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ISN-33259

Legal Assistance - Tunisia

Howard J. Taubenfeld

Final Report, and Final

Report, Part A

2

ISN - 33259

Legal Assistance to the
Ministry of National Economy-Tunisia

Dr. Howard J. Taubenfeld
Principal Consultant

A.I.D. Project No. 664-0300.5
Contracts Nos. 664-0300-C-00-3008-00
and 664-0300-C-00-2004-00

Final Report

2

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

August 3, 1983

MEMORANDUM

TO: S&T, DIU

FROM: NE/PD/ENV, Barbara A. Ormond *ba*

SUBJECT: Final Report - Howard Taubenfeld

Attached please find two copies of the final report of Howard Taubenfeld on the legal aspects of pollution control in Tunisia in accordance with the terms of contracts 664-0300-C-3008-00 and 664-0300-C-00-2004-00. A copy of his letter of transmittal is also attached for your information.

3

July 12, 1983



Ms. Barbara J. Ormand
AID - Near East
Washington, D.C. 20523

Re: Legal Assistance-Tunisia
Project 664-0300.5
Contracts 664-0300-C-00-3008-00
664-0300-C-00-2004-00

Dear Ms. Ormand:

In accordance with the terms of the referenced contracts, I am pleased to enclose seven sets of the final Report. According to the contracts, three copies are to be sent to the Program Office, and one to the Contracting Officer Tunis, and two to the Office of Development Information and Utilization, AID, Washington. I enclose one for the use of your office as well. Please be good enough to make the Washington distribution and, as per AID/Tunisia's instruction, forward four copies by pouch to Tunisia.

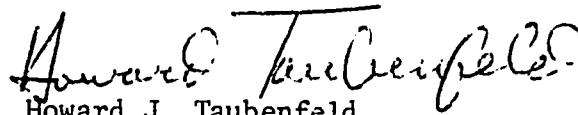
Please note that I expressly waive the right to review French translations.

The Final Report is in three bound volumes. The first volume contains the Final Report and Final Report, Part A, on the pollution problem. Volume two contains Final Report, Part B, Section 1, the Report to the Tunisian Government on legal aspects of enterprise and worker safety. The third volume contains Final Report, Part B, Section 2, the detailed supportive materials for Report B, Part 1. I would not expect the third volume to be translated. Each Volume has a table of contents.

I also enclose three copies of a set of the four "visit" reports prepared by me after each major visit to Tunis. Please send two copies to Tunisia (they are already in the files there), and keep one for yourself for information.

Many thanks to you and to Steve Lintner for your help and support in the course of this, for me, most interesting project.

Sincerely,



Howard J. Taubenfeld
Professor of Law

HJT/ng

Enclosures

cc: Richard Stevenson
AID/Tunisia

Final Report-Legal Assistance to the
Ministry of National Economy in Tunisia

Dr. Howard J. Taubenfeld, et al

Reporting under this Contract, as required by its terms, consists of a bifurcated final Report, due to the nature of the work performed. Final Report, Part A, is related primarily to work done in the area of pollution control and, for reasons detailed in it, is relatively brief. Final Report, Part B, is related exclusively to work done on the question of Industrial Security and Worker Security and Health and contains the detailed Report to MNE on this subject, as the contract's final Report. Together, Parts A and B constitute the Final Report required by the contract(s) between Dr. Howard J. Taubenfeld (et al) and A.I.D.

Final Report, Part A

To assist the Government of Tunisia in meeting the problems of industrial pollution control through legal technical assistance, Dr. Howard J. Taubenfeld was in Tunis in the periods April 15-22, June 2-17, August 6-8, and October 21-29, 1982. An extended visit in May/June, 1983, is covered in Report B. Prof. Jeffrey Gaba, a member of the legal assistance team was also in Tunis from June 12-19, 1982. While work was largely accomplished in Tunisia, work was also undertaken in Dallas, Texas and Washington, D.C. While in Tunis, Prof. Taubenfeld spent almost all his time at an office provided by the Office of the Director of l'Environnement, de la Normalisation et du Control Qualite of the Ministry of National Economy (MNE). Work was most directly with M. Darmoul but also with the Office Director, M. Bel Gaid (and, more recently, M. Majoub), and with the various members of the technical staff. Contacts and conferences were also had at the U.S.A.I.D. Mission, with Messrs. Carlson and Stevenson, with the help of Ms. Saida Zouiten. In the course of discussions at A.I.D., it was agreed that the work product achieved with MNE would in fact constitute the basic final Report to A.I.D., rather than a Report on environmental law. This Report, with attachments, therefore, briefly narrates and summarizes the work and work product primarily in the area of industrial pollution control.

