

## FINAL

### RUSSIAN ENVIRONMENTAL LAW – AN OVERVIEW FOR BUSINESSES

Daria N. Ratsiborinskaya<sup>1</sup>

Russia has carried out major environmental policy reforms during its transition period since the early 1990s, including with respect to global issues such as climate change, loss of biodiversity and ozone layer depletion. In view of these changes, this chapter provides a brief overview of current (and forthcoming) Russian environmental law as applicable to businesses operating in Russia. By touching upon the main difficulties that investors may face, e.g., environmental charges and fines, implementation of the Environmental Impact Assessment (EIA) procedure, this chapter may assist businesses to seek out and share experiences of best practices, provide innovative policy advice, as well as meet the challenges in the implementation and enforcement of Russian legislation and policies.

In addition, this chapter analyses and investigates (i) economic and administrative enforcement instruments, (ii) institutional arrangements, (iii) the Russian system of environmental compliance control, and (iv) new strategies which have been developed to protect the environment in Russia, ranging from the ‘end-of-pipe’ approach to pollution prevention strategies (through new technical regulation, best available techniques and ‘cleaner production’ methodology).

#### Environmental problems in Russia

In many respects, Russia is a major net contributor to European and global environmental quality. 65% of Russia’s territory has not been affected by economic activity and huge geographical areas remain virtually undisturbed by man. Russia contains 20% of global water resources and 22% of global forests.<sup>2</sup> Thus, the conservation of these immense environmental assets is a key concern.

Although both the government and businesses are increasingly taking steps to protect the environment, Russia continues to face immense environmental challenges. According to Russian official sources, the environmental situation typical of densely populated urban and industrial areas (constituting 10-15% of the country’s territory) is ‘alarming’. For example:<sup>3</sup>

- municipal water supply is unreliable in many cities, with threats of water pollution, including severe contamination by heavy metals. One-third of all

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<sup>1</sup> Staff lecturer at Erasmus University of Rotterdam (section of European law) and Associate Researcher at the Asser Institute.

Statements made in this chapter do not constitute or purport to constitute legal advice.

<sup>2</sup> OECD, *Environmental Performance Reviews: Russian Federation* (Paris, OECD 1999) p. 3.

<sup>3</sup> Ministry of Natural Resources, *Государственный доклад ‘О Состоянии и Охране Окружающей Среды Российской Федерации в 2003 году’* [State Report ‘On Condition and Protection of Environment of Russian Federation in 2003’] (2005) p. 83.

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- water pipes and 17% of sewage pipes urgently need replacement, and waste is exceeding the capacity of sewage pipes by 60%;
- systems of industrial and domestic waste handling are inadequate in Moscow and other cities. 1.8 billion tons of toxic waste have accumulated and this increases annually by 108 million tons;
  - industrial and vehicle emissions cause severe air pollution in many cities;
  - chemical and oil pollution of soil is characteristic to the Northern Caucasus, Kurgan, Irkutsk, the Cheliabinsk regions, the Volga basin and Western Siberia. The condition of soil (and land, generally) is unsatisfactory and critical in these regions due to soil erosion, decline in humus content, desertification and flooding, salination and nitrification, and pollution by pesticides, heavy metals and radionuclides;<sup>4</sup>
  - the health situation in Russia is also considered a matter of deep concern. Diseases and poisoning from heavy metals and other toxic materials are a significant factor in the decline in life expectancy, which for men is now said to be only 58 years.<sup>5</sup> On current trends, the population in Russia is expected to decline from 140 million today, to 135 million by 2015 and 100 million by 2050;<sup>6</sup>
  - the potential for energy savings in Russia is vast. For example, the potential for energy-efficiency gains is estimated at 400m toe (compared with annual natural gas production of 490m toe);<sup>7</sup>
  - Oil companies in Russia spill some 20 million tonnes of oil each year (5% of total extraction).<sup>8</sup> In comparison, the entire spillage of crude oil into Alaskan waters as a result of the Exxon Valdez spillage in 1989 would be less than a day's spillage in the Russian countryside.<sup>9</sup> It is noted that Russian environmental law provides that the company which causes an oil spillage must undertake all works relating to the clean-up of an ecological (pollution) incident.

Many of the above problems have a transboundary or global dimension. For example, Russia accounts for 7% of world carbon dioxide emissions for 1% of gross

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<sup>4</sup> Country Profile of Russian Federation to the UN Commission on Sustainable Development, 1997.

<sup>5</sup> Commission of European Communities Country Strategy Paper 2002-2006, National Indicative Programme 2002-2003, Russian Federation (27 December 2001).

<sup>6</sup> Russian Ministry of Natural Resources, Государственный доклад 'О Состоянии и Охране Окружающей Среды Российской Федерации в 2003 году' [State Report 'On Condition and Protection of Environment of Russian Federation in 2003'] (2005) p. 83.

<sup>7</sup> Organization for Economic Cooperation and Development, Environmental Performance Reviews: Russian Federation (Paris, OECD 1999) p. 6.

<sup>8</sup> Communication from the Commission on EU-Russia environmental cooperation of 17 December 2001 [COM (2001)772 final - Not published in the *Official Journal*], p. 4.

<sup>9</sup> Oleg Mitvol, Deputy Director of the Russian federal service managing the oversight of natural resources (Rosprirodnadzor) said in a recent interview that 'spills of oil and other oil products take place almost every two weeks' [in Russia], RBC Daily Russian news agency reported, see as reported at <<http://www.bellona.no/en/energy/39771.html>>. Yet, according to the Bellona Foundation, Russian officials do not have the statistics available that would help evaluate the scale of the oil leakage and spillage problems in Russia.

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domestic product (GDP).<sup>10</sup> Other, more regional dimensions of Russian environmental issues relate to the need to reduce pollution in the Baltic, Caspian and Black Seas, which requires joint action by Russia and its neighbours. Furthermore, control of air pollution, chemicals and hazardous waste, including spent nuclear fuel and radioactive waste, also require close co-operation with Russia's neighbours and other nations and stand to offer important mutual benefits.<sup>11</sup>

### **Russian economy and the environment in context**

In the past five years, the Russian economy has grown at an annual rate of above 7%, except in 2005, when the Russian GDP expanded by 6.4%.<sup>12</sup> In 2006, Russia's GDP grew by 7.4%,<sup>13</sup> whereas according to Russia's State Statistics Service, Russia's GDP grew 8.1% in 2007. Industrial output increased by some 17% in the same period.<sup>14</sup> This economic growth has been accompanied by increased environmental degradation. Thus, with the recent global economic decline since late 2008, pollution levels have declined, but these are expected to increase again as the economy recovers and starts to expand again.

