

## **Os obstáculos do licenciamento ambiental municipal - Análise das principais dificuldades e dos entraves existentes nos procedi- mentos de licenciamentos ambiental de competência dos municípios**

*Obstacles to municipal environmental licensing -  
Analysis of the main difficulties and obstacles in the environmental licensing procedures of  
municipalities*

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### **Resumo**

*O licenciamento ambiental constitui um dos principais instrumentos da Política Nacional de Meio Ambiente, principalmente pelo seu caráter de prevenção da significância dos danos ambientais. Após a edição da lei complementar nº 140/11, os municípios passaram a ter a competência explícita para licenciar os empreendimentos e atividades cujo impacto ambiental seja classificado como de âmbito local, desde que possuam órgão técnico capacitado e conselho municipal de meio ambiente. Após quase seis anos de vigência da referida lei complementar, verifica-se que grande parte dos municípios ainda não conseguiu implementar um sistema de licenciamento ambiental eficiente e eficaz, configurando-se como meros emissores de licenças ambientais. Os principais problemas encontrados no licenciamento ambiental municipal são tratados no presente trabalho, a saber: incongruências na definição de competência do órgão licenciador, as deficiências no arcabouço normativo, principalmente quanto às legislações de uso e ocupação do solo (zoneamentos), a baixa capacidade técnica e falta de independência dos órgãos ambientais municipais, a excessiva burocracia e o elevado tempo de tramitação dos processos, além da falta de transparência e de controle social. A análise desses obstáculos aponta para a necessidade de melhorias e mudanças efetivas nos sistemas municipais de meio ambiente, fazendo com que o licenciamento ambiental cumpra o papel de proteção da coletividade.*

**Palavras-chave:** *Licenciamento ambiental. Sistemas municipais de meio ambiente. Gestão ambiental municipal.*

### **Abstract**

*Environmental licensing is one of the main instruments of the National Environmental Policy, mainly due to its nature of prevention of the significance of environmental damages. After the enactment of complementary law no. 140/11, municipalities were given the explicit competence to license enterprises and activities whose environmental impact is classified as local, provided they have a qualified technical body and a municipal environmental council. After almost six years of enforcement of the aforementioned complementary law, it is verified that most municipalities have not yet been able to implement an efficient and effective environmental licensing system, configuring themselves as mere emitters of environmental licenses. The main problems encountered in municipal environmental licensing are addressed in this paper, such as inconsistencies in the definition of competence of the licensing body, deficiencies in the normative framework, mainly regarding legislation on land use and occupation (zoning), low technical capacity and Lack of independence of municipal environmental agencies, excessive bureaucracy and high processing time, as well as lack of transparency and social control. The analysis of these obstacles points to the need for improvements and effective changes in municipal environmental systems, making environmental licensing play the role of collective protection.*

**Keywords:** *Environmental licensing. Municipal environmental systems. Municipal environmental management.*

## 1 introduction

The National Environmental Policy in Brazil was instituted by Federal Law number 6938 of 1981, which defined as one of its instruments the environmental licensing and constituted the National System of Environment - SISNAMA. According to Marchesan (et al. 2013), the creation of SISNAMA in Brazil was strongly influenced by the United States of America and its National Environmental Protection Act of 1969. Its purpose is to establish a network of governmental agencies at various levels of the Federation aiming at ensuring mechanisms to efficiently implement the National Environmental Policy.

Environmental licensing, as an instrument of the National Environmental Policy, has a strong connection with SISNAMA, since the Constitution of the Federative Republic of Brazil of 1988 - CRFB / 88 defined as common competence of the Union, the States, the District Federal Government and the Municipalities to protect the environment against pollution in any of its forms, and this protection will be sought, among other ways, by the distribution of administrative actions of environmental licensing, where federal entities must work in an integrated and harmonious way, to avoid duplication of actions, or that activities with potential pollution are beyond the reach of state control.

Environmental licensing was defined by the Supplementary Law number 140 of 2011 - LC 140/11, as “the administrative procedure designed to license activities or enterprises that use environmental resources, considered as effective polluters or polluting potential or, in any form of, able of causing environmental degradation or causing it” (Article 2, I, LC 140/11). It is observed that the terms and concepts used in the legal definition of environmental licensing are abstract. There are several actions that can be interpreted as users of environment resources activities. The mere fact that a building occupies a physical space so far unoccupied, or covered by any type of vegetation, would characterize use of an environmental resource, such as the soil.

