

License for the Exploitation of Classified Facilities as a Preventive Mechanism for Environmental Protection

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Abstract

Exercising commercial and industrial freedom, as it is a constitutionally enshrined right, does not mean exercising this right in an absolute manner. Rather, it is restricted so as not to infringe upon the freedom of others, especially since the practice of these activities results in environmental damage that affects human health on the one hand and does not guarantee the rights of future generations to live in a clean environment. From this standpoint, these activities must be subjected to prior administrative permission for their exploitation, which is known as the administrative license, a proactive mechanism for protecting the environment. This license achieves a balance between the requirements of economic development, which are based on granting the freedom to engage in private agricultural, commercial, and industrial activities to achieve sustainable development, and the obligation to protect the environment, which is a public interest for all humanity and a supreme right for current and future generations.

Keywords: Administrative License, Environmental Protection.

Introduction

The environmental administration has wide powers in implementing preventive policies in the field of environmental protection and is at the same time the central core for creating and ensuring the success of various preventive environmental mechanisms that are non-repressive in nature. Therefore, the effectiveness of its intervention is determined

by the effectiveness of the various preventive mechanisms for environmental protection. Licensing the exploitation of classified facilities is considered one of the effective preventive tools for environmental protection, as it is the most controlling and efficient mechanism for providing prior protection against harm. It is particularly related to projects of importance and risk to the environment, especially industrial projects and urban development works, which often lead to depletion of natural resources and affect biodiversity. Based on this, we raise the following problem:

How important is the license for the exploitation of classified facilities in protecting the environment?

To answer this problem, the study is divided into two sections: The first section addresses the concept of licensing related to the exploitation of classified facilities, while the second section deals with obtaining a license for the exploitation of classified facilities to preserve environmental security.

Chapter One: The Concept of Licensing Related to the Exploitation of Classified Facilities

The administrative license is one of the most widely used and effective mechanisms to guide and monitor individual activity in society, as it allows the organization of the exercise of public freedoms to preserve public order in all its elements. On this basis, licensing is considered a system more restrictive of freedoms compared to declaration; it is an administrative tool through which the administration exercises prior supervision over

individual activity. It has a preventive role that allows the administration to prevent disturbances and harm to society, and specifically to neighbors and the environment, by monitoring the source of harm, whether a facility, institution, or place that is polluting or harmful to health and neighbors. Accordingly, we address in the first subsection the definition of the license and its legal nature, and in the second subsection, we discuss the types of classified facilities that require prior exploitation licenses.

Section One: Definition of the License and Its Legal Nature

The administration grants this license if the necessary conditions defined by law are met. Environmental laws often grant the administration broad powers, such as restricting certain actions that could harm the environment by requiring a prior administrative license. The administration exercises its discretion in assessing potential harm and the precautionary measures taken by the concerned parties. The first branch addresses the definition of the license for exploiting classified facilities, and the second branch addresses its legal nature.

Subsection One: Definition of the License for Exploiting Classified Facilities

The term “administrative license” takes various forms and names, such as authorization, permit, visa, and consent, and has different applications in administrative practice. The administrative authority uses it as a legal tool to organize and supervise the activities of individuals and some of their freedoms or their use of public property for private purposes. The rationale for the licensing system is to enable the administrative control authority to intervene in individual activities beforehand to take the necessary precautions to protect society from the dangers arising from unsafe practices due to misunderstanding or misjudgment by individuals. Thus, a license is the expression of the administrative authority’s consent for the concerned person or organization to carry out the desired activity and its approval for them to proceed.

A license is defined as permission issued by the competent administration to engage in a specific activity that cannot be performed without this permission. The license system is a type of consent shown by the competent administrative authority toward a person or group, allowing them to carry out certain activities under supervision.

Regarding the license for exploiting classified facilities, legal texts regulating classified facilities, including the repealed Law 83-03 on environmental protection and applicable texts, or Law 03-10 on environmental protection within sustainable development, did not define the license for classified facilities. However, the issuance of Executive Decree 06/198, amended and supplemented, which outlines provisions applicable to classified establishments for environmental protection and was issued in implementation of Law 03-10, defines the license for exploiting classified facilities. Article 4 defines it as an administrative document confirming that the classified facility complies with provisions and conditions concerning environmental protection, health, and safety as stipulated in the applicable legislation and regulations.

