy, according to the supply and demand of the electricity market, with a projection that non-conventional renewable energy resources reach 20% of the electricity generation matrix by 2030.

2.10. Promote programs and policies on the efficient use of energy in the public, productive, service, residential, and transportation sectors.

2.11 Design promotion programs for the development of technologies, use and production of green hydrogen.

2.12. Implement programs to change the use of firewood, dung, coal, among other polluting fuels; by other clean energy sources for domestic use.

2.13. Propose, within the scope of the "Multisectoral Commission for the Reform of the Electricity Subsector", with the participation of the Ministry of Environment, the regulatory framework for the increase in the use of non-conventional renewable energy resources in the electricity generation matrix, under competitive and efficient conditions, as well as other measures that promote the use of renewable energy.

**By the Ministry of Agrarian Development and Irrigation and the National Forestry and Wildlife Service (SERFOR)** with the main objective of strengthening the governance of forests and the control of deforestation, reducing it up to 30% by 2030, promoting sustainable agriculture that considers the adequate suitability of the soil, carrying out the following actions:

2.14. Grant property titles to native communities, as well as, in coordination with the Presidency of the Council of Ministers, through the Secretary of Government and Digital Transformation, promote the use of georeferencing, interoperability, open data, certificates and digital signatures, creation of digital services and strengthening of regional governments in the matter, in accordance with the current legal framework on government, trust and digital transformation.

2.15. Include the criteria related to adaptation and mitigation in the Action Plan for the development of the Second Agrarian Reform.

2.16. Approve the Regulation of the National Forest and Wildlife Control and Surveillance System (SNCVFFS).

2.17. Approve the criteria to establish mandatory strategic checkpoints at the national level.

2.18. Approve the guidelines for the formation, recognition and operation of the Forestry and Wildlife Management Committees (CGFFS).

2.19. Articulate actions from the national level with the regional levels, through the SNCVFFS, including satellite monitoring of impacts on forest heritage.

2.20. Establish the actions for the development of the study of the Estimation of the index and percentage of logging and illegal trade of wood in Peru, in coordination with the Agency for the Supervision of Forest Resources and Wildlife, National Forestry and Wildlife Service, and regional governments in alignment with the National Multisectoral Strategy to Combat Illegal Logging 2021-2025, approved by Supreme Decree No. 013-2021-MIDAGRI.

**By the Regional Governments, in coordination with the Ministry of Agrarian Development and Irrigation and with the competent authorities,**

2.21. Establish prioritization criteria for the work with the Agrarian Agendas, or those that take their place in the Regional Governments in the Peruvian Amazon with the objective of regularizing the delivery of possession certificates, in accordance with the current forestry legislation.

2.22. Implement the institutional, legal arrangements and technical guidelines that allow, in an efficient manner, to implement projects of natural infrastructure, planting and harvesting of water, mainly in the headwaters of the hydrographic basins vulnerable to climate change.

## **By the Ministry of Transportation and Communications**

2.23. Update the National Vehicle Regulations to promote the entry of electric, hybrid and green hydrogen-powered vehicles.

2.24. Design the promotion mechanism for electromobility.

For compliance with said actions, the aforementioned Supreme Decree established a period of no more than 180 business days from its entry into force; the deadline of which was October 19, 2022.

The above requests presented respond to a public concern regarding the close link between environmental management policies and instruments related to air quality and the mitigation of greenhouse gas emissions, for which we have requested the Ministry of Environment consider taking immediate actions regarding the requests made.

### **B. MEETING THE ADMISSIBILITY CRITERIA**

As submitters, we have asked the Ministry of Environment, as provided in paragraph e) of Article 18.8.2, of the USA—Peru Trade Agreement, for the compliance with environmental legislation, which we note is not being effectively enforced.

Indeed, on February 23, 2023, we sent a communication to the Minister of the Environment (MINAM) via a notarized letter, where two requests were made: first, the approval of pending standards for the protection of air quality in Peru, revert the setback in the sulfur dioxide standard and the public dissemination of air quality information in real time, and, second, execute the priority climate emergency actions contained in art. 3 of the D.S. 002-2022 MINAM, whose deadline expired on October 19, 2022.

This communication has not received any response to date. Likewise, we have requested an appointment with the Minister of the Environment but so far we have not received any communication.

This submission responds to a deep concern for the health of the population and the damages of climate change. The quality of life of young people and of future generations depends on the urgent change in conditions of environmental deterioration.

We indicate Calle Pinos del Valle 235 second floor Lima 33 Peru as the street address, and patricia.iturregui@pucp.edu.pe as the electronic address where notifications of this case will be sent.

### **PER THE ABOVE PARAGRAPHS:**

We ask that this submission be accepted and that the procedures be followed within the framework of the provisions of Articles 18.8 and 18.9 of the USA—Peru Trade Promotion Agreement.

### **ANNEXES:**

1. Notarized letter sent to MINAM on February 23, 2023.
2. Research paper on air pollution (2022) in Lima and Santiago, Chile. <https://www.mdpi.com/2227-7390/10/19/3677>
3. D.S. 074-2001-PCM- National Regulations for National Standards for Environmental Air Quality.
4. Presidential Resolution 088-99-CONAM PCD Annual Program 2000 for the approval of Environmental Quality Standards and Maximum Permissible Limits (Annual Standards Program).
5. Presidential Resolution N° 054-2001-CONAM Annual Standards Program.




6. Presidential Resolution N° 089-2005-CONAM Annual Standards Program.
7. Presidential Resolution N° 121-2009-MINAM Annual Standards Program.
8. Presidential Resolution N° 225-2010-MINAM Annual Standards Program.
9. Presidential Resolution 181-2016-MINAM creation of the air quality index and INFO AIRE.
10. D.S.020-2021-MINAM Environmental Quality Standard (ECA in Spanish) Plan and Maximum Permissible Limits (LMP in Spanish) for the 2021- 2023 period.
11. D.S. 034-2021-MINAM Regulations of the National System for Environmental Information
12. D.S.003-2022-MINAM that declares the climate emergency.

Lima, May 10, 2023

  
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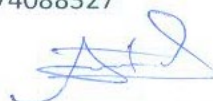
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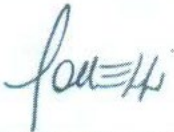
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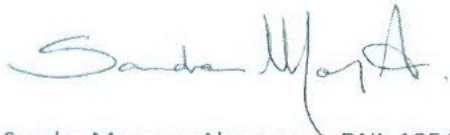
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