In addition, the definition does not only encompass activities classified as polluting in their operation, but all actions that may cause environmental degradation. In view of this abstraction, (FARIAS, 2015) understands that it is practically impossible to edit a rule establishing each of the specific cases in which there is an obligation of environmental licensing. CONAMA Resolution No. 237/97 provides list of examples of activities that may be subject to environmental licensing in order to guide environmental agencies, however, it is important to point out that this list brought by CONAMA, as well as others provided for in federal, state or municipal regulations, as a rule, has an exemplary and non-exhaustive character, that is, it will not exhaust the range of activities to be licensed.

## 2 The beginning of environmental licensing in Brazil

Despite being explicitly present in federal legislation only after 1981, with the publication of the National Environmental Policy - Law no. 6938/1981, some Brazilian states had already been executing environmental licensing since the 1970s. The states of Rio de Janeiro and São Paulo, mainly due to the pioneering of industrial activity, are examples of this practice. According to Sánchez (2008), state licensing in São Paulo and Rio de Janeiro applied to pollution sources, basically industrial activities and certain urban projects such as waste landfills and allotments. Oliveira (2005) stated that the State of Rio de Janeiro pioneered the regulation of environmental licensing through Decree-Law 134/75. Although present in the legislation of some states since the 1970s, environmental licensing was only treated systemically and applied to all entities of the federation after the edition of the National Environmental Policy.

### 2.1 The importance of environmental licensing in protecting the environment

The main objective of environmental licensing is to enable potentially polluting activities to be analyzed in advance by the licensing agencies to be compatible and adequate to protect the environment and, above all, to the interest of the community. Steigleder (2005) considered multifunctional environmental licensing, since it has the role of controlling polluting activities, imposing mitigating measures for environmental degradation which is about to be authorized and setting the tolerance limit for negative environmental impacts.

Any economic activity to be developed that interferes with the environment must respect the limits of tolerance imposed by the capacity of the environment to support the environmental impacts of the activity and it is through the environmental licensing that the interface between the entrepreneur and the State is given, ensuring compliance with the objectives proposed in the National Environmental Policy.

In a misleading way, whether due to the lack of knowledge on the part of the entrepreneur or the inefficient and distorted action of environmental agencies, environmental licensing has been treated as a kind of obstacle to economic activity, a barrier that must be overcome by receiving an environmental licensing. However, the objective of the environmental licensing procedure is extremely relevant because of its preventive character and because it is the materialization of the collective protection, when executed in an efficient and independent manner. Machado (2001) stated that the intervention of the Public Power in the professional life or in the activity of a company is only admissible by the Federal Constitution because of the general interest.

Therefore, it cannot be converted into mere issuance of a license, without further consideration or evaluation.

For the entrepreneur meeting the requirements and constraints imposed by the licensing body should not be seen only as an obstacle to be transposed. The Environmental Licensing Handbook of the Federal Court of Audit states that “complying with environmental legislation implies rationality, because when acting in accordance with the law, the entrepreneur is confident that he can manage his company’s planning in meeting the demands of its customers, without the possible problems of embargoes and paralysis, and to ensure that the probable environmental impacts of the ventures will be mitigated and compensated, also avoiding environmental crime or compromising the company’s performance in terms of productive capacity, due to delay the beginning of the operation of new ventures, in detriment of the image of the organization with the clientele.”

## 2.2 Municipal environmental licensing

LC 140/11 provides as one of the administrative actions of municipalities to promote the environmental licensing of activities or enterprises that cause or may cause local environmental impact, according to the typology defined by the respective State Environmental Councils, considering the size criteria, polluting potential and nature of the activity or located in conservation units established by the Municipality, except in Environmental Protection Areas (APAs).

From the definition of LC 140/11, it became easier to identify the types of activities to be licensed by the municipalities, although some aspects may be questioned, such as the linking of the definition of the typology of local environmental impact to the State Councils, which for some authors, would be a break in the autonomy of the municipality.

Another issue to be highlighted refers the criterion used by the legislator to define the municipality’s competence regarding environmental licensing. “The criteria defining competence in LC 140/11 are based on dominance (territorial sea, indigenous lands), monopoly of activity (nuclear), national security (military activities), APA), in the location and development of the activity and in the typology “(MARCHESAN *et al.*, 2013). However, the criterion of impact coverage was only maintained for interpretation of the local impact, defining the competence of municipalities. The maintenance of this criterion for the definition of municipal competence can be detrimental, since it opens the door to misinterpretations regarding the extent of impact, especially when the typology of local environmental impact is not well defined by the State Environmental Council.

