

Administrative Control for Environmental Protection Against Pollution

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Abstract---This research paper highlights the impact of physical pollution on living organisms and the damage it causes. Consequently, public authorities have intervened by issuing legislation and adopting measures and procedures capable of reducing this type of pollution and mitigating its effects. Physical pollution is divided into numerous and varied types. Therefore, it is crucial to establish a dedicated organisation to combat these types of pollution and implement all necessary measures and administrative control procedures to protect the environment.

Keywords---pollution, environment, administrative control.

Introduction

The Algerian legislator has provided local communities with a range of legal means and mechanisms to carry out their duties in environmental protection, which serve as the basis for monitoring activities and the extent of law enforcement¹. This follows the realisation by the Algerian legislator that, despite environmental legislation enabling local communities to fulfil their role, these laws alone are insufficient to curb environmental abuse². Therefore, it was necessary to establish a set of measures to assist the legislation and contribute to environmental protection, with the aim of achieving an environment free from all forms of physical pollution³.

¹- Lared Mohammad Ahmad, "Contractual Agreements and Their Role in Environmental Protection," *Journal of Scientific Research in Environmental Legislation*, Vol. 7, No. 1, January 2017, pp. 460-467.

²- Adel Akroum, "Environmental Administrative Control over Household Waste Management," *Journal of Real Estate Law*, Vol. 5, No. 1, March 2018, pp. 124-140.

³- Boukhalfa Abdel Karim, "Mechanisms for Environmental Protection in Algerian Legislation within the Framework of Sustainable Development," *Journal of Ijtihad for Legal and Economic Studies*, Vol. 9, No. 2, 2020, pp. 53-68.

How to Cite:

Zakaria, M. (2025). Administrative control for environmental protection against pollution. *The International Tax Journal*, 52(5), 2514–2522. Retrieved from <https://internationaltaxjournal.online/index.php/itj/article/view/261>

The International tax journal ISSN: 0097-7314 E-ISSN: 3066-2370 © 2025

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Submitted: 26 February 2025 | Revised: 25 August 2025 | Accepted: 09 October 2025

2514

The nature of the task to be accomplished determines the means and measures that are employed, which may act independently based on the powers and authorities granted to them by law. This intervention may take the form of administrative decisions, such as permits. Local communities may develop environmental protection plans and intervention may also take the form of agreements between the local administration and private contractors — owners of private institutions active in environmental protection — by involving them in projects related to environmental issues and their protection.

Based on the information presented, we can pose the following question: while the purpose of environmental administrative control is similar to that of administrative control in general, it is distinguished by its focus on environmental security and health. To what extent is it effective in reducing environmental pollution? We will attempt to answer this question by first discussing the concept of environmental administrative control and its domains, followed by the means and measures of administrative control for protecting the environment from pollution.

Section One: The Concept of Environmental Administrative Control and Its Applications

Administrative control is widely regarded as a vital means for states and local communities to maintain public order in all its traditional and modern aspects. As the environment has gained significant importance for humanity and legal thought, it has become imperative to protect it against dangers⁴.

First requirement: Definition of Environmental Administrative Control

Although the concept of public order resists a comprehensive definition that encapsulates it, since it reflects the prevailing social, political, economic and moral realities of the state (which are contingent on time and place), administrative control essentially seeks to establish public order in all its elements. It is a set of rules that regulates the fundamental interests of society across all fields and domains⁵.

While legislation may lack a definition of environmental administrative control, the interventions of administrative authorities are specifically related to the protection and preservation of the environment. It is therefore a function of public administration to take preventive measures and issue regulatory and individual decisions that govern the exercise of freedoms, with the aim of maintaining environmental public order in society under specific conditions⁶.

Environmental administrative control encompasses the procedural rules issued by the relevant authorities to prevent environmental harm and deter those responsible. The intention is to restore balance to the ecosystem and protect it⁷.

It comprises a set of preventive measures and restrictions imposed by the public administration on individuals to protect the environment from pollution and degradation, through either precautionary or punitive measures⁸.