Pressures on the State budget have, however, led to constraints on funding for environmental policy, institutions and enforcement. Sovereign guarantees for environmental loans have been unavailable for several years.<sup>15</sup>

The rate of public and private investment in environmental projects is critically low. Massive technological and management modernisation is needed – including in environmental technology, much of which will need to come from abroad. Thus, there are many opportunities for (technically orientated and other) international businesses interested in investing in environmental projects in Russia, or projects, which contain 'environmental' elements. Although it is growing, foreign direct investment (FDI) in Russia remains rather low compared to other emerging economies. For example, FDI in Russia between 1991-1999 amounted to about Euro 23 billion (compared to Euro 36 billion in Poland or Euro 340 billion in China).<sup>16</sup>

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<sup>10</sup> Communication from the Commission on EU-Russia environmental cooperation of 17 December 2001 [COM (2001)772 final - Not published in the *Official Journal*], p. 4.

<sup>11</sup> For example, a recent study estimated that the benefits to non-EU countries (notably Russia, Belarus and Ukraine) from actions by the EU candidate countries to meet the requirements of EU directives would be at least EURO 9.5 billion a year, see ECOTEC et al., *Benefits of Compliance with EU environmental acquis for the candidate countries* (2001).

<sup>12</sup> See also Chapter 1 (*Hansen*), for an overview of the Russia economy.

<sup>13</sup> Source: Deputy Economics Minister Andrei Belousov, *RIA News Agency*, 21 February 2008. <<http://en.rian.ru/russia/20080221/99794450.html>>.

<sup>14</sup> See also Chapter 1 (*Hansen*), for more detail on the Russian economy.

<sup>15</sup> Communication from the Commission on EU-Russia environmental cooperation of 17 December 2001 [COM (2001)772 final - Not published in the *Official Journal*].

<sup>16</sup> Communication from the Commission on EU-Russia environmental cooperation of 17 December 2001 [COM (2001)772 final - Not published in the *Official Journal*] It is noted that the EU is by far Russia's main trading partner and accounts for about one third of Russia's imports and exports. This figure could increase up to 50% after the recent EU enlargement. Russia has a large trade surplus with the EU. Russian energy supplies are particularly important for both Russia and the EU. 53% of Russia's oil exports and 62% of natural gas exports go to the EU. This represents 16% of EU oil and

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Although the economic situation in Russia has not enhanced the improvement of Russia's environmental performance, legal certainty, as well as the implementation (and enforcement) of environmental legislation still needs to be optimised. Nevertheless, provided that the recent improvement of the general macro- and micro-economic conditions (including the current reform of natural monopolies) continues, there will be growing opportunities for businesses, which are interested in environmental investments in areas such as:<sup>17</sup>

- water and other municipal services
- energy efficiency
- reductions of GHG emissions

In addition, there are likely to be increasing opportunities as a result of new economic instruments and due to the continued harmonisation and approximation of environmental standards, norms and legislation.

### **Russian institutions and judicial system**

For businesses to fully understand Russian environmental law, being familiar with Russian institutions (relevant to environmental issues) and with the Russian judicial system is key. The implementation and enforcement of Russian environmental laws (and, of course, other laws relating to businesses' activities) are strongly determined by the responsible institutions, the Russian legal system, and, more generally, the rule of law. The below provides a very broad-brush overview of both the institutional and judicial system currently prevailing in Russia.

#### ***Institutions***

It is well documented that the Russian Federation is a presidential republic, which was founded in 1991 following the collapse of the USSR. According to the Russian Constitution, adopted by way of referendum on 12 December 1993, the Russian Federation contains 89 subjects (or 'Regions'), including 21 republics, 49 areas, 6 territories, 11 autonomous Regions, and also cities of federal significance – Moscow and Saint Petersburg. Constituents of the Federation are devised into 7 federal districts which have no legislative authorities, but administer the Regions. Constituents of the Federation are subdivided into districts and municipalities.

The essential role of the federal government is to develop federal policy, strategy, legislation and the legal base to be introduced as directly applicable within

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19% of EU gas consumption. This expanding trading relationship offers incentives for harmonising environmental standards.

<sup>17</sup> Analytical data according to RosBusinessConsulting, <www.rbc.ru> (4 February 2005). It is noted that a recent study estimated that the benefits to non-EU countries (notably Russia, Belarus and Ukraine) from actions by the EU candidate countries to meet the requirements of EU directives would be at least Euro 9.5 billion *per annum*.

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the entire territory of the Russian Federation.<sup>18</sup> Federal authorities must exercise direct regulation and control only in cases when the main interregional and international questions need resolving, for example, relating to the construction of a transnational pipeline, transboundary waste shipment, and so forth.

The following barriers at times hamper the effective distribution of governmental responsibilities:

- similar functions are carried out at different levels that results in duplication of functions;
- there is no clarity regarding the distribution of responsibilities, which can result in unpredictable ‘freedom of interpretation’;
- constituents of the Russian Federation are accorded tasks which exceed their responsibilities.

### *Environmental institutions in Russia*

The Ministry of Natural Resources and Ecology (MNR)<sup>19</sup> is the key governmental authority responsible for environmental protection and natural resources. According to a governmental resolution of July 2004,<sup>20</sup> the responsibilities and functions of the MNR include:<sup>21</sup>

- state policy formulation and normative and legal regulation in the sphere of the study, renewal, and conservation of natural resources, including management of the State subsoil stock and forestry;
- the use and conservation of the inventory of water resources; the use, conservation, and protection of the stock of wooded forests and reproduction;
- operation and safety of multipurpose reservoirs and water-resources systems, protecting and other hydraulic structures (except navigation hydraulic facilities);
- the use of wildlife resources and their habitat (except wildlife resources assigned to hunting resources);
- specially protected natural areas, as well as in the sphere of environmental conservation (except the sphere of ecological supervision).

The MNR has the right to issue environmental permits and to bring draft environmental laws and regulations before the State Duma (which is the second Chamber of Russian Parliament). MNR comprises 5 federal agencies: (i) the Federal Nature Management Supervision Service, (ii) the Federal Subsoil Use Agency, (iii) the Federal Service on Ecological, Technological, and Atomic supervision, (iv) the

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<sup>18</sup> According to Art. 71 of the Constitution, the establishment of federal policy principles and federal programmes on the environmental development of the Russian Federation, defence and safety, as well as issues surrounding the generation of hazardous substances are under the exclusive jurisdiction of the Russian Federation.

<sup>19</sup> See <<http://www.mnr.gov.ru/part/?pid=398>>.

<sup>20</sup> Resolution of the Government of the Russian Federation No. 370, dated 22 July 2004.

<sup>21</sup> *Ibid.*, p. 1.