Before visiting Tunis, the Senior Consultant had extensively reviewed United States, French and Tunisian* laws and regulations concerning environmental protection. In the initial visits, discussions at MNE covered the existing state of Tunisian law concerning pollution control, the Tunisian approach to the control and regulation of industry, the state of industrial pollution, and the administrative structure, present and possible, for dealing with pollution issues. A study prepared by the legal consultants on types and effects of pollution-control sanctions in United States' law was delivered to MNE and briefly discussed and copies of all major United States' laws on the environment were also given to MNE for reference.

The largest amount of time at this early stage was devoted, as per the Office Director, M. Bel Gaid's, preference, to a joint analysis of a proposed decree broadly governing water pollution, promulgated by the Ministry of Agriculture. It appeared to have many flaws; if it had been adopted in its then form, and seriously enforced, it would drastically have hampered industrial activity and development. The Consultant prepared extensive comments

*Tunisian laws, decrees, etc. furnished initially for review included the extensive Water Code of 1975, a decree of 1932 on boilers and steam engines, a decree of 1955 on the same subject, decrees of 1956 and 1957 on machinery for high pressure gas usage, an order of 1956 on compressed gas, a law of 1974 creating the National Office of Sanitation (O.N.A.S.), a decree of 1978 providing for efforts by the Ministry of Equipment in connection with charges for water and its purification, a decree of 1979 concerning water purification, and the important chapter VI of the Labor Code and Decree of 1968 concerning Classified Establishments. In this last context, the French laws on classification, from which the Tunisian laws are taken, were reviewed and the complete list of classifications was obtained from the MNE. A Tunisian study on the state of water pollution was also very useful. The consultants also had the benefit of prior studies made for A.I.D./Tunisia by Gerard Rohlich on his visit to Tunisia in January, 1980, and by William Yake on Waste Water Generation from a Sulfuric/Phosphoric Acid Plant. Later, in 1983, the Principal Consultant also reviewed other laws, decrees, etc. as described in this Final Report, Part B.

8

and possible revisions of the proposed decree which were discussed extensively with the Office Director and his associates. (Copies of this work product filed with MNE and AID.)

In accordance with a work statement agreed to at the first visit, the consultants prepared an overview of United States law and approach to environmental issues which was briefly discussed at an extended work session in June, 1982. Almost all of the two weeks time spent by the principal Consultant was, however, devoted to the preparation of a draft "umbrella" law for the environment for Tunisia.

This was discussed and argued at length by Taubenfeld in meetings which were attended at length by Darmoul and other members of the staff and with less consistency by Bel Gaid. The Consultant further drafted the water sections for such an overall law. He also worked on a draft, expressly requested by MNE, of a new organism, to be attached to MNE but partly outside, it, which would actively seek to control industry on the anti-pollution side, and would also be able to help fund changes for the development of a pollution-free environment. At the same time, MNE staff were charged by the Office Director with translating the draft overall code into responsive French but it is unclear whether this was fully accomplished.

Full scale meetings on the draft law and on legal approaches to the new organ of government were held over several days. (Copies of the draft law for the environment (25 pages) and the new governmental entity (10 pages) were filed with MNE and AID/Tunisia.)

To that point then, the consultants had worked closely with MNE both on rationalizing existing Tunisian laws on the environment and in drafting possible new, more effective laws and approaches, and in participating in

the structuring of a possible new organ of government to assist in pollution control from planning and regulating, through financing. In addition, and beneficially, if not previously planned, the MNE Office Director had used Dr. Taubenfeld very much like in-house counsel to review "legal" matters, for example, the Ministry of Agriculture's approach to a comprehensive water pollution control law and to consult with him and seek advice on points of law and approach.

At the third major visit, in October, 1982, it was agreed by MNE and Dr. Taubenfeld that he would prepare a draft law covering all aspects of atmospheric pollution, wastes and noise for presentation by MNE to other Ministries no later than November 10. A single law was requested, though the areas of interest are somewhat disparate. An initial draft was discussed at length with M. Darmoul and clarifications of what MNE wanted were obtained- for example, the emphasis was to be on solid wastes rather than all waste products.