Furthermore, environmental administrative control is defined as the authority held by the administration to protect the environment by restricting individual freedoms in order to safeguard environmental public order within society⁹. It is also described as a function of the administration involving the taking of measures and the issuing of decisions (both regulatory and individual) aimed at

⁴- Ibrahim Yamah, "Powers of Administrative Control and Means of Practice in the Algerian Legal System," *Journal of Ijtihad for Legal and Economic Studies*, Vol. 1, No. 1, January 2012, pp. 113-137.

⁵- Slimani Hendoun, "Powers of Control in Algerian Administration," Thesis submitted for the PhD degree in Management and Finance, Faculty of Law, University of Algiers 1, 2012/2013, p. 112.

⁶- Farihate Ismail, "Local Environmental Administrative Control," *Journal of Policy and Law Notebooks*, Vol. 13, No. 3, June 2021, pp. 126-138.

⁷- Dadi Hamou Bahamed, Ismawi Yahya, "The Role of Administrative Control in Environmental Protection," Thesis submitted for the Master's degree, Public Law specialization, Faculty of Law and Political Science, University of Ghardaia, 2017/2018, p. 22.

⁸- Abdullah Khalaf Al-Ruqad, "Means of Administrative Control in Protecting the Environment from Urban Pollution," *Journal of Ijtihad for Legal and Economic Studies*, Vol. 9, No. 1, 2020, pp. 266-301.

⁹- Salah Hashim Jumaa, "The Environment and the Role of Police in Its Protection," Cairo, 2001, p. 161.

organising the exercise of freedoms in order to protect environmental public order under specific conditions¹⁰.

The rules of environmental administrative control consist of a set of procedural rules issued pursuant to decisions required to achieve the community's environmental preservation goals, utilising all the necessary legal and material powers and means of the administration¹¹.

Second Requirement: Domains of Environmental Administrative Control

Environmental protection is the primary objective of specific administrative control. While general administrative control indirectly protects the environment as part of its three traditional objectives, specific administrative control directly protects the environment, regardless of whether there is a breach of public health, public tranquility or public safety¹².

Section Two: Key Areas of Environmental Administrative Control

First Subsection: Administrative Control of Construction and Urban Development

The construction and urban development system is significantly related to environmental pollution. Consequently, numerous texts concerning pollution control have been issued, including regulations related to minimum room capacity, ventilation, wastewater disposal, sewage systems and air pollution prevention¹³.

Although urban chaos is a global issue that many countries are trying to address with strict deterrent laws in order to create sustainable urban development and 'global cities' — an issue faced by Algerian cities — the legislator has risen to the challenge by establishing a legislative system comprising derived laws aimed at reducing this phenomenon. Generally, a permit must be obtained through an administrative decision that considers all relevant construction and urban development rules, such as those regarding distances, volumes, the general appearance of buildings and their compatibility with the surrounding environment¹⁴.

Second Subsection: Administrative Control of Natural Reserves

The law provides special protection for natural reserves, which are considered spaces of environmental value. Any actions that may harm the natural environment, its aesthetic value or the existing animal or plant life within it are prohibited¹⁵. Several other actions affecting the ecosystem are also banned, such as works altering the landform or vegetation cover, and any act harming animals or plants¹⁶.

Third subsection: Administrative Control of Hazardous Installations

Hazardous installations are industrial or commercial facilities that pose risks or nuisances to public safety, public health, neighbours' comfort or agriculture. This necessitates special oversight and control to prevent these risks and nuisances. The most significant of these include the risk of explosions, fires, smoke, dust, foul odours, noise and pollution of water and air, among others¹⁷.

¹⁰- Ismail Najm al-Din Zankana, "Environmental Administrative Law: A Comparative Analytical Study," 1st Edition, Halabi Legal Publications, Lebanon, 2012, p. 261.

¹¹- Samia Belladjraf, "Lectures on Environmental Administrative Control," University of Mohamed Kheider, Biskra, available at: [http://elearning.univ-biskra.dz/moodle/course/index.php?categoryid=1720]. Accessed on 22/01/2024, at 11:32.