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Federal Water Resources Agency and (v) the Federal Service for Hydrometeorology and Environmental Monitoring. The structure of MNR includes:

- *at the federal level*: departments (UPRs)
- *at the regional level*: central departments of MNR (GUPRs)
- *at the municipal level*: authorized representatives of MNR branches.

Other federal institutions, which are responsible for environmental regulation, are:

- **Ministry of Public Health and Social Development**,<sup>22</sup> develops norms relating to health protection based on four levels of toxicological danger of waste. This ministry is also responsible for the protection of labour and hygienic issues.
- **Ministry of Industry and Trade**,<sup>23</sup> which comprises, amongst others, the Federal Agency on Energy and the Federal Agency on Technical Regulation and Meteorology.<sup>24</sup>
- **Ministry of Agriculture**,<sup>25</sup> which consists of the Federal Veterinary Supervision and the Federal Agency on Forestry<sup>26</sup>.
- **Ministry of Finance (Minfin)**<sup>27</sup>.
- **Ministry of Economic Development of Russian Federation**<sup>28</sup> (MED), comprising amongst other agencies, a Federal Agency for Management of Special Economic Zones<sup>29</sup> and a Russian Federal Property Fund<sup>30</sup>.
- **Ministry of Energy**.<sup>31</sup>
- **Federal Service on Ecological, Technological and Atomic Surveillance** (which is accountable to the MNR).<sup>32</sup>
- The Regional prosecution departments specialized in environmental protection make part of the **Public Prosecution Department**<sup>33</sup> and are also involved in enforcing environmental law.

After the abolition of environmental funds (in 2000),<sup>34</sup> Minfin took on the responsibility of distributing revenues (to stakeholders involved in nature-use and nature protection) earned from environmental taxes imposed by the Federal Treasury. Minfin comprises, amongst others, the Federal Tax Service, which is responsible for

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<sup>22</sup> See <<http://www.minzdravsoc.ru>>.

<sup>23</sup> See <<http://www.minprom.gov.ru>>.

<sup>24</sup> See <<http://www.minprom.gov.ru>>.

<sup>25</sup> See <<http://www.mcx.ru>>.

<sup>26</sup> See <<http://www.rosleshoz.gov.ru>>.

<sup>27</sup> See <<http://www.minfin.ru>>.

<sup>28</sup> See <<http://www.economy.gov.ru>>.

<sup>29</sup> See <<http://eng.www.rossoez.ru>>.

<sup>30</sup> See <<http://www.fpf.ru/eng/>>.

<sup>31</sup> See <<http://minenergo.com/>>. (Note, website address is subject to change).

<sup>32</sup> See <<http://www.gosnadzor.ru>>.

<sup>33</sup> See <<http://eng.genproc.gov.ru/>>.

<sup>34</sup> Federal and regional budgetary resources deemed to be spent on environmental needs were allocated in so-called environmental funds, which, until 2000, were part of the budget structure in every region of the Russian Federation.

the collection of environmental taxes. As the structure of an ‘environmental tax’ is not yet fully established, the scheme which was formerly used for the collection of environmental payments is still employed in most of the Regions.

When discussing environmental regulation, it is crucial to highlight the importance of the main law-making institution in Russia: the *State Duma*. The Duma is a parliamentary body and the lower chamber of the Federal Assembly (Parliament). It comprises, amongst others, the Committee on Natural Resources and Ecology, which is mainly concerned with lawmaking. Unfortunately, cooperation between the Duma and the executive authorities is very often low-effective or even on the brink of conflict. From a business point of view, this decreases legal certainty, as well as makes environmental lobbying a very complicated enterprise.

The essential role of federal government is to develop federal policy, strategy, legislation and the legal base to be introduced and directly applicable within the entire territory of the Russian Federation. Federal authorities must exercise direct regulation and control only in cases when main interregional and international questions need solving, for example, relating to the construction of a transnational pipeline or, transboundary waste shipment.

### ***Regional level***

The procedures relating to the distribution of power between the federal and regional authorities is currently being developed. In this respect, the Specialised Commission for Power Distribution,<sup>35</sup> which develops proposals for distinct distribution of responsibilities, was established under the Presidential Administration.

While the MNR plays the central role in context of Russian environmental law, the determination of environmental policy, control and coordination functions over its territorial branches, State policy at the regional level is carried out by the relevant Regional Duma and Regional Administration. Their responsibilities as regards environmental regulation are set out in regional legislation and are based on the Constitution.<sup>36</sup> According to Article 76 paragraph 5 of the Constitution, laws and other normative acts of the subjects (i.e., the Regions) of the Russian Federation cannot contradict federal laws. In case of contradiction, federal law is deemed to prevail.

### ***Municipal regulation***

Each municipality within the Regions is free to choose the means by which to implement environmental regulations. Municipalities are responsible for waste management on their territory. The key environmental authority at this level is the administration of the relevant municipality. This gives some room for manoeuvre for national and foreign investors.

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<sup>35</sup> *Государственная комиссия по вопросам разграничения полномочий между уровнями государственного управления.*

<sup>36</sup> Para. 2, Art. 78 of the Constitution of the Russian Federation reads: ‘Federal executive authorities under agreement with executive authorities of the Russian Federation constituents can delegate them a part of their responsibilities if it does not contradict the Constitution of the Russian Federation and federal laws.’

## Judicial and arbitration practices

The high-level judicial bodies, such as the Supreme Court (*Верховный Суд*) or the higher arbitration court,<sup>37</sup> participate in the environmental regulatory process by issuing instructions and ‘informational letters’ (*информационные письма*), which interpret legislative provisions, and by way of enacting decrees. In certain cases, informational letters summarize the judicial practice, which then create judicial precedents.<sup>38</sup> Such informational letters have advisory force only and are addressed to the lower courts. In Russian legal theory, some authors argue that due to their advisory character, such decrees may not be recognized as sources of law.<sup>39</sup> In any event, when describing the Russian legal system, it is not permitted to omit information on judicial activities in the environmental area, as such information provides interpretation of legislative provisions, helps avoid contradictions amongst such provisions and fills in the legislative gaps. Despite the advisory character of the above-mentioned instructions, the lower courts tend to follow the regulatory decisions of higher courts.

With regard to environmental law, the Plenum of the Supreme Court issued a Decree on the Practice of Judicial Enforcement of the Legislation on Environmental Liabilities.<sup>40</sup> This decree aims to ensure the correct and uniform application of environmental liabilities legislation. The document also points at the high level of threat to society emanating from environmental offences, and instructs the courts to make a deep and a comprehensive study of a given committed offence. In particular, the decree requires courts to provide explanations on the serious consequences of the offence, as well as on what is to be understood by ‘moral damage’ caused by the offence.