The license for exploiting classified facilities has the following characteristics:

- It falls under the legal tools for exercising administrative control, aiming to regulate the activity of the classified facility according to provisions and conditions for protecting environmental health and safety.
- It concerns classified facilities that pose major environmental risks and affects the interests that classified facilities law seeks to protect.
- It is distinct from sectoral licenses and is independent in its legal entity and purpose, and no other sectoral license can replace it.

Subsection Two: Legal Nature of the License for Exploiting Classified Facilities

The licensing system today encompasses all sectors of life, representing order and discipline, aiming at safety of life, as in licensing dangerous industrial projects such as

chemical manufacturing, and public health protection like environmental remediation, or licensing food projects such as drilling wells for drinking water or building restaurants, hotels, and baths. The administrative authority, when granting or refusing a license for an activity, is bound by law and not discretionary; the administration must grant the license to anyone meeting the required conditions and adhere to public interest principles, such as equality, so that granting or refusing is not used for favoritism or retaliation.

Determining whether the license related to classified facilities is a regulatory or individual administrative decision requires reference to administrative law principles. Since administrative acts are subject to these rules, and a regulatory decision is general and abstract, applying to all persons meeting its conditions without specifying individuals, whereas the license for classified facilities is granted to a specific person or entity (natural or legal), it is therefore classified as an individual administrative decision. It must meet formal and substantive requirements, and the license must be issued through an explicit administrative decision, not implicitly or passively. The previous system allowed implicit licensing, but the Algerian legislator abandoned this, meaning an individual cannot rely solely on submitting a request as sufficient to practice the activity, even if the law sets a response period; the purpose of the period is to expedite consideration without granting automatic permission.

Section Two: Types of Classified Facilities Requiring Prior Exploitation License

Facilities owned by persons that directly affect legally protected environmental elements require permission before commencing any activity, issued by a competent authority, such as obtaining permits for activities linked to environmental pollution sources. The first branch defines classified facilities, and the second branch discusses the types of classified facilities requiring a license.

Subsection One: Definition of Classified Facilities

Recent industrial and technological developments have changed life patterns, but

there is no denying the failure to control industrial waste from classified facilities and its serious environmental consequences. There is no single universal definition of classified facilities. Some define them as any place, facility, or technical production unit that could be part of a project or pose a danger. These can be dangerous, disturbing, or harmful to health. Others define classified facilities as industrial or commercial establishments that cause risks or nuisances affecting public safety, health, neighborhood comfort, or agriculture, requiring special supervision to prevent dangers such as explosions, fires, smoke, dust, odors, noise, water contamination, or pests. They are also considered fixed sources of pollution, owned by private or public persons engaging in activities listed in classified facilities regulations.

Therefore, all definitions agree that a classified facility is any establishment capable of causing serious environmental or neighborhood harm. There is no distinction between industrial, commercial, or classified facilities; the term “facility” encompasses all. If an activity poses a danger or nuisance, it is considered a classified facility.

Legally, Executive Decree 76-34 defines dangerous or unhealthy facilities, including factories, workshops, and all industrial or commercial institutions subject to administrative supervision under this decree. Law 83-03 on environmental protection replaced the term “dangerous establishments” with “classified facilities” and expanded protected interests to neighborhood comfort, health, safety, public hygiene, agriculture, nature, the environment, and tourism/heritage sites.

Law 03-10 further defines classified facilities as factories, workshops, quarries, mines, and other facilities exploited or owned by natural or legal persons that may pose risks to public health, safety, agriculture, ecosystems, natural resources, or tourism sites. Classified facilities are fixed sources of pollution posing environmental hazards. Paragraph 1 of Article 2 explicitly defines a classified facility as any fixed technical unit conducting activities listed in the applicable classified facilities regulation.

Paragraph 2 defines a classified establishment as the area containing one or more classified facilities under the responsibility of a natural or legal person.

The Algerian legislator also specifies hazardous materials in classified facilities, including toxic and explosive substances, under Executive Decree 07-144.

An economic facility differs from a classified facility as a unit producing goods and services, while an industrial facility produces goods/services under single management, potentially covering larger areas with branches, engaging in extractive, transformative, or energy/water industries.

Subsection Two: Categories of Classified Facilities Requiring a License

The classification of facilities varies across legal systems and even within a system due to different criteria, such as danger level, distance from residential areas, production or storage capacity, and regulatory system. In Algeria, Decree 76-34 classified facilities into three categories based on danger and harm:

1. Facilities requiring distance from residences due to danger.
2. Facilities where distance is not necessary but require preventive measures.
3. Facilities causing no serious harm and subject to general guidelines for neighborhood benefit.