Thereafter, full-scale discussions ensued of the detailed draft-a precis of the draft had been prepared as well to facilitate interaction. The materials were discussed primarily with M. Darmoul although the Consultant was advised that M. Bel Gaid had reviewed the proposals in detail as well. The drafts were discussed in both French and English and seemed to be almost precisely what had been requested. With some agreed changes, embellishments, a few deletions and with translation (by MNE) into French, M. Darmoul indicated that the draft law would be offered at the meeting on the environment to be held on November 10, 1982. Thereafter, it was anticipated that other Ministries would offer comments, reviews and critiques to

be considered by MNE en route to eventual acceptance as law. The Consultant was told, in May, 1983, that the proposed law was duly proceeding through this process.

Rather than give a precis of this proposed general "enabling" law, covering all aspects of pollution control except control of water, the "avant-Propos," the precis, prepared for MNE is attached to this Report as is the draft law, the principal work product of this phase of this contract.

While, as stated at the outset, it was early agreed that the documented work products would constitute the final report of this phase of the legal assistance project, it seems appropriate to offer a few generalizations concerning the present and future of industrial pollution control through legal rules in Tunisia.

1. Under Tunisian law, the charge to MNE with respect to classification, rationalization, inspection and control of industrial establishments appears to be broad enough to permit effective control of industrial pollution.

2. Engineering experts suggest that a substantial amount of Tunisian industrial pollution is caused by management and establishment practises. These could presumably be improved, and pollution reduced or eliminated, with guidance and assistance. MNE is in the legal position to assist and insist; little or no new law is necessary in these instances.

3. Since pollution control under the existing Tunisian regime of division of ministries and responsibilities requires coordination and cooperation to be fully effective, an "enabling" or "umbrella" law, which states the goals and requires appropriate ministries to take appropriate action to eliminate or reduce sources of pollution in all aspects of Tunisian life would seem appropriate in the shortest time possible to permit effective, coordinated governmental action.

11

4. In all countries, cooperation is the necessary first approach to enhancing the quality of the environment. The existence of and enforcement of clear-cut, understood rules is, however, not merely the second step; it is extremely useful in creating the framework in which efforts at the cooperative approach are likely to succeed.

5. The discussion in Part **B**, of this Report, concerning the role of MNE and industrial security is directly relevant here as well as to powers, rights, and means of enforcement and is broadly incorporated here by reference.

The following materials were prepared for MNE and are part of the ongoing work product. Copies are attached to and made part of this Report although they are already on file at MNE and USAID/Tunisia.

1. Draft Law to Prevent and Control Environmental Pollutions from Discharges into the Atmosphere, Pollutions from Wastes, and Pollution by Noise;
2. Precis of "1" above;
3. Draft of a possible new government agency organization for Tunisia to help control and to assist in financing the control of pollution.

The following materials were prepared for MNE with copies on file at MNE and USAID/Tunisia:

1. Study of Sanctions and penalties in the United States used for Environmental Protection;
2. Analysis, Comments and Draft Sections, proposed water pollution decree (French and English draft). Comments keyed to draft;
3. Overview of U.S. Law and Approach to the Environment;
4. Draft "umbrella" law on the environment of Tunisia;
5. A variant draft ("Gaba draft") on number 4 above.

The following materials were delivered to MNE for reference and possible guidance:

1. Copy of all U.S. federal laws on the environment.
2. U.S. Code of Federal Regulations: Protection of the Environment (CFR 40), parts 400-424 (rev. to 7/1/81), parts 425 to end (rev. to 7/1/81), parts 53-80 (rev. to 7/1/81); Development Document, Textile Mills (1979); Development Document, Pulp, Paper, and Quality Criteria for Water (1976).

LAW ON POLLUTION OF THE ATMOSPHERE, ON WASTES, AND ON NOISE

Avant-Propos:

The aim of the law is to provide the enabling law under which appropriate Ministries and other public authorities can begin to prevent or ameliorate pollution from discharges into the atmosphere, from wastes, and from noise, consistent with the other needs of Tunisia as a developing economy.

The law has nine divisions:

I. Section I: Policy 1) gives the policy of the law: the prevention and control of pollution; 2) states that all pollution is subject to regulation; 3) provides that control will be achieved primarily by use of the best available technology and other controls determined by appropriate Ministries; 4) and limits all pollution to levels consistent with the public's health.

II. Definitions: This section defines, for purposes of this law, "pollutant", "pollution", "environment", and "sources of pollution". The definitions are broad.