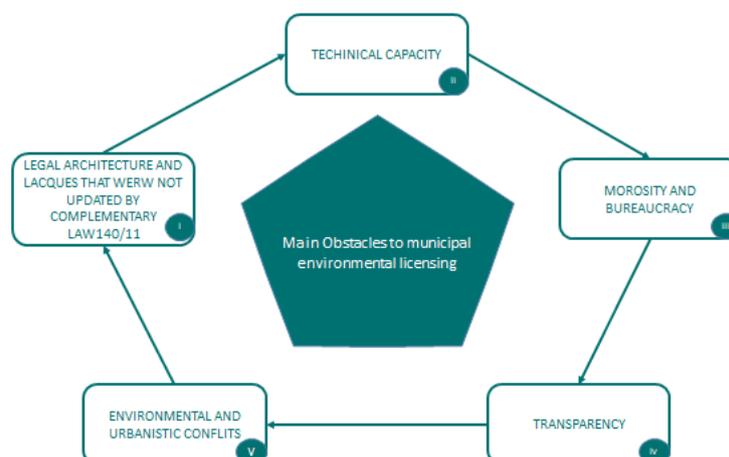
## 2.3 Objective

The objective of the present work was to carry out a survey and an analysis of the main obstacles still found in the municipal environmental licensing procedures. For this purpose, a set of relevant topics was selected to be analyzed and discussed independently. Even after the edition of Law Complementary 140/11, several obstacles hinder the effective implementation of a preventive system of environmental control in the municipalities, which should be provided by the licensing system. In addition to the issue of defining the legal competence for licensing, some important obstacles still have to be overcome in order to municipal environmental licensing be truly effective. The present paper selected a set of the main obstacles encountered in environmental licensing to be discussed and analyzed independently.

## 2.4 Metodology

The present work will support its analysis in 5 relevant themes, as shown in figure 1 below:

Figure 1 - Main obstacles in municipal environmental licensing. Source: Author’s elaboration.



It is hoped that the survey and analysis of the five main obstacles to municipal environmental licensing presented in figure 1 will facilitated the understanding of how municipal environmental agencies fall short of what the community expects and needs, in terms of institutional strengthening aimed at the control and prevention of environmental damage. The discussions of the five main themes raised is not intended to exhaust the list of difficulties encountered in municipal environmental licensing procedures, but rather to criticize relevant issues, which, although they do not exhaust the related problems to municipal environmental licensing, bring up relevant issues and obstacles found in most of the Brazilian municipalities.

### 3 Definition of Administrative competence in environmental matters

Since the CRFB/88 established that all federative entities (Union, States, Federal District and Municipalities) have common competence to protect the environment in all its forms, it is believed that the intention of the legislator was to entrust all entities with federative autonomy the mission of preserving the environment through an orderly, efficient and integrated effort in environmental protection and control actions. There is no procedure as dependent on this integrated action of federative entities as environmental licensing.

According to Farias (2015), “in the opinion of Paulo Bessa Antunes, the lack of a clear system of competence allocation was one of the most serious problems of Brazilian environmental legislation”. Indeed, sometimes two federative entities entered into litigation because one was competent to make the environmental licensing of an activity that was under the responsibility of the other. “

The sole paragraph of art. 23 of the CRFB / 88 established that “a complementary law shall establish rules for cooperation between the Union and the States, the Federal District and the Municipalities, in order to balance development and national well-being.” The present paragraph only came to be regulated with the edition of LC 140/11 and its main objective was to define the criteria to determine the typologies of undertakings and activities that each entity of the federation must license. The Union was the federative entity whose licensing competence was established more clearly and didactically by LC 140/11, using criteria such as the geographical location of the enterprise (located in Brazil and in a bordering country, in the territorial sea, continental shelf or EEZ, indigenous lands or protected areas established by the Union except APA); the monopoly of activity (nuclear) and national security (military enterprises)

It should be noted that the most significant change to define the Union’s licensing competence was the replacement of the criterion of environmental impact (brought by CONAMA Resolution 237/97) for the criterion of geographic location of the enterprise, which is much easier to be defined than that.

This change brought much greater security, given that sometimes the scope of the impact was not well defined or was only defined during the course of the licensing process.