The Supreme Court also provides periodical analyses of judicial practice in the settlement of environmental disputes and in taking liability measures against environmental offences. Thereafter, it publishes surveys in the ‘Bulletin of the Supreme Court of the Russian Federation’, a publication intended mainly for lawyers.

Procurators’ offices (*Prokuratura*) are empowered to generally supervise compliance with legislation. They play an important role in combating environmental offences. There are currently 66 specialized procurators’ offices, which were set up some 20 years ago and which have by now gained good experience in uncovering environmental offences and punishing offenders by applying existing procedures.

Any proceedings which relate to economic disputes, which have environmental consequences are evaluated, coordinated and analyzed by the Higher

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<sup>37</sup> I.e., which are the commercial courts (not to be confused with arbitration tribunals).

<sup>38</sup> It is noted that the Russian Federation has a civil law system, which means that officially courts are not legally bound to apply judicial precedents.

<sup>39</sup> O. Kolbasov and I. Krasnova, *Russian Federation*, International Encyclopaedia of Laws (London, Kluwer Law International 2003) p. 42.

<sup>40</sup> Dated 5 November 1998, *О практике применения судами законодательства об ответственности за экологические правонарушения*.



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Arbitration Court of the Russian Federation.<sup>41</sup> The Higher Arbitration Court regularly issues decisions instructing regional arbitration courts on questions of the adequate settlement of claims relating to compensation for property damage inflicted due to the violation of environmental legislation, as committed by legal persons (including organizations, institutions and enterprises). Such decisions are often issued as ‘letters’ of the Higher Arbitration Court.

### *Appeals*

Enterprises can appeal the government bodies’ decisions in any case when they believe their interests are affected. For example, the *Law on Ecological Expertise* provides for a possibility to challenge the results of an expertise (Art. 18 Para. 8).

All cases are reviewed by a court of general jurisdiction, except for cases which have an economic interest at stake. Thus, arbitrary courts can review, amongst other matters, industries’ appeals against licence/permit refusals. Currently, the Law on Arbitrary Procedures is being drafted by the State Duma, which may bring further changes to the appeals procedure. Neighbouring enterprises and other government authorities can also be involved in the process in different ways: as co-plaintiffs, co-defendants or third parties (if recognized by the court).

Private parties can challenge the government bodies’ decisions on licence / permit issue or refusal if such decisions constitute a breach of citizens’ constitutional rights. A remarkable recent case to illustrate this is the case of *Nadezhda Fadeyeva* who lodged an application against the Russian Government with the European Court of Human Rights (ECHR) and won the case.<sup>42</sup>

Non-governmental organization and the general public can issue a plea aimed at the protection of common environmental interest(-s).<sup>43</sup>

It should be noted that ‘group actions’ are not available in Russia. Claims may be brought by groups of claimants, but all claimants must be identified at the beginning of the trial. At the discretion of a judge, such independent claims may be united in a single trial.

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<sup>41</sup> Art. 127 of the Constitution reads: ‘The Higher Arbitration Court of the Russian Federation shall be the supreme judicial body for settling economic disputes and other cases examined by courts of arbitration, shall carry out judicial supervision over their activities according to federal law-envisaged procedural forms and provide explanations on the issues of court proceedings.’

<sup>42</sup> Application No. 55723/00, *Fadeyeva v. Russia*; ECHR 9 June 2005. Based on the Article 8 of the European Convention Human Rights the ECHR ruled that governments are legally responsible for preventing serious damage to their citizens’ health caused by pollution from industrial installations, even when they are privately owned and run. Consequently The ECHR held that the Russian Federation was guilty of violating the human rights of Ms. Fadeyeva, resident of the town of Cherepovets, north-east of Moscow. Ms. Fadeyeva had complained that her health had been harmed by long-term exposure to pollution from a Severstal steel plant in the town. The court said the state had failed to protect Ms. Fadeyeva by either resettling her away from the plant or reducing its pollution levels. It ordered the Russian government to pay her €6,000 in compensation and to ensure it resolved her situation. The ruling is binding and if Russia fails to comply, it could ultimately be expelled from the Council of Europe, which administers the Court. The case marked the first time the ECHR had held a state responsible for damage caused by a private company.

<sup>43</sup> See Arts. 10 and 12 of the Environmental Protection Law (as defined below).

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Penal or exemplary damages are not available under Russian law, as only material damage and lost profit incurred by the injured party are subject to compensation.

All major cases are published in information bulletins of Supreme Arbitrary Court and Supreme Court of Russian Federation.

### **General Russian environmental law**

Environmental law is an independent branch of Russian law consisting of legislative acts and executive by-laws aimed at the preservation of the natural environment, the rational use of natural resources, and the sustainable development of nature, man and society. The main legislative rules are found in the federal framework legislative acts. These general laws are supplemented by Presidential and Government decrees, as well as ministerial regulatory acts that specify certain legislative provisions and provide concrete implementation measures. The body of general Russian environmental law is rooted in Soviet legislation, which aimed to address mounting environmental problems in the USSR. Partly as a result, contemporary Russian environmental law, for example, focuses on placing limitations on discharges of hazardous substances or harmful/polluting emissions, or imposes permitting systems on operations, which have negative environmental impacts.<sup>44</sup>

The protection of different environmental elements – such as soil, water, air, protected areas, biodiversity – as well as the protection of the environment against certain impacts – e.g., chemicals, waste, radiation – is regulated additionally by specific legal acts, which are based on general principles and rules, taking into consideration the specific qualities of these elements.

In general, businesses operating and investing in Russia will need to assess what kind of impacts their operations and investments may have on the environment – and ensure compliance with the relevant regulatory system(s), not only relating to laws relevant to investments in Russia, but also relating to the general (and more specific) Russian environmental laws, as may apply to their particular operations and investments.

The below provides an overview of the various key environmental laws and regulations which are likely to apply generally in context of business activities in Russia.

### ***Federal environmental legislation – an overview***

The Constitution of the Russian Federation provides the legal basis for Russian environmental regulation, as follows:

*‘every citizen has [the] right to [a] favorable environment, true information on the state of [the] environment and reimbursement for damage to health or property caused by [a] breach to environmental legislation’ (Art. 42).*

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<sup>44</sup> O. Kolbasov and I. Krasnova, *Russian Federation*, International Encyclopaedia of Laws (London, Kluwer Law International 2003), p. 49; and see Chapter 7 (*Nystén-Haarala*).