¹²- Omri Ahmed, Alyan Bouzyan, "Powers of Administrative Control in Protecting the Environmental Public Order," Journal of Scientific Research in Environmental Legislation, Vol. 7, No. 2, June 2017, pp. 1-22.

¹³- Daddy Hamou Ba Ahmed, Asmawi Yahya, previous reference, p. 43

¹⁴- Abba Bradji, Leila Hlaimiya, "Building Permits in Special Areas in Algerian Legislation," Thesis submitted for the Master's degree, Real Estate Law specialization, Faculty of Law and Political Science, University of Arab Tebessi, Algeria, 2018/2019, p. 50.

¹⁵- Bakdour Rabah, Barani Halim, "Legal Protection of Natural Reserves in Algerian Law," Thesis submitted for the Master's degree, Environmental Law and Sustainable Development specialization, Faculty of Law and Political Science, Ibn Khaldun University, Department of Public Law, Tiaret, Algeria, 2022/2023, p. 100.

¹⁶- Fiki Omar, "Legal Protection of Vegetation Cover in Algeria," Thesis submitted for the PhD degree in Environmental Law, Faculty of Law and Political Science, Djilali Liabes University, Sidi Bel-Abbes, 2020/2021, p. 204.

¹⁷- Ben Mbarek Rashida, "Local Control of Classified Facilities for Environmental Protection in Algerian Legislation," Thesis submitted for the Master's degree, Administrative Law specialization, Faculty of Law and Political Science, Ahmed Draïa University, Adrar, Algeria, 2021/2022, p. 15.

The relevant administrative control authorities may revoke a permit or temporarily suspend an installation's activity if they determine that its continued operation is causing uncontrollable environmental damage.

Section Three: Means and Measures of Administrative Control for Protecting the Environment from Pollution

Environmental administrative control is one of the mechanisms initiated by the Algerian legislator to achieve environmental protection¹⁸. To achieve this, an environmental policy aimed primarily at protection was adopted. In order to provide this protection, the legislator adopted a proactive approach by activating two mechanisms.

The first is the preventive aspect of environmental administrative control, ensuring environmental planning in line with the integration principle, alongside the legal techniques of environmental administrative control. The second mechanism is embodied in the deterrent aspect of environmental administrative control and involves two main applications: environmental taxation, which commits to the 'polluter pays' principle; and non-financial administrative penalties¹⁹.

First requirement: The preventive aspect of environmental administrative control

Administrative control authorities possess several preventive measures, as stipulated by law, to fulfil their mission of protecting the environment. These measures are an effective and serious legal method of safeguarding the environment from pollution risks. Such protection cannot be achieved merely by applying subsequent procedures after damage has occurred; rather, the relevant authorities must take prior preventive measures to prevent harm or mitigate its effects²⁰.

First Subsection: Environmental Planning as a Commitment to the Principle of Integration

Many countries are now suffering from serious environmental problems to the extent that clean air, pure water and beautiful environments have become rare commodities. This situation arises from humanity's failure to grasp the full meaning of planning²¹ and encompass its comprehensive concept. Attention has therefore primarily focused on economic considerations, largely neglecting the environmental dimension in the pursuit of maximising productivity and achieving the highest profit in the shortest possible time²².

Traditional (non-environmental) planning, based solely on economic considerations and disregarding environmental impacts, has led to many environmental problems and attracted criticism. This has paved the way for environmental planning, a new concept that formulates development plans from an environmental perspective²³.

¹⁸- Hamaidi Fadila, "Limits of Powers of Environmental Administrative Control Authorities in Algerian Legislation," Thesis submitted for the Master's degree, Environmental Law and Sustainable Development specialization, Faculty of Law and Political Science, Moulay Tahar University, Saida, Algeria, 2020/2021, p. 25.

¹⁹- Hatabi Amina, "Mechanisms of Administrative Control in Protecting the Environment from Chemical Materials," *Journal of Real Estate Law and Environment*, Vol. 8, No. 2, June 2020, pp. 329-347.