III. Jurisdiction of Ministries: This section indicates which Ministries have initial jurisdiction over certain types of pollution and provides that the Ministries shall implement this law by evaluating and regulating all forms of pollution, with broad powers to do whatever is needed for these purposes.

IV. Special Requirements for Industrial Sources of Pollution: This section sets out the basic technique for the control of all forms of pollution from industrial sources. The approach used is to require that each source, in cooperation with MNE, create a plan which will identify pollution sources and types, will identify the best available technology and management

techniques to be used, and will indicate what levels of pollution will be achieved, with monitoring to see that these levels are not exceeded. Note: this approach provides for a cooperative venture between MNE and industry, since most industries are government-owned, with reasonable efforts to control pollution at the source, through use of technology and management, rather than by overall national standards which sources would be forced to try to attain.

V. Atmosphere: This section defines and bans, within limits, certain discharges into the air and places special responsibilities on MNE with respect to such discharges from industrial sources, including locating funding for pollution control technology.

VI. Wastes: This section defines wastes (following the language of France's laws) and provides for regulation and licencing of all waste disposal, toxic and non-toxic, on site and elsewhere.

VII. Noise: This section declares that excessive noise is a pollutant and provides 1) for control in and near industrial sites and 2) for regulation of other noise sources by appropriate authorities in all other places.

VIII. Penalties: The aim of this law is to induce cooperation in all aspects of pollution control. Nevertheless, this section lists penalties for violations.

IX. Final Clauses: This section preserves consistent prior laws and states again that pollution control is of high priority but also provides that, in special circumstances involving national defense or the national economy, these may temporarily be more important.

15

LOI No. _____ OU _____ 1982,

ON POLLUTION OF THE ATMOSPHERE, ON POLLUTION BY WASTES,
AND ON POLLUTION BY NOISE.

AU NOM DU PEUPLE,

NOUS, Habib Bourguiba, Président de la République Tunisienne,

L'Assemblée Nationale Ayant Adopté,

Promulguons la Loi dont la Teneur suit.

LAW to Prevent and Control Environmental Pollution from
Discharges into the Atmosphere, Pollution from Wastes,
and Pollution by Noise.

I. POLICY OF POLLUTION CONTROL

101. This law, and the decrees and regulations issued hereunder, govern the prevention and control of pollution and the improvement, conservation and restoration of the environment in the interest of all the people of Tunisia.

102. Regardless of their source of origin, all pollutants and the causes thereof are subject to prevention, regulation, control and prohibition by the Government. Pollution control shall, to the extent possible, be at the expense of the present or would-be pollutor.

103. All sources of pollution shall employ the best available pollution control technology and equipment and use the best management practices to minimize pollution of all aspects of the environment including pollution of the air, surface water, ground water, and land. Determination of the proper pollution control methods for a source of pollution shall be made by the appropriate Ministry or other public authority, consistent with the policy of prevention of pollution and the needs for national defense and for a developing economy. In no event shall the emission of gases, smoke, particles, odors, noise, wastes, or any other polluting material, reach higher levels

18

than is permissible by values protective of the public health or the integrity and safety of the environment in general and each affected neighborhood in particular.

II. GENERAL DEFINITIONS

201. For purposes of this law:

A. Pollutant means:

1. Any material or substance, or combination of materials and substances, or compounds, chemical or biological derivatives, including, but not limited to, smoke, dust, gas, ash, bacteria, residues, wastes, and any other substance which, in the air, water, or land, may alter or modify its natural characteristics or those of the environment;

2. Any form of energy such as heat, noise, or radioactivity, which, when discharged into the air, land, or water, may alter its normal state.

B. Pollution means:

The presence in the environment of one or more pollutants, or any combination of them, which injures or distrubs human life, health or welfare, or plants or animals, or degrades the quality of the air, water, land or the resources in general of the nation or of private persons.

C. Environment means:

The physical world, including air, ground water, surface water, and land, viewed as an interrelated whole.