All classified facilities, regardless of category, fall under the licensing system.

Law 83-03 further classifies facilities by danger: first-category facilities require the governor's license due to size and risk; second-category facilities require municipal council approval due to lower risk. The law distinguishes between licenses from the Minister of Environment, the governor, or the municipal council, depending on facility size and classification.

Article 19 of Law 03-10 on Environmental Protection included a reference to the authority authorized to issue an operating license for classified establishments, considering their danger or the damages resulting from their operation, into three categories:

1. Establishments of the first category are subject to a license from the Minister in charge of the environment.
2. Establishments of the second category are subject to a license from the locally competent Wali (Governor).
3. Establishments of the third category are subject to a license from the President of the Municipal People's Council.

The Algerian legislator divided classified establishments into establishments subject to licensing and others subject to declaration. The latter are not subject to an impact study or summary impact study, unlike the classified establishments subject to licensing, for which a so-called impact study and summary impact study must be conducted before operation. Here, the determining factor is the study or summary impact; if the establishment is subject to a study or summary impact, it is subject to an administrative license. If it is not subject to a study or summary impact, it is subject to a declaration to the President of the Municipal People's Council.

As for Executive Decree 06-198, amended and supplemented, which regulates the organization applied to classified establishments, Algerian legislation divided classified establishments into four categories: the first category includes at least one establishment subject to a ministerial license; the second category includes at least one establishment subject to a license from the locally competent Wali; the third category includes at least one establishment subject to a license from the President of the Municipal People's Council; and the fourth category includes at least one establishment subject to the declaration system to the President of the Municipal People's Council. To identify classified establishments subject to licensing and declaration, reference is made to Executive Decree 07-144 concerning the list of classified establishments for environmental protection, which established several criteria for classification, including:

- Based on the cell number consisting of four digits: the first digit represents the material or activity, the second represents the hazard class—highly

toxic, toxic, flammable and incendiary, explosive, corrosive, or combustible—or branch of activity, and the last two digits represent the type of activity.

- Determination of the classified establishment's activity.
- Determination of the suspension area of the classified establishment.
- Documents attached to the application for an operating license for classified establishments, which may include, depending on the case, an environmental impact study, hazard study, summary impact study, and report on hazardous materials.

Chapter Two: Obtaining an Operating License for Classified Establishments to Maintain Environmental Security

It is well known that classified establishments are considered sources of hazards that can harm the environment, causing all types and forms of pollution. Therefore, the legislator, through regulatory provisions, organized their activity by specifying the procedures for issuing an operating license and the procedures the competent authority must comply with and respect, as these are of public order. Its authority is limited concerning respecting the preliminary stage of filing the license application, as well as the competent administration's respect for the final stage of issuing the license. Accordingly, the first requirement addresses the procedures for obtaining an operating license for establishments, and the second requirement addresses the role of hazard studies in maintaining environmental protection.

Section One: Procedures for Obtaining an Operating License for Classified Establishments

The administrative license is the permission issued by the competent administration to practice a specific activity; it cannot be practiced without this permission. The administration grants the license only if the necessary conditions specified by law are met. The discretionary power is limited to the extent of meeting these conditions and choosing the appropriate time to issue the license. Administrative licenses are individual

administrative acts. To obtain the final license to operate a classified establishment for environmental protection, a long series of procedures must be followed (First Branch). As the legislator allowed, the operating license for classified establishments can also be withdrawn from the owner if the specific requirements are not met (Second Branch).

Subsection One: Stages for Obtaining an Operating License for Classified Establishments

The administrative license is considered one of the most controlled and effective methods because it provides prior environmental protection before any infringement occurs. Therefore, obtaining an operating license for classified establishments is required before starting operation by the operator to ensure environmental protection, as the operating license determines the consequences of economic activities on the environment and confirms that the classified establishment complies with environmental protection provisions, and the health and safety of the environment as stipulated in applicable legislation and regulations.