In order to define the licensing powers of the States, LC 140/11 assigned to this entity of the federation the so-called residual competence, that is, any undertaking or activity that does not fall under the jurisdiction of the Union or of the Municipality. However, for activities located or developed in Conservation Units - UC established by the State, except APAs, the licensing competence is of the State, prevailing the criterion of the institution body of the UC.

According to art. 7 of LC 140/11, it is administrative competence of the Municipalities:

XIV - observing the attributions of the other federative entities provided for in this Complementary Law, to promote the environmental licensing of activities and enterprises:

a) that cause or may cause environmental impact of a local scope, according to the typology defined by the respective State Environmental Councils, considering the criteria of size, polluting potential and nature of the activity; or

b) located or developed in protected areas established by the Municipality, except for Environmental Protection Areas (APAs); (emphasis added)

Until the edition of LC 140/11, most of the time, the jurisdiction of the Municipalities was not recognized due to the absence of legal provision expressed in the Federal Law 6938/81 - Law of National Environmental Policy and because, before that law, the referred Complementary Law didn’t exist. This legal gap between 1988 and 2011 resulted in a scenario of high insecurity, being the Municipality the federal entity most impaired, since in fact, there was no federal law that had jurisdiction over its licensing competence.

In an attempt to solve this problem, CONAMA Resolution 237/97 included that environmental licensing would be federal, state and municipal competence, however, CONAMA extrapolated its function, which, no less important, is limited to the edition of normative administrative acts. Therefore, according to Farias (2015), regulatory administrative actions may not interfere in jurisdiction, especially when the Basic Law required the enactment of a complementary law.

On 11 December 2011, the long awaited LC 140/11 came into force. However, despite establishing the allocation of competences and defining criteria, was inadequate, mainly in the definition of municipal competence. The first criticism to be made is regarding the delegation of competence to the State Environmental Councils. Since LC 140/11 defined that it is the responsibility of the Municipalities to promote the environmental licensing of activities and enterprises that cause or may cause local environmental impact, according to the typology defined by the respective State Environmental Councils, in fact, the legislator

delegated to the State Councils the definition of the types of enterprises and activities to be licensed by the municipalities.

In other words, a federal law delegated attributions to an agency of the State Executive Branch to define the type of activities and enterprises to be licensed by the municipality (local environmental impact). It does not seem to be something that has come to facilitate the definition of competence and, moreover, disregarded the municipal competence given by CRFB / 88. Although the legislature has had the intention to contemplate the diverse local realities, or understood that some municipalities do not have technical structure and functional independence to define the activities to be licensed, which is still a reality, the terms of LC 140/11 were poor in several ways.

Another important aspect that deserves attention is the following: LC 140/11 used the criterion of geographical location of the activity or enterprise to define the Union's licensing competence, however, as a criterion for defining the licensing competence of municipalities, it continued to use the area of influence of environmental impacts, as previously defined by the Resolution No. 237/97 of CONAMA. The criterion of influence of impacts, as already mentioned and commented previously, brings even more insecurity, especially to municipal environmental agencies, which, as general rule, are less capable when compared to the federal agency.

An interesting idea brought by LC 140/11 was to establish conditions for municipalities to carry out environmental licensing. If the Municipality does not have adequate structure of material, equipment and qualified technical professionals, the municipal environmental licensing would be harmed and should be assumed by the state environmental agency through the supplementary action, foreseen in item II of art. 15 of LC 140/11. The problem is that the LC missed a great opportunity to set the minimum technical structure in terms of staff and material for the municipality to license.

The correct definition of the federal entity responsible for licensing is so important that, when performed in a wrong or incorrect way, it may render ineffective the acts practiced, and thus, all efforts on the part of the entrepreneur and the licensing body will have been in vain. In this line, Farias (2015) pointed out that "the correct observance of administrative competence in environmental matters is a prerequisite for the validity of the acts themselves ... since the environmental permit will be considered null if it has been processed by the administrative entity that is not competent".

#### 4 The deficiencies in the municipal environmental regulatory framework

Besides the administrative competence to carry out the municipal environmental licensing, the Municipalities also have legislative competence in environmental matters given by CRFB/88. Regarding environmental matters, the Union, the States and the Federal District have concurrent competence to legislate (Article 24, CRFB / 88), and the Union has the priority of legislating on general standards. The municipalities are responsible for legislating on environmental issues of predominant local interest, provided that they respect the general norms that have been issued by the Union or by the State.