Moreover, Article 58 of the Constitution provides that ‘every citizen is obliged to protect nature and [the] environment’. This obligation also applies to companies. It is important to note that international agreements (e.g., multilateral treaties) constitute an important factor in further shaping national environmental policy and legislation. According to Russian legislation, provisions of international agreements have supremacy over the existing provisions of Federal legislation.<sup>45</sup>

In the past decade, around 30 federal laws addressing various environmental issues have been adopted. These laws can be divided into three general categories and are as set out below:

a) **Integrated federal legislation:**

In this context, the term ‘integrated legislation’ means legal norms of general application. Most often an integrated law is of federal importance and it establishes the general legal regime of the regulated object, while specific conditions of such regime may be stated in sectoral (environmental) legislation.

- The Law ‘On Environmental Protection’ (*Об охране окружающей среды*, 2002) (the Environmental Protection Law)
- The Law ‘On Ecological Expertise’ (*Об экологической экспертизе*, 1995)
- The Law ‘On Sanitary and Epidemiological Well-Being of the Population’ (*О санитарно-эпидемиологическом благополучии населения*, 2001)
- The Law ‘On Specially Protected Areas’ (*Об особо охраняемых природных территориях*, 1995)
- The Law ‘On the Protection of Lake Baikal’ (*Об охране озера Байкал*, 1998)
- The Law ‘On Air Protection’ (*Об охране атмосферного воздуха*, 1999)
- The Law ‘On Waste of Production and Consumption’ (*Об отходах производства и потребления*, 1998)
- The Law ‘On Hydrometeorological Service’ (*О гидрометеорологической службе*, 1998)

b) **Federal legislation relating to natural resources:**

- Land Code (*Земельный Кодекс*, 2001)
- Forestry Code (*Лесной Кодекс*, 2006)
- Water Code (*Водный Кодекс*, 2006)
- The Law ‘On Subsoil’ (*О недрах*, 1992)
- The Law ‘On Wildlife’ (*О животном мире*, 1995)

c) **Federal legislation relating to environmental safety:**

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<sup>45</sup> Constitution of Russian Federation, Art. 15 Para. 4.

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The notion of ‘environmental safety’ is understood as ‘life conditions, protected from industrial and natural disasters’. Various federal laws, as listed below, establish a framework or provide detailed rules regarding the operation of industrial facilities, their environmental obligations and state control measures:

- The Law ‘On Use of Nuclear Energy’ (*Об использовании атомной энергии*, 1995)
- The Law ‘On Radioactive Safety of the Population’ (*О радиационной безопасности населения*, 1995)
- The Law ‘On Destruction of Chemical Weapons’ (*Об уничтожении химического оружия*, 1997)
- The Law ‘On State Regulation of Gene Modifying Activities’ (*О государственном регулировании в области генноинженерной деятельности*, 1998)
- The Law ‘On Protection of Population and Areas from Natural and Industrial Emergencies’ (*О защите населения и территорий от чрезвычайных ситуаций природного и техногенного характера*, 1994)
- The Law ‘On Industrial Safety of Dangerous Production Facilities’ (*О промышленной безопасности опасных производств и объектов*, 1997)
- The Law ‘On Technical Regulation’ (*О техническом регулировании*, 2002).

The fundamental principles of Russian environmental law are set out in the Environmental Protection Law and public agencies are expected to apply these when enforcing environmental law. The Environmental Protection Law provides the basis for environmental regulation in Russia. It includes principles such as the *polluter pays principle*, the *principle of potential environmental danger*, *full compensation for damage caused to the environment*, *principle of environmental impact assessment*. In a separate chapter, the Environmental Protection Law establishes general requirements for various economic activities, including the choice of location, construction and operation of various types of facilities, and regulates matters connected with the import of radioactive waste. It also determines the general features of the legal regime relating to specially protected areas.

In October 2007, an attempt to codify some integrated environmental legislation was undertaken which resulted in a draft of an *Ecological Code*.<sup>46</sup> If codified, it would result in rendering the following Federal Laws void: The Environmental Protection Law, the ‘Law On Ecological Expertise’, the ‘Law On Air Protection’, the ‘Law On Waste of Production and Consumption’.

### ***Strategic Approach: ‘End-of-Pipe’***

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<sup>46</sup> The Russian text of the Code can be found at the website of the Ministry of Natural Resources <[www.gov.mnr.ru](http://www.gov.mnr.ru)>.

Until this day, the main strategic approach in Russia as regards environmental protection is the 'end-of-pipe' approach. The assessment, evaluation, monitoring and control of the actual industrial pollution characterize this approach. Within this approach, each industrial plant is required to obtain special permits with respect their air emissions, water discharges, and waste disposal. Such permits set the 'Emission Limits Values' (ELV), which are calculated to meet ambient standards (i.e., maximum allowable concentrations), but usually permit pollution levels according to the actual emissions of the industrial facility. At the same time, the 'end-of-pipe' approach includes the polluter pays principle, which provides that the polluting entity pays for the environmental pollution it has caused (e.g., in the form of ecological fees, fines, and compensation payments for environmental damage). The 'end-of-pipe' approach includes the putting-in-place of environmental compliance control mechanisms for working facilities, as well as of administrative fees and penalties for non-compliance.

Thus, the 'end-of pipe' approach does not incorporate pollution prevention measures and provides neither stimulation to apply best available technologies nor encourage environmental protection.

### ***Environmental impact assessments***

All installations in Russia are subject to permitting, regardless of their size, nature or environmental impact. Under Russian law, all draft legislation and decrees that could have environmental impacts must themselves be submitted for an environmental '*expertiza*'.

Prior to 1985, there was no formal EIA process in the USSR. Environmental impacts of selected major activities (e.g., projects and plans) were appraised by various sectoral expert committees or *expertizas*. Attempts to introduce EIA in the USSR and, then, in Russia, have led to the development of two distinctive regulatory concepts which are in practice today:

- the concept of the State Environmental Expertise (SEE or *gosudarstvennaya ekologicheskaya expertiza*); and
- the concept of the Assessment of Environmental Impacts (OVOS or *otcenka vozdeistviya na okruzhajushuju sredu*).

In 1989, the Supreme Soviet (Parliament) issued a law which made the initiation of projects which had not passed the SEE unlawful. The SEE process continues to be regulated by the Ministry of Ecology's SEE Regulations (1993). These regulations require all developers to submit the project, plan or programme documentation to the Federal or Provincial SEE Departments (SEEDs). SEEDs checks whether each activity meets the environmental requirements. The SEED may hire individually licensed experts or expert teams in order to assist the SEED to carry out the SEE. The developer is required to cover the cost of the SEE. The outcome of the SEE process is the so-called 'SEE Resolution',<sup>47</sup> which may be positive or negative. For example, if the SEE Resolution relating to the relevant project, plan or programme

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<sup>47</sup> In Russian: *Reshenie Gosudarstvennoi Ecologicheskoi Expertizi*.

deems that a particular activity thereunder is ‘negative’, then the relevant activity cannot be implemented and the relevant developer must modify the project (plan or programme) and resubmit it for a further SEE.