D. Sources of Pollution means:

All man-made sources of pollution, except purely household activities, and includes:

1. Fixed sources, such as factories, boilers, shops, thermo electric plants, mines, refineries, chemical plants and any other source similar to those listed;

2. Mobile sources, such as aircraft, locomotives, ships, motorcycles, automobiles and similar vehicles,

3. Miscellaneous sources, such as incineration or open air burning, or other actions which cause or may cause pollution.

III. JURISDICTION OF MINISTRIES

301. Jurisdiction lies with the following Ministries for the fields mentioned for the implementation and enforcement of this law and for the decrees and regulations issued pursuant to its authority:

The Ministry of National Economy in all matters concerning the prevention or control of pollution caused by industrial or commercial activities, including the rationalization of industry, industrial practices, and industrial management to this end, and including pollution discharged into air and water, by toxic materials, wastes, and noise in this connection;

The Ministry of Agriculture, as provided by existing law and decrees, in all matters concerning the prevention and control of soil, animal, and crop pollution, and of water and air by pollution from agricultural sources;

The Ministry of Public Health in all matters concerning prevention of pollution and control of water used for municipal and related purposes, and for the beaches and other recreational resource areas;

The Ministry - - -

The Ministry - - -

22

Local and other authorities for regulation and control of pollution by noise in the municipalities other than that caused by industrial and commercial sources.

302. To the extent appropriate, and not already covered by existing decrees and regulations, the Ministries shall issue decrees and orders for the implementation of this law and its policy including, but not limited to, those necessary to:

a) locate, classify, and evaluate the types and sources of pollution, including the establishment of standards and technical processes to which emissions, discharges, deposits, transportation, and the control of pollutants in general, shall be subject;

b) regulate the transportation, composition, storage and use of fuels, solvents, additives and other products which, by their nature, cause or might cause pollution of the environment;

c) regulate vehicles and internal combustion engines for the same purpose;

d) regulate all waste matters produced in industry, agriculture, urban life and the like in the same manner and for the same purpose;

23

e) carry out, contract for and order the studies, works, or assignments, as well as establish long-term and interim measures needed for preventing environmental pollution;

f) create, with the approval of the Prime Minister, such subsidiary bodies and organizations as are deemed necessary, with such structures and powers as shall be assigned, in relation to the purpose of this law;

g) enforce the provisions of this law by such methods as, but not limited to, orders to desist for limited periods or permanently, orders to limit hours or types of activity or production, fines, and imprisonment.

303. All officers and employees of the Government and its agencies are authorities for carrying out these provisions. In each case of primary responsibility set forth above, the Ministry shall, before promulgating regulations, consult with any other Ministry having an interest in the subject matter of the regulations.

IV. SPECIAL REQUIREMENTS FOR INDUSTRIAL SOURCES OF POLLUTION

401. No industrial source classified as Class I or II under the laws of Tunisia, or any industrial source which the appropriate Ministry determines is or may be a significant source of pollution of any type, may operate without certification from the appropriate Ministry that it has complied with the requirements of this Law.

402. All industrial sources subject to this part must prepare, in cooperation with MNE and other appropriate Ministries, a plan for minimizing or preventing pollution from such sources. Each plan must contain at a minimum:

- (i) a characterization of the sources and amounts of pollutants which are or may be emitted by the source into the air, surface water, ground water, and land, including noise;
- (ii) the specific pollution control equipment the source will use to control pollution of the environment. Such equipment shall be the best available technology, which can be installed consistent with the policy of preventing or minimizing pollution of all aspects of the environment including air, surface water, ground water, and land, and the need for national defense and economic development;

25

- (iii) management techniques which the source will use to minimize or prevent pollution, including conservation and reuse of materials, maintenance of pollution control equipment, and operating practices which minimize the amounts of pollutants which may be emitted;
- (iv) the location of any site within the source which will be used for the disposal of solid wastes;
- (v) specified levels of pollution which the source will not exceed if the pollution control technology and management techniques are employed;
- (vi) a program of monitoring pollution on a periodic basis to determine if the levels of pollution specified in paragraph (ii) above are being exceeded.

26

POLLUTION BY DISCHARGE TO THE ATMOSPHERE, BY WASTES, BY NOISE

- SPECIAL PROVISIONS:

V. POLLUTION OF THE ATMOSPHERE

501. It is forbidden, except as otherwise provided, to discharge pollutants that can alter the atmosphere in a manner harmful to health and human life, to plants, animals, and to the resources or property of the State or of private persons. The discharge of pollutants into the atmosphere such as, but not limited to, dust, vapor, smoke, gas, radioactive materials and other such substances shall be subject to the regulations and rules set by the appropriate Ministries as defined by the general law and by this Law.

502. The appropriate Ministries, within the scope of their authority, shall determine, evaluate and supervise the location, installation and operating plans, the processes, the raw materials, the products and by-products for all those activities which cause or might cause atmospheric pollution. All affected parties shall furnish such Ministries with the requisite information and facilities.

