

Changes to the National Waters Agency and their effect on the Basic Sanitation Framework Law

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The early days of Brazil's new government saw the publication of legislation and regulations that reorganize the federal administrative structure. One of the most significant changes was in the National Waters and Basic Sanitation Agency (ANA – Agência Nacional de Águas e Saneamento Básico) and its jurisdiction to establish reference regulations on basic sanitation, which are essential to ensuring greater uniformity in the rules governing the sector.

Provisional Measure 1.154/2023 removes an essential part of article 3 of Law 9.984/2000 (as amended by Law 14.026/2020, the Basic Sanitation Framework Law), which made the ANA "responsible for creating national reference regulations on the provision of public basic sanitation services", while Decree 11.401/2023 puts the ANA back under the authority of the Ministry of the Environment and Climate Change (MMA – *Ministério do Meio Ambiente e Mudança do Clima*).

Originally, the ANA's functions were directed to regulating and inspecting the use of water resources, involving, for example, monitoring and evaluating actions undertaken in compliance with applicable federal legislation, and granting permits to use water resources in bodies of water under federal jurisdiction. With the advent of the Basic Sanitation Framework Law, the ANA acquired, in addition to its previous functions, responsibility for issuing reference regulations on public basic sanitation services (art. 4-A, Law 9.984/2000).

The reference regulations are directed to providers of services and regulatory agencies, and must comply with the guidelines established in the Basic Sanitation Framework Law. To encourage adoption of the ANA's reference regulations, the Framework Law makes access to federal funds and financing conditional on compliance with the reference regulations (article 50, Law 14.026/2020; article 4-B, Law 9.984/2000). Federal technical and financial support for adapting basic sanitation services to the new standards also depends on compliance with ANA regulations (as provided for in article 13, Law 14.026/2020 and in regulations under Federal Decree 10.588/2020). To assist the ANA in meeting the challenges created by these new responsibilities, Law 14.026/2020 put the agency under the authority of the Ministry of Regional Development.

The changes introduced by Provisional Measure 1.154/2023 generate uncertainty for the sector, since the other provisions of Law 9.984/2000 dealing with reference regulations, like article 4-A[1] mentioned above, continue in effect. **Since the ANA plays a crucial role in regulating and supervising the sector by means of the reference regulations, much more clarity is needed on how the changes made by the Provisional Measure will apply vis-à-vis the objectives established in the Basic Sanitation**

Framework Law.^[1]

Moreover, Decree 11.401/2023 once again put the ANA under the authority of the Ministry of the Environment and Climate Change – MMA, removing it from the Ministry of Regional Development. The move could signal that the focus of the ANA's work will return to environmental matters, such as regulation and inspection of water resources, which would be in line with the new federal government's concern with environmental issues.

Time will tell how the ANA's new links to the MMA will affect its activities, especially in matters related to regional development and basic sanitation. The first year of the new government will be essential to show how the Basic Sanitation Framework will be implemented, and whether its goals are on track.

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[1] Article 4-A provides that "the ANA will issue reference regulations to be used in the regulation of public basic sanitation services by service providers and regulatory and inspection entities."

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