²⁰- Bahri Abdul Razak, "Means of Administrative Control and Procedures as a Means to Achieve Environmental Security," *Al-Manar Journal for Legal and Political Studies*, No. 3, December 2017, pp. 162-179.

²¹- Abd al-Halim Hafina, "More than 10 Countries Suffer from Pollution, Including Two Arab Countries," Article published on Sky News, dated 01/11/2021, available at: [<https://www.skynewsarabia.com>]. Accessed on 26/01/2024, at 12:41.

²²- Shibli Muhammad, "The Environmental Dimension of Emerging Institutions in Algeria," Thesis submitted for the Master's degree, Environmental Law and Sustainable Development specialization, Faculty of Law and Political Science, Moulay Tahar University, Saida, Algeria, 2020/2021, p. 51.

²³- Iman Qadari, "Environmental Planning in Algeria as a Tool for Establishing Environmental Security and Achieving Sustainable Development," *Journal of Algerian and Comparative Public Law*, Vol. 3, No. 1, January 2017, pp. 156-176.

Second subsection: Legal Techniques of Environmental Administrative Control

First: Licensing

Licensing is one of the most important preventive measures for environmental protection²⁴. The environmental protection authorities may only grant licences after verifying that the necessary conditions are met by the applicant, whether natural or legal. Once these conditions are met, permission is granted to carry out the activity in accordance with environmental protection requirements²⁵.

Licensing plays a significant and effective preventive role in environmental protection²⁶. This is because certain commercial, industrial and other activities often lead to breaches of environmental public order. Therefore, licensing is important in establishing controls that allow such activities and freedoms to be exercised without harming or polluting the environment.

Second: prohibition

Environmental legislation clearly includes this type of technique for protecting the environment, ensuring the inclusion of absolute and relative prohibitions depending on the assessed danger of the prohibited act²⁷.

Prohibition generally refers to the complete or partial banning of a specific activity by individuals or private groups through the exercise of administrative authority, as an exception aimed at protecting public order²⁸.

Prohibitory measures are issued by the administration in the form of decisions, similar to administrative licensing, due to their status as a public authority. For a prohibition to be legal, it must be definitive and absolute, and the administration must not abuse its power to the extent of infringing individuals' rights and fundamental freedoms; otherwise, it would be an unlawful act and merely physical assault or coercion, as described by scholars of administrative law²⁹.

The legislator resorts to prohibition whenever there is a real danger to ecological balance and deems it necessary to intervene to preserve and protect the environment³⁰.

Third: Obligation

One of the characteristics of environmental law is the imperative nature of its rules. Violating these rules exposes such actions to nullity or criminal liability for the violator. It is through this characteristic that the system of obligation finds its legal basis and source³¹.

As a legal administrative procedure, the authority of obligation requires individuals³², entities and installations to carry out specific positive actions to prevent pollution of various environmental elements, or to remove the effects of pollution caused by their actions if possible. This obligation to

²⁴- Sassi Amal, "Administrative Licensing as a Mechanism for Environmental Protection," Thesis submitted for the Master's degree, Planning and Urban Development specialization, Faculty of Law and Political Science, Mohamed Bachehir Ibrahim University, Bordj Bou Arreridj, Algeria, 2019/2020, p. 52.

²⁵- Ismail Saasa Al-Badiri, "Legal Methods for Protecting the Environment from Pollution: A Comparative Study," Faculty of Law, University of Babylon, n.d., p. 12.

²⁶- Jafal Abdul Haq, Mazhoud Abdul Karim, "Licensing as a Mechanism for Environmental Protection in Algerian Legislation," Thesis submitted for the Master's degree, Planning and Urban Development specialization, Faculty of Law and Political Science, Mohamed Bachehir Ibrahim University, Bordj Bou Arreridj, Algeria, 2021/2022, p. 35.

²⁷- Muhammad Ahmad Abdul Naim, "The Extent of Administrative Authority in Stopping Hazardous Activities to the Environment: A Comparative Analytical Study," Journal of Sharia and Law College in Tanta, Egypt, No. 37 of 2022, Part One, pp. 188-277.