503. In particular, the Ministry of National Economy, in carrying out its assigned role in licensing and controlling classified industries and others, and in pursuance of section IV of this Law shall:

- a) Include the question of pollution control in setting classifications and issuing permits;
- b) Include in Class I all industrial establishments where adequate pollution control is not presently attainable;
- c) Require that all establishments prepare the plan required by section IV: 402 of this Law;
- d) Develop a program by which existing classified establishments come into conformity with "c" above;
- e) Inspect establishments to see that the requirements of the accepted plan are continuously met.

504. The appropriate Ministries shall carry out programs aimed at investigating and evaluating the quality of air in areas deemed appropriate. Studies shall include the results both of man-made emissions and of natural phenomena such as soil erosion and desertification as well.

505. To carry out the provisions of this law, each appropriate Ministry may, with the concurrence of the Prime Minister, establish a research control, investigative and support unit of qualified professionals and support personnel to investigate potential sources of pollution, to monitor ongoing activities, to pass on requested permits, to make studies, to recommend appropriate technology and management practices, to locate and advise on sources of funds for pollution control equipment, and to do all other appropriate acts to further the aims of this law.

VI. SPECIAL PROVISIONS: WASTES

601. Definition Wastes:

For the present law, wastes are defined as all residues of processes of production, change or use, which are destined to be abandoned or discarded.

602. Persons concerned:

Any person or entity which produces or holds such waste materials, of a type which could produce harmful effects on the air, soil, flora or fauna or degrade sites by polluting air or water, or by creating odors or noise, or otherwise injuring the health of humans and the environment, must assure the elimination of the waste materials without these harmful effects.

603. Control of Wastes:

The appropriate Ministries will provide that the elimination of wastes, including the collection, transportation, holding and treatment needed to recover reusable materials, is accomplished without harm to the environment.

In particular, it is forbidden to discharge or deposit pollutants or to let them stand on the land or seep into the soil. Such discharges may be permitted in limited circumstances but only in accordance with licenses granted by appropriate Ministries as specified by this law and by other laws, decrees and regulations.

Licenses shall specify the technical standards required for the proper operation of collection, transportation, storage and deposit systems.

604. Industrial sources may dispose of wastes and other pollutants on site but only in accordance with a plan approved by the appropriate Ministry.

605. All other persons and entities seeking to dispose of wastes on land or elsewhere may do so only if authorized by license issued by the appropriate Ministry, as provided herein. Such license may be issued only if the disposal or deposit of pollutants will not cause pollution of the environment and such license may impose necessary requirements, such as the treatment of wastes prior to disposal and disposal in specified locations, to ensure that such pollution does not occur.

606. The appropriate Ministry shall limit, regulate, or, if proper, prohibit the use of such substances as pesticides, fertilizers, defoliant, radioactive materials, and others, when a use causes pollution or the accumulation of undesirable waste products.

607. Individuals, companies, municipalities, and any others who use or dispose of solid residues or waste materials shall do so only in conformity with regulations to be issued by appropriate Ministries and after the projects and installations have been approved by the responsible Ministry.

608. Solid residues, such as garbage and other refuse capable of producing pollution, which comes from public, domestic, industrial, agricultural and other uses, and which may accumulate on the soil or elsewhere, must be treated in such a way that they cause no:

- a) pollution of the soil or environment;
- b) undesirable alterations in the biological process of the soil;
- c) changes, disturbances or alterations in the use and exploitation of the soil or in the capacities of any and all waters or in the environment in general.

609. Industrial products capable of producing solid residues which, due to their nature are not subject to biodegradability, such as plastic, glass, aluminum and others, or which are especially hazardous, such as radioactive materials, shall be governed by special rules issued by the Ministry of National Economy after consultation with other appropriate Ministries.

610. Special Provision: Liquid Waste from Industrial Sources.
A source may discharge waste water into a municipal sewage treatment plant if the appropriate Ministry determines that:

- (i) discharge into the municipal sewage treatment plant will ensure adequate treatment of the industrial waste, and

- (ii) the municipal sewage treatment plant has adequate capacity to treat the industrial waste in addition to all other municipal waste. The appropriate Ministry may require that an industrial source pretreat its wastes prior to discharge to the municipal sewage treatment plant in order to prevent disruption of the sewage treatment plant, the discharge of untreated waste or the placement of pollutants in sewage sludge which makes such sludge unacceptable for agricultural or other uses.