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The Union's competence to establish general standards regarding environmental legislation does not mean that federal environmental standards should be generic and deprived of detail. It is allowed for the Union to legislate in a comprehensive manner on environmental matters, provided that it is intended to protect the common good

Mussetti (2002) emphasized the following aspect: "Given that the reason for being of environmental legislation is to ensure the protection of the environment, it is permissible for the Union to legislate in detail on a certain subject as if it were dealing with a general rule that it is seeking to safeguard the general interest ". This is a way to prevent states and municipalities from facilitating environmental degradation by legislating on the environment in a more permissive way; this finds solid foundation in the principles of precaution and prevention.

Mukai (2002) emphasizes that in environmental matters municipal and state legislation can not go against federal law, since municipal legislation will have to observe the valid general norms of the Union and of the States, and the States and the Federal District will have to observe necessarily the general norms edited by the Union. In other words, the municipality can never legislate in a less restrictive way in environmental matters; otherwise this legislation will be null and void.

It is still common to exist situations in which municipal legislation violates this principle and sometimes, this misrepresentation of municipal legislative competence generates high damages to the environment. As an example, we can mention the issue of Marginal Protection Bands - FMP. Since the "New Forest Code" of 2012 (Federal Law 12.651/12) established that the Marginal Protection Areas (FMPs) of rivers surrounding urban or rural areas, according to the (4) of Federal Law 12.651/12, it is the responsibility of States and Municipalities to respect these films and, if necessary, to supplement them more restrictively.

Despite being called again, the Forest Code of 2012 did not innovate in relation to the FMP, since the "Old Forest Code" (Federal Law No. 4.771/65) already made reference to the protection of river banks. Recalling the beginnings of Brazilian

environmental norms, we will see that the Decrees of the colonial period already referred to the protection of areas around water courses, making it clear that this environmental theme is as old as the lack of compliance.

There are cases of states and municipalities that, in addition to not respecting the footages of the FMPs provided for in Federal Law 12.651/12, still go so far as to publishing unconstitutional norms as Decrees, establishing less restrictive measures. In this line, we exemplify the nonconformities with Judgment No. 15.278-3, issued by the Third Civil Chamber of the Court of Justice of the State of Paraná, which ruled against the Appellate Court of 65.302-7 with respect to the applicability of art. 2 of Law 4,771 / 65, known as the Forest Code, before the New Code expires after 2012.

According to the TJPR: “Thus, any doubts about the application of the Forest Code in urban areas are clarified, since the Union, within the limits of its competence, established as a general rule to be applied indistinctly by all States of the Federation and its Municipalities, regardless of whether they are located in rural or urban areas, the measures specified in the article 2 of Law 4,771 / 65. The municipality of Curitiba can not publish a law that establishes rules less rigid than those established by federal or state laws, on the grounds that they would be legislating on matters of local interest - article 30, I, of the Federal Constitution. (Judgment nº 15.278-3, Third Civil Chamber of the Court of Justice of the State of Paraná, Appellant’s Appeal No. 65302-7, our italics).

We realized that a large part of the municipalities hasn’t yet considered the correct use of the environmental legislative competence determined by the 1988 Constitution. It would be salutary if the municipalities really did supplement the federal and state environmental norms, being at least as restrictive as they were able to adapt municipal environmental standards to local reality. These municipal norms, besides following these postulates, should be based on technical studies and environmental diagnoses that reflect the reality of each municipality, however, what is generally perceived are municipal laws that deviate from federal and state norms and in many cases are distorted and disfigured copies of several existing laws, providing an environment of high insecurity, mainly for the activity of environmental licensing.

## 5 Technical capacity and independence of municipal environmental agencies

According to LC 140/11, in the absence of a qualified environmental body or environmental council in the Municipality, the State must carry out the municipal administrative actions until its creation. Although it conveys two important ideas, LC 140/11 was wrong again, first because simply having environmental advice does not mean that it works properly. The collegiate bodies, at various levels of the federation, are important elements of SISNAMA. With the deliberative and / or consultative functions, the councils are the stage where representatives of the public power, organized civil society and the businessmen can participate in the decision-making process and follow the environmental licensing procedures. In addition to representing the various sectors of society, municipal environmental councils have the function of establishing environmental parameters to be met, mainly focused on pollution control and environmental degradation at the local level.

It happens that in many cases, municipal councils of environment are mock organs, with seats occupied by representatives whose purpose is to assert the interests of a small group, for the benefit of the community, and also for the autonomy of the federated bodies, there is no body with the function of overseeing the actions of the municipality’s environmental council and verifying that it actually performs functions effectively.