²⁸- Barish Shahrazad, Azeib Fahima, "Practicing Local Administrative Control between the Necessity of Preserving Public Order and Protecting Individuals' Rights and Freedoms," Thesis submitted for the Master's degree, Administrative Law specialization, Faculty of Law and Political Science, Abderrahmane Mira University, Bejaia, Algeria, 2023, p. 65.

²⁹- Mundas Luiza, Shli Naima, "The Legal Framework for Administrative Control Authorities in Algeria," Thesis submitted for the Master's degree, Internal Public Law specialization, Faculty of Law and Political Science, Mohamed Sidik Ben Yahia University, Jijel, Algeria, 2014/2014, p. 39.

³⁰- Sharati Khira, "The Effectiveness of Environmental Control Mechanisms in Protecting the Environment," Journal of Ijtihad for Legal and Economic Studies, Vol. 9, No. 2, 2020, pp. 27-52.

³¹- Munir Musa Abu Rahma, "Legal Rules for Environmental Protection in Occupied Palestine under Israeli Occupation," Journal of Constitutional Law and Political Institutions, Vol. 5, No. 2, 2021, pp. 123-161.

³²- Abdul Razak Bahri, "Means of Administrative Control and Procedures as a Means to Achieve Environmental Security," Al-Manar Journal for Legal and Political Studies, No. 3, December 2017, pp. 162-179.

perform positive actions is equivalent to prohibiting negative actions, i.e. abstaining from certain activities.

Thus, obligation is the opposite of prohibition, as the latter is a legal administrative measure that prevents an activity from being carried out — it is a negative measure while obligation necessitates an act being carried out, which is positive and can only achieve its goal through the actions mandated by law³³.

Fourth: The Technique of Impact Assessment Between the Principle of Prevention and the Precautionary Principle

The growing focus on environmental issues, particularly those associated with development processes, has prompted calls for environmental impact assessments to be conducted for development projects³⁴. These assessments are essential for identifying environmental problems and determining the most suitable ways to address them from the outset of these projects, in accordance with the saying 'prevention is better than cure'. The aim is to achieve harmony between development processes and environmental protection, or sustainable development³⁵.

It is worth noting that the specific conditions for the measures taken within the framework of preventive activity also apply to the precautionary principle. However, the precautionary principle differs from the preventive principle in that it considers potential harm. The precautionary principle applies when there are known and certain risks, whereas the preventive principle is associated with potential risks³⁶.

Second requirement: The Deterrent Aspect of Environmental Administrative Control.

It is evident that the preventive measures employed by administrative control authorities to safeguard the environment against potential damage are not sufficient to prevent environmental violations resulting in pollution and harm³⁷. In order to deter assaults on the environment and mitigate the effects of violations that have already occurred, environmental administrative control authorities can utilise remedial measures that are explicitly provided for in environmental legislation³⁸.

Consequently, we will discuss environmental taxation, which is an economic tool primarily developed to implement the 'polluter pays' principle, as well as non-financial administrative penalties³⁹.

First Subsection: Environmental Taxation as a Commitment to the Polluter Pays Principle

Since the Rio Conference, the use of economic instruments at an international level has become a new trend in international environmental protection strategies. This has led to two approaches: one involves using trade policy tools within multilateral environmental agreements⁴⁰, while the other involves negotiating the application of tools such as fees, credits and emissions trading markets to achieve the goals of these agreements⁴¹.

The Algerian legislator has referenced the 'polluter pays' principle in the new Environmental Law as one of the principles governing environmental management. This reflects the legislator's intention to

³³. Balazouq Bilal, Ben Amir Jamal al-Din, "The Legal System for Managing Household Waste and Similar Mechanisms to Achieve Circular Economy in Algerian Legislation," *Journal of Legal Studies and Research*, Vol. 6, No. 1, January 2021, pp. 32-46.