The concept of OVOS originates from a more process-oriented attempt to translate the Western understanding of what constitutes EIA into the Russian context. It focuses on trying to establish an adequate process for identifying likely environmental impacts, consulting with concerned parties and balancing environmental impacts against social and economic considerations. No Soviet or Russian legislative act (i.e., passed by the Parliament), mentions the concept of OVOS. OVOS was, however, addressed by a number of regulatory guidelines and instructions (i.e., adopted by the Ministries). The Order of the Minister of Environment No. 222 of 18 July 1994 introduced the ‘OVOS Regulations’. This was done, amongst other reasons, in order to comply with the requirements of the 1991 *UNECE Convention on Environmental Impact Assessment in a Transboundary Context* (the ‘Espoo Convention’)<sup>48</sup> to which Russia is a party. Currently the OVOS procedure is set out in the *Regulation on the Assessment of Environmental Impacts*.<sup>49</sup>

Unlike the SEE process, the OVOS process is required only for projects listed within the OVOS Regulations, which is slightly broader than the Espoo Convention list. The provincial and federal authorities are given the discretion to initiate an OVOS for other types of projects. The OVOS Regulations require (i) the developer to prepare an environmental impact statement (EIS) and (ii) the competent authorities to initiate the consultation and public participation process. These Regulations were followed by the 1992 Guidelines of the Ministry of Ecology<sup>50</sup> (this ministry is now replaced by the MNR). These Guidelines detail the process for submitting the draft (and final) EIS to the competent authority within the project development cycle and provide what information is to be supplied with respect to the EIS.

Although there has been significant progress in introducing elements of EIA within Russian law, many loopholes still exist. The required process for a SEE has poor screening requirements, does not provide for the evaluation of complex and uncertain environmental impacts and has only very limited consultation provisions. Whereas, the OVOS process is not well integrated into the project development cycle and its requirements are not supported by sufficient provisions for research, training and development of guidance. Therefore, it has only limited practical application. Perhaps, most of the current difficulties relating to OVOS and SEE could be more effectively dealt with if both processes were more closely integrated. It is also quite apparent that both OVOS and SEE need a more sound legislative basis.

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<sup>48</sup> See <<http://www.unece.org/env/eia/welcome.html>>, see also the 2003 Kiev Protocol on Strategic Environmental Assessment. Russia signed the Espoo Convention on 6 June 1991 but has not yet ratified this convention, see <<http://www.unece.org/env/eia/convratif.html>>.

<sup>49</sup> Dated 16 May 2000, No. 372 (*Об утверждении Положения об оценке воздействия намечаемой хозяйственной и иной деятельности на окружающую среду в Российской Федерации*).

<sup>50</sup> Issued 1 January 1992 by the Ministry of Ecology of the Russian Soviet Federative Republic (*Руководство по проведению оценки воздействия на окружающую среду (ОВОС) при выборе площадки, разработке ТЭО и проектов строительства (реконструкции, расширения и технического перевооружения) хозяйственных объектов и комплексов*). The text of the document can be found at <<http://oboc.narod.ru/ovos1.htm>>.

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According to a study by Peterson in 1997 (produced under the auspices of the National Council for Eurasian and East European Research),<sup>51</sup> foreign firms operating in the Russian market, especially those operating in the pollution-intensive sectors such as the oil, logging, and consumer goods sectors, employ more efficient equipment and technology and generally use more ‘environmentally friendly’ practices than Russian firms. For example:<sup>52</sup>

- An international consortium developing oil and gas off Sakhalin Island is using the latest equipment and practices. Elsewhere, the Polar Lights joint venture between CONOCO and its Russian partners received an environmental achievement award.
- The numerous oil development projects by Western companies currently underway in the Caspian Sea region pose fewer environmental threats than comparable Russian and Soviet projects undertaken over the last 40 years.
- The Russian Industrial Consortium for Protecting the Environment, a group of international packagers, is attempting to improve waste management and recycling schemes to lessen the impact of disposable packaging in Moscow and St. Petersburg.

These examples demonstrate how businesses are increasingly adhering to best environmental practices regardless of the legal environment.

### *Environmental permits*

Under the current framework of existing Russian law, the stages of obtaining an environmental permit are as follows:

1. The relevant company must arrange (and pay for) an inventory of its emission and discharge sources, draft emission limit values, draft discharge limit values and draft waste disposal limits. These calculations of the various ‘limits’ are usually made by specialised consultancies on behalf of a company.
2. The draft limits are submitted to the MNR Regional Direction for approval within one month. *Sanepidnadzor* (the Federal Centre on Hygiene en Epidemiology<sup>53</sup>), must agree with these limits. If the limits are not accepted and the various draft limits is refused as incorrect, grounds must be provided.
3. Once approved, the company’s draft emission and waste disposal limits are valid for 5 years, whereas its draft discharge limits are valid for 3 years, provided there is no change in the company’s production processes. Temporary limits are valid for one year.

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<sup>51</sup> D.J. Peterson, *Environmental Activism in the New Russia: Prospects for the Coming Decade*, Report to the National Council for Eurasian and East European Research (Washington DC, National Council for Eurasian and East European Research 1997).

<sup>52</sup> National Intelligence Council, *The Environmental Outlook in Russia* (January, 1999).

<sup>53</sup> See <<http://www.fcgsen.ru/>>.

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4. Permits for a company's emission, discharge and waste disposal limits are developed and approved by the Federal Nature Management Supervision Service of MNR (*Федеральной службой по надзору в сфере природопользования*), responsible, amongst other matters, for ecological 'expertise' and the permitting. Thus, based on these draft emission and waste disposal limits, the company applies to the Federal Nature Management Supervision Service for a permit for its emission, discharge and waste disposal limits.
5. Permits are issued for 1 year and can be extended, based on a so-called 'technical report' on extension of limits.
6. The Federal Nature Management Supervision Service reserves the right, if necessary, (i) to carry out an inspection in order to reach its decision on approval of the limits, (ii) to organize an inspection of the installation, or (iii) to request information about inspections performed by the State Control Division of the territorial body.

As mentioned, both during the EIA and permitting stages, investors and operators are encouraged to use specific consultancies to perform the numerous necessary studies and calculations.

There is no fee when a permit is issued. Nevertheless, the preparation of ELVs' volumes and other preliminary data collection and expertise requires time and money. According to the enterprises interviewed in pilot regions, it usually takes around 30 days to collect and prepare the information necessary for a permit application. Thus, payments associated with permit applications may vary from tens to hundred thousands of roubles.