Secondly, on the question of the technical capacity of the municipal environmental agencies, LC 140/11 missed a great opportunity to define what would be a qualified technical body. According to most current legal and technical understandings, a technical body qualified to carry out environmental licensing would be one that has its own effective employees, whose attribution to perform the environmental licensing is provided for in law (competence), with compatible and diversified technical training, in an amount of employees consistent with the demand of the municipality and, in addition, the body must have an adequate structure for the actions of environmental control and inspection such as vehicles, measuring and georeferencing equipment, accredited laboratories for performing environmental analyzes, color printers, software with their own licenses, systems of digitalization and process control, among other tools aimed at environmental control and enforcement actions. Many municipal environmental agencies have suffered the effects of a run-down administrative political system, where public offices, which should be filled by public servants and technicians, are used as a bargaining chip with political backers and aligners.

According to André Zhouri, Klemes Laschefski and Ângela Paiva (2005), “the function of environmental licensing is to ensure that political decisions regarding the installation, location, expansion and operation of potentially or actually polluting activities fit within the regulations of society. Only in this way citizens will be protected from the consequences of decisions taken on the basis of political and non-technical criteria.” But the assertion of the above writers would only be true if the environmental agencies were occupied by independent technical servants, but how could they expect independence from occupiers of public office for transitional periods, appointed to positions in environmental organs by political partisan alignments? Certainly, even if these temporary servants were equipped with a high technical preparation, which often does not occur, the decisions taken would be aimed at favoring, or at least not against, the political interests of those who appointed them to those positions. This is the reason why tender admission and server stability is not just to protect the server. Going much further, it is a protective shield of society against the irresponsible politicians and their unconsequential actions.

## 6 Excessive delays and bureaucracy of municipal environmental agencies

It is not salutary that entrepreneurs and those responsible for activities that are subject to environmental licensing become hostages of the bureaucracy of environmental agencies. According to Machado (2001), “the Public Power, which raises environmental licensing fees, has the duty to structure the environmental body in such a way that there are agents, in adequate quantity and quality, capable of licensing, but also agents all means of carrying out the necessary analyzes and verifications .

Thus, it is not for the environmental agency to try to explain the slowness and excessive bureaucracy due to the lack of technical structure. According to Farias (2015) “bureaucracy and slowness are exactly the main criticism of private initiative licensing.” The bureaucracy presents itself in many ways, both due to the excess of documents and demands, and also because several of these requirements are not related to the nature of the activity and carried out by a professional without adequate preparation and without the legal and technical competence to analyze them.

The bureaucracy is also present, for the long and dark path that those responsible for environmental licensing must go through. In some cases, the municipal environmental agencies request from the environmental licensing authorities, documents and information to be provided by the municipal government itself, which could be suppressed or optimized, for example: if a fee is to be paid to the State Treasury Office so that the process can continue, it would be enough for the municipal government to have a digitized system, where the server of the environmental agency would consult in the system if the fee was paid, without the licensee having to go through the various steps such as issuing a guide collection of payment, pay the State Treasury Office in a public bank, printing proof of payment, taking a xerox copy of the voucher, obtaining the certification of signature in a notary's office, etc.

The steps mentioned in the previous paragraph are just some of many examples of inefficiency and excessive bureaucracy on the part of municipal environmental agencies, which makes the licensing procedures a tedious and difficult road, which often results in the discredit on the part of the collectivity, turns entrepreneurs off legality, for judging the licensing procedure almost impossible to be concluded and the origin of huge piles of paper. It is enough to analyze that most of the municipal environmental agencies do not have system of scanning and consultation of processes through Internet.

As for slowness, the main problem is the non-compliance with the deadlines for the grant or rejection of environmental licenses. Federal Decree No. 99.274/90 provides in art. 19 that “the deadlines for granting environmental licenses will be set by CONAMA, observing the technical nature of the activity”. According to Farias (2015), CONAMA's resolutions have the force of a general rule, in view of paragraph 1 of art. 24 of the CRFB / 88 and item I of art. 8 of Federal Law 6938/81.

The CONAMA Resolution No. 237 of 1997 stipulated, among other deadlines, a maximum of 6 months for issuance or rejection of the license by the environmental agency, from the protocol of application in the case of procedures without the need for EIA / RIMA and 12 months in cases in which EIA / RIMA are required. The caput of art. 14 of LC n ° 140/11 established that “the licensing agencies must observe the deadlines established for the conduct of the licensing processes”, thus maintaining the provisions of resolution 237/97 of CONAMA.