VII. SPECIAL PROVISIONS: NOISE: ESTABLISHMENTS

701. The creation of excessive noise is a pollutant and has been determined to be detrimental to the health of workers and others subjected to it in excessive quantities.

702. For classified establishments, the Ministry of National Economy, in consultation with appropriate Ministries, will create standards for acceptable and for prohibited noise levels within and in the neighborhood of such establishments in order to protect the health of the workers and those in the vicinity and the peace and integrity of the environment by pollution from excessive noise.

703. The Ministry of National Economy shall require existing and new establishments to meet these standards by introduction and use of appropriate noise-reducing or noise-suppressing equipment and materials, by limiting worker exposure to irreducible noise levels, by requiring use of noise suppressing gear, including ear covers and the like, by improving management techniques, and by any other appropriate measures.

704. Measurements at establishments shall be periodically taken to assure that noise levels remain at acceptable levels over time. The best available technology will be required for proposed new establishments.

Other Sources:

705. Other sources of noise pollution also exist. Such sources of excessive and detrimental noise include, but are not limited to, aircraft and airports; machinery used in the open for street and other repairs, including tools, air compressors, and the like, construction machinery, vehicles, including on-street repairs, unusual horns, and faulty or non-existent mufflers, ventilators, factory whistles, loudspeakers, entertainment activities, and

33

occasional other activities, including the openair playing of radios, TV sets, musical instruments at excessive volume, street demonstrations, and the like.

706. The appropriate Ministries and civil and police authorities shall provide that such sources of detrimental pollution by noise are eliminated or reduced either by prohibition by appropriate rules or by regulating the times during which activities such as entertainment activities in the streets or the like may take place so that noise does not harm the health or well-being of the population.

VIII PENALTIES

801. The decrees and regulations to be issued by the appropriate Ministries shall specify the violations of law for which the following penalties may be imposed:

A. Fines, from _____ DR. to _____ DR.

B. Total or partial temporary seizure of the polluting source, plus fines.

C. Temporary or permanent closure of plants or establishments, plus fines

D. Imprisonment for wilful violators of 10 days to three months.

802. Prior to the imposition of Administrative penalties referred to in "801" above, the alleged offender has a right to a hearing before the responsible administrative body of the Ministry in question not less than _____ days before the date for imposition of the penalty, He shall receive the same treatment (written defense, evidence, oral argument, etc.) as in any other similar matter. Decisions shall be in writing and shall be given within _____ days after the hearing. Appeals in writing may be taken within _____ days thereafter to the Minister.

803. Pollution caused by purely domestic house hold activities shall not be subject to any penalty.

804. Any individual or group may direct the attention of the appropriate Ministry to any violation of the pollution laws and regulations which may then investigate the complaint and make a finding.

35

IX. GENERAL FINAL CLAUSES

901. The problems of pollution control and protection of the environment are considered to be of the highest priority. Nevertheless, in any case where the needs of National Defense or defense of the National Economy absolutely so require, the appropriate Ministry, after consultation with all other affected Ministries, and with the approval in writing of the Prime Minister, may suspend for a fixed limited period the application of all pollution control laws or a specific regulation to a particular establishment or to an industry. Such suspension of application shall be reviewed by the appropriate Ministry at 6 month intervals to determine if the suspension should be terminated.

902. All existing laws, decrees and regulation, especially

insofar as they are not inconsistent with this Law, are supplemental to this Law and are preserved in full force.

36

DRAFT PROPOSAL - NOT FOR GENERAL CIRCULATION

Agence [Institut, or Direction]
De L'Environnement

14 Juin 1982
H. J. Taubenfeld

In view of the fact that [Vu] the war against pollution has been declared a major priority of the Government and the People of Tunisia;

In view of the fact that the Ministry of the National Economy (MNE) is charged by law and decree with a major role in that fight in general and with the avoidance of pollution by industry, within industry, and from industrial sources in particular;

In view of the fact that MNE is charged with the duty of classifying industries and rationalizing their production, and controlling them for these purposes so that they do not cause pollution of the air, water or land of Tunisia and do not cause a deterioration of the environment;

In view of the fact that the MNE desires to create an entity which will especially assist industry in knowing and understanding its obligations to avoid pollution of the air, water and land of Tunisia and in meeting the obligation to be non-polluting in production;