It is difficult to estimate the cost of a project approval, as the preparation of the EIA, including calculations of emissions and limits, requires obtaining baseline information from different authorities. The cost of obtaining such baseline information varies from one authority to another. Furthermore, the cost of an EIA differs according to the type of industry, complexity of the project and required level of expertise.

Under general Russian legislation, it is possible to appeal any administrative decision. In practice, this possibility is rarely used as individuals and companies try to avoid conflict with the authorities. However, this has happened recently in other areas and it is likely that companies may start to appeal decisions on environmental permitting in the near future.

If a requested permit (licence) is not granted, an applicant is entitled to challenge the public agency's decision in court within three months of the date of the relevant decision. Similar procedures exist with respect to appealing against the conditions contained in the environmental permit.

Environmental regulators have some enforcement powers regarding violations of permit conditions. If the environmental procedures described in the project/design documentation are not observed or other environmental violations are committed during the implementation of an industrial project, civil, administrative or criminal liability measures may be imposed (see below for more detail). If the



conditions stipulated by other types of permit/licence are violated (e.g., subsoil use licence, hazardous waste licence), these licences can be withdrawn in particular circumstances and grounds, which will result in the termination of the person's right to undertake the activities listed in the licence. If, regardless, such activities are continued in the absence of the necessary licence, such activity can be treated as illegal entrepreneurial activity, which might entail the compulsory liquidation of a company.

### ***Quality of goods, production processes***

The federal Law 'On Technical Regulation' (the 'Technical Regulation Law') has attracted much attention in various circles, especially government and industry. It entered into force on 1 July 2003 and regulates the quality of goods, processes of their production, operations, transportation, as well as their sale and treatment (utilization). The objective of the Technical Regulation Law is to guarantee the safety of consumers, including environmental safety, as well as the safety of all processes and goods relating to human life and health. This objective is expected to be achieved through the establishment of a special procedure for law-making and changing technical requirements.

The Technical Regulation Law applies to two types of regulatory acts: *technical regulation laws* and *standards*. It prescribes that technical regulation laws are to be adopted according to a special procedure as set out in detail in Article 9. Further to the Technical Regulation Law, the federal executive bodies (ministries) may also adopt 'optional regulatory acts'. This means that the Russian government may temporarily adopt technical regulations that will remain in force until a respective technical regulation law is adopted.<sup>54</sup> Under the Technical Regulation Law, the President may also adopt decrees in cases of emergencies and such decree will become invalid as soon as a technical regulation law on this issue is adopted. Since 1 July 2003, laws that establish requirements relating to goods, production processes, use, storage, transportation, and utilization of goods have been implemented in a mandatory way only in context of protecting human life and health, as well as the environment. Technical regulation laws should be adopted within seven years after entry into force of this law. An active process of law-making is currently under way and many sectoral technical regulation laws are already in place. However, in some areas temporary laws still exist.

The impact of the Technical Regulation Law on the environmental obligations of businesses has yet to be assessed. However, it is understood that it will result in considerable operational changes being required, such as relating to standards and emission values, monitoring requirements, as well as certification requirements. Current environmental permit and project description documents for industry may become invalid in the future, unless specific regulations relating to these are developed. Even the validity of certain existing laws, such as the *Law On Industrial Safety of Dangerous Industrial Facilities* (dated 21 July 1997) may be

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<sup>54</sup> A technical regulation (law) [*tehnikeskii reglament* - in Russian] is a piece of sectoral environmental legislation or a legal norm, introduced during the development of integrated federal legislation, namely, the Federal Technical Regulation Law.

questioned, at least in 5 years' time, if it is not replaced. However, an interpretation of the Technical Regulation Law is still underway.

### *Liabilities*

Breach of environmental law or permits can give rise to civil, administrative or criminal liability under Russian law.

In the Environmental Protection Law, there is no complete list of environmental violations. Such violations are dispersed among a number of legislative acts. The *Russian Federation Criminal Code and Code of Administrative Offences* determine in detail what types of violations and punishments exist.

**Civil liability** might result either in the need for full compensation for damage caused to the environment or performance of remediation. Chapter 17 of the Civil Code<sup>55</sup> specifically deals with land ownership issues, matters related to leasing, as well as the use of natural resources and civil liability (compensation for damage) relating to natural resources. Court practice evidences that remediation should replace monetary compensation if the responsible party is willing and capable to undertake such remediation (or to finance it), or if remediation is more effective than financial compensation. Under Russian law, the amount of financial compensation is estimated using applicable calculation methodologies and, in their absence, on the basis of the actual expenses incurred during/necessary for remediation of the damaged environment, including lost profits (if any).

**Administrative liability** may result in the imposition of fines (in comparatively insignificant amounts) or suspension of a facility's operation for up to 90 days. In certain rare cases, closure of a facility can be required. Imposing a fine or suspension of operations does not remove the obligation to eliminate a violation. Thus, if a particular violation is not eliminated, fines/suspension may be imposed repeatedly. (See the *Code on Administrative Violations*,<sup>56</sup> which was adopted in 2002).

Other laws contain similar provision, for example the *1995 Law on the Continental Shelf of the Russian Federation*<sup>57</sup> covers all issues connected to activities within the continental shelf, including the use of minerals and living resources.

The *Law on Social Protection of Citizens Subjected to Radiation Caused by the Chernobyl Accident*<sup>58</sup> provides comprehensive regulation relating to Chernobyl victims' social protection and establishes the legal regime relating to areas polluted by radiation.

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<sup>55</sup> *Grazhdansky Kodeks*, adopted in 1994 (Part I), 1995 (Part II) and 2001 (Part III).

<sup>56</sup> *Administrativny Kodeks*, for details see Baker & McKenzie report 'New Code of Administrative Violations of the Russian Federation: Increased Responsibility of Commercial Organizations and Their Managers', 2 July 2002: <<http://www.bisnis.doc.gov/bisnis/bisdoc/020710AdmCode.htm>>.

<sup>57</sup> *O kontinentalnom shelfe Rossiskoi Federatsii*.

<sup>58</sup> *O социальной защите граждан, подвергшихся радиации в следствие катастрофы на Чернобыльской АЭС*, 1992.

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*The Law on State Secrets*<sup>59</sup> provides a list of matters which are considered to be state secrets, including various information concerning natural resources and certain activities related to the use of the environment – and provides a restricted regime of access to such information.

Environmental control agencies are empowered to suspend the operation of enterprises and organizations which systematically violate environmental law provisions relating to pollution and other types of environmental deterioration. A decision to suspend or close such operations is taken only in cases where an order or a prescription of administrative inspectors is not complied with. Such measures are not often taken in practice, due to the complicated procedural barriers (related to tax and bankruptcy regulation, as well as relating to the adverse economic consequences).