An important issue to be raised is that failure to comply with the deadline stipulated in a standard does not imply a tacit issuance of the license, but rather, the action of the environmental agency that has the supplementary jurisdiction, that is, if the municipal environmental agency does not meet the deadline stipulated for the issuance or rejection of a license, the state body would assume licensing on a supplementary basis. This legal provision is contained in paragraph 3 of art. 14 of LC # 140/11. It implies that in practice it is very likely that the Union is not prepared to take state licenses, nor the States to take municipal licensing, since all have difficulties in fulfilling their own obligations and, moreover, the entrepreneurs who have already lost years with processes in a federative entity, will not have the courage to start this “battle” again in another environmental body.

Stipulating supplementary competence as the only consequence in the inertia of environmental agencies, seems to have been more of a misconception of LC # 140/11, when in fact, managers of environmental agencies and when applicable, even servers, according to the proportion of their responsibilities, should be penalized for unjustified inertia in environmental licensing procedures.

Tarin (2005) pointed out that in Rio de Janeiro there are several potentially polluting activities in operation without proper licensing, and there have been lawsuits in the state environmental agency for more than four years, demonstrating that delinquency is not an exclusive prerogative of municipal agencies.

## 7 The lack of transparency in municipal environmental licensing procedures

The right to access information in Brazil was provided for in CRFB/88. However, the issue was only regulated in 2011, through Federal Law No. 12,527 / 11, known as the Access to Information Act. Pursuant to this law, all state bodies of the Union, of the States, of the DF (FEDERAL DISTRICT) and of the municipalities that are members of the direct or indirect administration and of all powers, must provide information on administrative procedures and manage information in a transparent manner.

In the case of SISNAMA's state bodies, in addition to a legal determination, the transparent management of information is

directly related to the right of all to the ecologically balanced environment. On the one hand, it is the right of every citizen to be informed of the environmental quality of their environment, as well as to obtain information about the details and effects of interventions in the environment. Regarding environmental licensing, with the exception of very few confidential information, transparency in procedures should be sought by the organs of SISNAMA and charged by the collectivity.

Environmental bodies, especially municipal ones, leave a lot to be desired in terms of transparency. It is still common in these bodies, little or no information about licensing procedures on official websites. The administrative licensing procedures are still carried out, as a rule, by physical means and without the possibility of consulting the technical opinions, requirements, deadlines for analysis, procedure, etc.

Several environmental licensing instruments, especially regarding activities with low environmental impact, could be carried out in a self-declaration by digital means, thus, there is a direct relationship between transparency in environmental licensing processes and reduction of bureaucracy, situations that would bring several advantages to municipalities, such as increase in revenues, considering that excessive bureaucracy and lack of transparency mean that those responsible for licensable activities do not seek formal licensing, not to mention the direct relationship between excessive bureaucracy, lack of transparency and corruption.

Due to the availability of norms, procedures, schedules, deadlines and requirements for licensing, municipal environmental agencies are expected to provide transparency, as well as to enable the environmental licensing officer and any citizen to obtain information on the procedures in progress in municipal environmental agencies, such as the date of entry and the dates of analysis, the studies required, reports and opinions issued, as well as the criteria adopted in each procedure for issuing environmental licenses.

## 8 The conflicts between urban and environmental licensing

Although they are directly related and interdependent, the environmental and urbanistic licenses have each one their respective purpose. Urban development license is required for all construction, use or land parceling. Since the municipality is the executor of the urban development policy, by art. 182 of the CRFB / 88, it is up to the municipalities to issue urban permits and the occupation license, also known as “*habite-se*”.

The environmental license is required for activities that are potentially polluting, or users of environmental resources, and thus have a wider scope, and it can not be denied that the urban license also has environmental control, since the artificial environment (URBANISTIC) integrates the broader concept of “environment” and has a direct relationship with the availability and quality of environmental resources.

Some authors, such as Garcez (2005) and Prestes (2002), have pointed to the fact that there is a mismatch between environmental and urban planning licenses. It has not been uncommon in cases of urban development projects that may be subject to environmental licensing, that the municipality issue the urban permit and deny the environmental license. This has occurred for several reasons, however, the main one is the following: the municipal environmental agency that is competent to issue environmental licenses, in general, does not work in an integrated manner with the Urbanism Secretariats or municipal bodies responsible for urban development licenses, that is, environmental and town planning licenses do not fall under the jurisdiction of the same body.