In view of the fact that the MNE desires also to assist industry financially and in all other ways to rationalize and control its production methods so that they will contribute to the highest degree in the struggle against pollution;

Now, for all these purposes, the MNE creates, in close

affiliation with the Ministry, the Agence De L'Environment ---

From and after the date of its creation, the Agence shall have the following functions, rights, duties and structure:

I. FUNCTIONS:

1. The Agence shall guide industry to use the best available technology and techniques to avoid pollution and to control polluting products and by-products. On receipt of a request for a permit to create a classified industry, or even earlier, if a request for information is received at MNE, it shall consult with the proposed permittee to assure that the best available technology as well as the best siting, construction, and all other arrangements are included to avoid completely or to minimize, to the greatest degree possible, the dispersion of pollutants into the air, water and soil, and to avoid noise and other pollutants in and near the industry.

2. The Agence will suggest the best available pollution control equipment, machinery, devices and production methods and the best techniques for dealing with residual waste products and will assist industry to choose correctly.

3. The Agence will offer guidance to industry in obtaining financing of pollution control equipment, devices, and the like.

4. The Agence will offer financial assistance in appropriate cases for the obtaining of such equipment. [Compare Water Law,

Sects. 129, 130, 131].

5. The Agence will consult with the Director of the Office of _____ before the issuance of a permit to a classified industry to assure that the best possible control of pollution is provided for by the permit.

6. The Agence will establish regulations for industrial pollution, oversee their application, regulate classified industries generally, study the agreements under which classified industries function in order to lessen and eliminate adverse effects on the environment and will oversee the management of industrial zones for these same purposes.

7. The Agence will inspect all new classified establishments to observe that required anti-pollution equipment is in place and operating effectively and that required management policies to control pollution are being carried out.

[For the right to inspect,
see Labor Code, Art. 303]

8. The Agence will inspect all existing classified establishments and will suggest the installation of such equipment and management techniques as are needed to control all forms of pollution.

9. The Agence will make general and specific studies of industrial pollution in Tunisia and will make recommendations

and proposals to MNE for actions of any kind to reduce or eliminate industrial pollution. It will gather and dispense all relevant information on pollution control. It will also study the impact of industry on the environment and the effects of industrial pollution on air, water, land and on the ecology generally.

10. The Agence will make a detailed analysis and study in any case in which a classified establishment seeks to avoid application of pollution control laws or regulations on the grounds of the needs of national defense or the national economy, and will report its conclusions to the MNE.

11. The Agence will cooperate with all other Ministries, agencies, financial organizations, etc. to further the fight against pollution.

II. Other Rights and Duties:

12. The Agence will be financed by receipt of the fees and taxes assessed in the classification procedures for classified establishments, by taxes on classified establishments, by taxes, fees or charges levied on pollution, by receipt of fines assessed against polluters under applicable law, by funds received from the Government of Tunisia, by gifts, donations, contracts, grants and the like made by private persons, corporations, organizations, and governments in the furtherance of the lawful aims of this entity.

[On fees, payments and taxes, see
Labor Code, Arts. 312, 313, 314,
317, 318, 319; Decree 68-88, Sects.
1, 8]

13. The Agence shall have the right to visit and inspect all classified establishments at all reasonable times in the interest of the control of pollution and the rationalization of industry and management of industry and shall have the right to request and receive from all classified establishments any and all information in the form of reports, questionnaires or the like, that it needs to fulfill its purposes.

14. Failure to comply with requests for information or to permit inspection shall be the basis for proceedings and shall be punishable by fines and/or temporary or permanent closure of the establishment.

15. In the event of failure, after notice, or refusal by an establishment to take the steps requested by the Agence to eliminate or control pollution, the Agence shall issue notice to the offender of a proceeding, including proposed fines, closures, production limitations or other penalties, including imprisonment, and shall thereafter, if non-compliance continues, hold the required hearing, and shall assess such penalties as are provided by law. Appeals shall be, in the first instance, to the Minister of the National Economy.

41

[On initiating proceedings and on taking all necessary measures, see Labor Code, Arts. 304, 305, 306, 315 and Decree 68-88, Arts. 5, 9; on penalties, including fines and prison, see Labor Code Arts. 321, 322, 323, 324]

III. Structure:

This must be supplied by the technical experts at MNE. In addition to administrators and technical experts (engineers, scientists), I strongly recommend a financial/banking expert - an economist, perhaps, with practical knowledge of the banking community.