³⁴. Mamdouh Salama Morsi Ahmed, "Environmental Management for Environmental Impact Assessment of Projects," *Assiut Journal of Environmental Studies*, No. 32, January 2008, pp. 105-124.

³⁵. Ousserir Manour, Ben Hajj Djilali Maghwarah Fatiha, "Environmental Feasibility Study for Investment Projects," *North Africa Economics Journal*, No. 7, n.d., pp. 329-354.

³⁶. Lamiya Hamadou, "The Precautionary Principle as a New Dimension of Civil Responsibility: From Compensation to Prevention," Thesis for the PhD in Law, University of Algiers 1, Faculty of Law, 2020/2021, p. 2.

³⁷. Dadi Hamou Bahamed, Ismawi Yahya, "Previous Reference," p. 80.

³⁸. Dadi Hamou Bahamed, Ismawi Yahya, "Same Reference," p. 81.

³⁹. Walid Omar Tayeb, Qarmit Djilali, "Enforcement of Taxation for Environmental Protection under the Polluter Pays Principle," *Journal of Scientific Research in Environmental Legislation*, Vol. 11, No. 1, November 2021, pp. 41-61.

⁴⁰. United Nations Conference on Environment and Development, "Rio de Janeiro, Brazil, June 3-14, 1992."

⁴¹. Kamal Rzeeq, "The Role of the State in Environmental Protection," *Researcher Journal*, No. 5, 2007, pp. 95-105.

adopt a tax approach to promote the sustainable use of natural resources and enhance environmental protection⁴².

Second subsection: Non-Financial Environmental Administrative Penalties

Examining the legal regulations related to the environment reveals a significant trend towards strengthening the administrative authorities' powers to protect the environment from pollution. This is achieved by granting them relatively broad powers to impose various measures and penalties on those who violate environmental laws. This trend is important for several reasons:⁴³

- The procedural flexibility and technical expertise gained by administrative authorities in monitoring and detecting violations of the regulations within their jurisdiction⁴⁴.
- The capacity of administrative authorities to take urgent preventive measures to avert dangers resulting from those violations⁴⁵.
- The administration's involvement in defining environmental pollution crimes, allowing these authorities to determine the nature of such acts, their elements and the conditions for their occurrence. In other words, the administration has discretionary power to assess acts causing environmental pollution and take the necessary actions. For these and other reasons, the administration employs various methods depending on the severity of the violation committed by individuals⁴⁶.

Conclusion

In conclusion, studying the administrative organisation responsible for environmental regulation is paramount in revealing the effectiveness and efficiency of environmental intervention to preserve and maintain the environment. This is achieved through a range of preventive and remedial measures. Legal texts alone are insufficient to regulate any aspect of public life unless they are supported by effective mechanisms that ensure the optimal implementation of the policies expressed in these texts.

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⁴²- Salihah Boudhri, Aisha Boutalha, "The Tax System and Its Impact on Reducing Pollution: A Case Study of Algeria," *Journal of Research and Commercial Studies*, No. 3, March 2018, pp. 148-170.

⁴³- Boukhalfa Abdel Karim, "Mechanisms for Environmental Protection in Algerian Legislation within the Framework of Sustainable Development," *Journal of Ijtihad for Legal and Economic Studies*, Vol. 9, No. 2, 2020, pp. 53-68.

⁴⁴- Ben Ali Abdul Razak, Rafi Ali, "The Role of Administrative Bodies in Environmental Protection in Algerian Legislation," Thesis submitted for the Master's degree in Law, Planning and Urban Development specialization, Faculty of Law and Political Science, University of Bachehir Ibrahim, Bordj Bou Arreridj, Algeria, 2022/2023, p. 52.

⁴⁵- Lounas Youssef, Eid Haddad, "Administrative Methods for Environmental Protection," *Economic Studies Journal*, Vol. 17, No. 1, April 2023, pp. 470-482.

⁴⁶- Bouhazma Kawthar, "The Role of Administrative Authority in Protecting the Environment from the Harms of Classified Institutions," *Mediterranean Thought Journal*, Vol. 11, No. 1, 2022, pp. 745-718.

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