Due to a sad physiology in the public administration, the municipal organs have been divided and occupied by political parties and with this, reflect interests often contradictory, what prevents the integration between the public policies and processes, affecting the municipal administration.

According to Prestes (2002), “the environmental license and the urban license must be made compatible, so that neither is prioritized”. Garcez (2005) added that the compatibility of the environmental and urbanistic license should not be restricted to the format, but also to the content, for which the same author stated that the properties should be analyzed in all their interfaces, so that the types of buildings that can be adapted to the environmental situation of the area, which implies a joint study between the environmental body and the urban planning body, which, although they are different organs within the administration, is the legal entity of the municipality that will issue the environmental and urban development.

In order for urban and environmental licensing to be compatible, it is imperative that the land use and occupation Laws such as the Master Plans, the Regional Town Planning Plans and the Zoning Laws are updated, encompassing the entire area of action of the municipality and reflect the yearnings of the collectivity, and should be prepared and updated based on serious and reliable studies. It is still common to find municipalities in which these norms are non-existent, outdated and do not cover the entire municipal territory and when they are made, many are based on outdated data and reflect the yearnings of a small part of the population, such as the interests of the representatives of the real estate market.

According to Farias (2015), it's ideal that the environmental license is only required after the certificate of use and occupation of the soil, since the environmental viability also presupposes the correct adaptation to the artificial or urban environment. In this sense, Resolution No. 237/97 of CONAMA states that “in the environmental licensing procedure, it shall compulsorily include the City Hall's certificate stating that the place and type of enterprise or activity is in compliance with the applicable legislation of use and occupation of the soil “. (emphasis added).

Farias (2015) also pointed out that “only in a small part of the cases in which the urban license is granted is that the envi-

ronmental license is required, and in those situations the right to build only actually exists with the concession of the competent environmental license, therefore, the prior or installation license can modify the project in such a way that the urban license has to be adapted or revised. This is the reason why the first one (installation license) must be granted after that (urban license)".

For the community, which the Municipal Government must serve and not the other way round, it does not matter if the licenses are issued by the same organ or by different organs, what the community expects and needs is that the municipal bodies are coherent and careful in procedures for issuing licenses, whether urban or environmental.

## 9 Conclusions

After analyzing the main obstacles encountered in municipal environmental licensing procedures, we realize that there is still much to be discussed and solved, so that environmental licensing in municipalities can fulfill the important role of preventing and mitigating negative environmental impacts. Despite the publication of the much awaited Complementary Law No. 140/11, some gaps were not fulfilled, such as the difficulty in defining the projects to be licensed by the municipalities, mainly due to the maintenance of the criterion of impact coverage and the fact that the State Environmental Councils have been given the competence to stipulate the projects whose impact is local, thus removing the attribution given to the municipality by the CRFB itself.

Municipalities, for the majority, do not have a robust environmental legal framework and municipal environmental laws are often considered unconstitutional because they are less restrictive than Federal and State regulations. They are also common, municipal environmental standards made without diagnosis and local studies, being redundant and inconvenient.

As for the technical capacity of municipal environmental agencies, the situation is also equally bad. The Municipal Secretariats of the Environment have been handed over to political parties, the result of a system that has transformed public management into political party management based on physiology; rare are the environmental agencies that have technical staff composed of permanent employees and with independence to apply the legal and technical requirements of the licensing. In this same line, municipal environmental agencies lack minimum structure of operation such as vehicles, analysis and measurement equipment, accredited laboratories, etc.

The degradation of municipal public administrations, which have used administrative bodies as the "exchange", is the cause of conflicts between environmental and urban licensing. Organs that should work together and aligned usually enter into conflicts of interests, damaging the community, when in fact, both the environmental and urbanistic licenses have the same purpose, which is the limitation of the right to use the soil for the environment balanced in all aspects (artificial or natural).

Delays and excessive bureaucracy are still a hallmark in municipal licensing processes, generating disbelief in the process and reinforcing the mistaken view that environmental licensing is an obstacle to be transposed by the entrepreneur. Environmental licensing procedures have become a near-scrutiny procedure, avoiding analyzes related to the quality of the environment, the diagnosis of impacts and mitigating measures, or other relevant issue for environmental licensing. The deeds, fees, declarations, certificates, contracts, and other documents that should have been instrumental in the process, have become the main actors.

Reducing bureaucracy is a goal that must be achieved, not only through process optimization, but also by investing in improving public transparency, which is so important in environmental licensing procedures.

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