The Algerian legislator subjected classified establishments in categories one, two, and three to a unified system regarding the legal documents required in the license application file, while a report system was applied for documents requiring a technical study. Category one and two establishments are subject to an impact study and hazard study, while category three establishments are subject to a summary environmental impact study and hazardous materials report. In general, the operating license application file includes:

- The name, surname, and address of the project owner if a natural person; the company name, legal form, headquarters address, and the capacity of the signatory if a legal entity.
- The nature and volume of activities proposed by the project owner, and the category or categories of classified establishments to which the establishment belongs.

- The manufacturing methods implemented, in addition to the materials used and products produced.
- If applicable, the project owner may provide information in a single copy in a separate envelope if this may disclose trade secrets.
- Determination of the establishment's location on a map scaled between 1:25,000 and 1:50,000.
- A situational plan with a scale of at least 1:2,500 for the surrounding area up to at least ten times the suspension area specified in the list of classified establishments, not less than 100 meters, indicating all buildings with their functions, railways, public roads, water points, channels, and conduits.
- A general plan with a scale of at least 1:200, showing the measures the classified establishment intends to undertake within at least 35 meters, including buildings, adjacent lands, and road networks.

Algerian legislation did not specify who has the authority to submit the license application file, but Article 8 of Executive Decree 06-198, amended and supplemented, implies that the authority may be the natural person or legal representative of the legal entity wishing to operate a classified establishment. This authority is not granted to someone who does not intend to operate an establishment but hopes to obtain a license for commercial reasons.

It is noted that the decree places great emphasis on accurately determining the location of the classified establishment using maps, to prevent establishing such establishments in areas of special importance, such as agricultural, tourist, or historically significant areas. However, the legislator did not include intervention plans or internal intervention plans, as provided in the law on major risk prevention and disaster management in the framework of sustainable development, in the application file.

The file is submitted for a preliminary review by the Wilaya Committee for the Control of Classified Establishments. For new

investments, the project division elements must be consulted between the environment administration, industry, and relevant stakeholders. The committee issues a decision based on the application file within no more than three months from the submission date. After reviewing all attached documents, including hazard studies, impact studies or summaries, and approving them, and after taking the opinions of technical services, the concerned Municipal Council President, and the Inspectorate's opinion, the Wilaya Committee for the Control of Classified Establishments issues a meeting record and grants preliminary approval for establishing the classified establishment for category two and three establishments (subject to Wali and Municipal Council licensing). For category one establishments (subject to ministerial licensing), the committee sends the meeting record to the Minister in charge of the environment, who grants preliminary approval.

After the classified establishment is built, the committee visits the site to verify compliance with the documents submitted. Once verified, the committee prepares a draft operating license decision and sends it to the competent authority for signature: the Minister for category one, the Wali for category two, and the Municipal Council President for category three. The license is issued by joint ministerial decision for category one, by the Wali for category two, and by the Municipal Council President for category three.

Subsection Two: Withdrawal of the Operating License for Classified Establishments

Classified establishments for environmental protection are a form of exercising industrial and commercial freedom but are also major sources of environmental risk and neighborly nuisance. Therefore, legislation requires strict administrative oversight, which may include severe administrative penalties, especially if the establishment's operation violates the license. The license is permission that relieves responsibility for certain acts, ensuring activities are conducted efficiently and

according to proper technical rules, preventing pollution of humans and the environment.

License withdrawal is a sanction imposed by judicial or administrative authorities on anyone exercising the licensed right in violation of laws and regulations. It may result in permanent or temporary cessation of the right. License cancellation or withdrawal is one of the harshest administrative penalties for limiting pollution affecting public health within the law. In administrative law, withdrawal is considered termination of the legal effect of administrative decisions retroactively as if they never existed.

Regarding withdrawal of licenses for classified establishments, Article 23 of Executive Decree 06-198, amended and supplemented, states that in case of non-compliance observed during any inspection regarding:

- Regulations applied to classified establishments in environmental protection.
- Specific technical provisions stipulated in the issued operating license.

A report is drawn up detailing the violations and setting a deadline for rectification. If the non-compliance is not addressed, the operating license is suspended. If the operator does not rectify the establishment within six months, the license is withdrawn. Any new operation is subject to a new licensing procedure.

Administrative authorities have the right to withdraw the operating license if the classified establishment does not comply with applicable regulations or specific technical provisions, following several steps: first, a warning phase allowing rectification; second, temporary suspension if non-compliance persists; finally, permanent withdrawal if non-compliance continues.

Withdrawal penalties apply only to category one, two, and three establishments. Category four, subject to declaration, is not subject to this penalty.

In case of permanent cessation, the operator must leave the site in a state that poses no environmental risk, applicable to all classified establishment categories. Article 42 of Executive Decree 06-198 requires the operator to inform the Municipal Council President for

declared establishments, or the locally competent Wali for licensed establishments, within three months prior to cessation, including a file detailing pollution removal, waste management, and site protection if needed. The committee supervises implementation to ensure the site is restored according to the plan.

Section Two: The Role of Hazard Studies in Maintaining Environmental Protection

The operating license applies to establishments that pose major environmental hazards, as intended by the law. It is a legal tool for administrative control, ensuring the classified establishment's activity complies with environmental health and safety provisions.

Subsection One: The Scope of the Operating License for Hazardous Establishments

A classified establishment is subject to licensing if it is dangerous, posing negative consequences for health, safety, environment, neighborly comfort, and economic prosperity. Establishments under declaration pose no hazards and cannot be contested. Hazard is defined as a property inherent to a material, factor, energy source, or situation that can cause harm to people, property, and the environment. The types of hazards, per Executive Decree 07-144, are:

A. Highly toxic: substances causing death or acute/chronic hazards through inhalation, ingestion, or skin contact in very small quantities.

B. Toxic: substances causing death or acute/chronic hazards through small quantities inhaled, ingested, or absorbed.

C. Incendiary: substances that react strongly with other materials, especially flammable ones, producing heat.

D. Explosive: solids, liquids, or pastes that can explode without oxygen involvement, releasing gas rapidly.

E. Flammable: liquids with ignition temperatures $\geq 21^{\circ}\text{C}$ and $< 55^{\circ}\text{C}$.

F. Corrosive: substances that destroy living tissues on contact.

Establishments whose operations may harm the environment due to these hazards cannot operate without administrative licensing.

Subsection Two: Hazard Study as a Technical Mechanism for Controlling Classified Establishments

The hazard study is a technical enforcement tool aiming to establish preventive protection around industrial sites, especially classified establishments. Derived from industrial safety, it involves inventorying all hazards, analyzing risks, creating scenarios of potential accidents, and implementing preventive measures. It complements environmental impact studies and precedes the operation of classified establishments. It is also a scientific and technical procedure following established methods, considered administrative since it serves to obtain an administrative decision. It identifies direct and indirect risks to people, property, and the environment and prescribes technical and organizational measures to prevent or mitigate accidents.

According to Article 14 of Executive Decree 06-198, the hazard study includes:

- General project presentation.
- Description of neighboring areas potentially affected by accidents, including physical, economic, social, and cultural data.
- Description of the project and facilities using plans (location, size, capacity, entrances).
- Identification of all hazard factors from each facility.
- Analysis of risks and consequences at the establishment level.
- Analysis of potential effects on residents, workers, environment, and expected economic/financial impacts.
- Organization of site security, major accident prevention, security management, and emergency measures.

The study is conducted at the project owner's expense by certified specialized offices approved by the Minister in charge of the environment. The hazard study assesses risks from operating a facility and prescribes measures to reduce or mitigate them.

Hazard studies are mandatory for granting an operating license. Without it, the license is denied. It also serves as a preliminary step for

other preventive tools, such as intervention plans and internal work plans.

Conclusion

Licensing for classified establishments is an effective tool for monitoring activities before and after operation, ensuring administrative control for environmental protection by regulating operators of hazardous activities. A single classified establishment can cause multiple types of pollution. This study reached the following results and suggestions:

Results:

- Executive Decree 06-198, amended and supplemented, introducing hazard studies, is a qualitative precedent ensuring environmental protection from pollution caused by classified establishments. Existing establishments must complete hazard studies within two years of the decree.
- The decree obliges existing establishments without a license or whose license falls under the categories specified to conduct an environmental review within two years.
- Environmental law requires obtaining a license before operation. The legislator updated license timelines; old licenses are considered invalid.
- The decree does not require public notification of licenses, unlike the previous Decree 98-339, weakening public oversight and participation rights.

Suggestions:

- Establish a legal provision stipulating that a license application fulfilling all legal requirements and deadlines, with no false or incomplete information, and not rejected within the legal period, is considered implicitly accepted.
- Require public notification of licensed classified establishments for third-party awareness and the right to appeal.
- Encourage voluntary environmental compliance by classified establishments through support.
- Raise environmental awareness among all community sectors, including

managers and operators of classified establishments.

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