The administrative tools which are used in Russia to assist environmental enforcement and compliance include the following:

- Environmental pollution permitting, including the evaluation of Environmental Quality Standards and Emissions;
- Limit/ Levels based of existing "Maximum Allowable Concentrations" with respect to harmful components;
- Environmental impact assessment (ecological expertise);
- Ecological compliance control.

The economic instruments for environmental protection currently in force are as follows:

- *Ecological fees*: Special obligatory payments for air emissions, water discharges, and waste disposal. This includes the individually calculated payments agreed with ELVs specified in permits, and 5-multipletime payments when a plant exceeds its permissible levels of emissions or operates without an appropriate permit.
- *Environmental fines*: Administrative fines (penalties) for non-compliance. The effectiveness of these fines from an environmental protection perspective is limited due to their low rates; it is more convenient for polluters to pay low administrative fines than implement all the environmental requirements and invest in pollution prevention and control.

All the revenue collected from the abovementioned fees and fines are accumulated in the federal budget of Russia and in the appropriate regional budgets. A part of such funds collected is spent in accordance with the aimed budget planned for environmental protection activities and to executive authorities carrying out the ecological compliance control.

In 1996, a new Criminal Code<sup>60</sup> was adopted which lists at Chapter 26 (*Environmental Crimes*) criminal offences relating to the illegal and ‘socially

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<sup>59</sup> *O gosudarstvennoi taine*, 2005.

<sup>60</sup> *Ugolovniy Kodeks*, last amended on 8 December 2003.

dangerous' uses of natural resources. *Criminal liability* may result in criminal fines varying on average from (the Rouble equivalent of) Euro 1,150 to 14,500, corrective labour, imprisonment from 3 month to 8 years, prohibition to hold certain official posts or to engage in certain activities. Punishments for individuals and officials differ. It should be noted that companies and legal persons cannot be punished under the criminal procedure, only individuals can face criminal charges under Russian law.

Environmental crimes are still rarely enforced in practice. One of the reasons is that enforcement bodies do not have strong capacity to find and prove criminal deeds or to establish causal links in connection with environmental crimes. Illegal hunting, water pollution and illegal forest cutting are amongst the most typical environmental crimes.

Administrative fines and other less strict administrative liabilities are imposed in cases when an enterprise, for example, exceeds its permissible emission levels, and they, thus, precede the suspension of operations or the closing of the enterprise. It is noted that fines for non-compliance with environmental regulations are at times disguised as bribes to corrupt authorities.<sup>61</sup>

### ***Environmental insurance***

Russian law provides for obligatory and voluntary environmental insurance. For example, environmental insurance is required with respect to hazardous industrial facilities (e.g., oil and gas development and transportation, most industrial manufacturing processes). In general, however, the environmental insurance market in Russia is in its very early stages of development and does not play a significant role. The information on environmental insurance claims is not open to the public in Russia, so it is very hard to obtain any figures on environmental insurance.

### ***New (environmental) legislation underway***

Intensive legislative activities relating to environmental protection are still on-going. At present, the State Duma is preparing several draft laws, e.g., the *Federal Law on Payments for Negative Impacts on the Environment*,<sup>62</sup> the laws on hunting and fishing, as well as the *Law on the Protection of Marine Biological Resources*.<sup>63</sup> Several drafts of the new *Law on Subsoil Resources* have been prepared by various governmental bodies and are currently under negotiation in the State Duma.

The Russian government's draft law on 'Procedures for making foreign investment in Russian commercial organizations of strategic importance for national

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<sup>61</sup> For example, pressure politics helped Ikea win its battle against certain bribery-inclined local authorities in Moscow. Ikea was temporarily stopped from opening its shopping mall in Chimki outside Moscow in the beginning of 2005 on the basis of a gas leak threat from the Ikea building. However, Ikea manager for Russia, Lennart Dahlgren, claimed the real reason was that Ikea refused to pay bribes to the local authorities (source *The Moscow Times*, 27 April 2005).

<sup>62</sup> *О плате за негативное воздействие на окружающую среду*. The draft Federal law regulates the relationships between state executive organs and legal and private persons on the basis of the polluter pays principle.

<sup>63</sup> *Об охране морских биологических ресурсов*.

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security of the Russian Federation’ (No. 455348-4) was submitted to the Duma on 17 July 2007, and approved in a first reading on 14 September 2007 – it entered into force in May 2008 (the ‘Strategic Investments Law’).<sup>64</sup> Yet it seems that more amendments are needed to regulate this sensitive issue. Thus, the Federal Antimonopoly Service (FAS) together with MED, the Federal Security Service (FSB) and the Commission on State Secrets are preparing some adjustments to be introduced in early 2009.<sup>65</sup>

The new Strategic Investments Law requires that any transactions between ‘foreign investors’ and ‘Russian commercial organizations’ (later Russian company or companies) must be subject to preliminary government approval if the transaction meets two criteria simultaneously:

- The Russian company is engaged in *activity of strategic importance to national security* as defined by the law; and
- The foreign investor’s transaction will result in direct or indirect *control of a Russian strategic company* as defined by law.

The transaction may include equity acquisition or other agreements resulting in foreign control of a Russian strategic company. This law defines ‘control’ as the capacity of a foreign investor (or a group of persons) to determine directly or indirectly decisions made by a commercial organization of strategic importance. (Art. 2, Section 4 of the law).

The Strategic Investment Law covers both types of companies and identifies 39 types of activity considered of strategic importance to national security. In addition to defence, energy, aircraft and aerospace industries, and critical infrastructure – all of which have long been deemed as strategic – the list also includes activities related to ‘the use of pathogens of infection diseases’ and activities that fall under the jurisdiction of the Federal Service for Hydrometeorology and Environmental Monitoring. In addition, new amendments proposed by the Presidential Administration and endorsed by the State Duma Committee for Construction and Land add certain natural resources, radio and television companies, publishing and printing companies, telecommunications companies, and Internet service providers, among others, to the list.

### **New steps towards cleaner production**

It is noted that the Ministerial Declaration adopted at the meeting of European environmental ministers in Sophia, 1995, stipulated that ‘cleaner production’ means the continuous implementation of integrated environmental strategies for production

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<sup>64</sup> Федеральный Закон «О порядке осуществления в Российской Федерации иностранных инвестиций в коммерческие организации, имеющие стратегическое значение для национальной безопасности Российской Федерации»; English version to be found at <<http://www.fas.gov.ru/english/legislation/21182.shtml>>.

<sup>65</sup> The FAS is responsible for contacts with foreign investors and has a good English-language portal. See <<http://www.fas.gov.ru/english/>>.

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and processes, directed to decrease harmful effects on humans and the environment.<sup>66</sup> By comparison, 'cleaner production' methodology in Russia is considered the method by which to shift the perspective from 'end-of-pipe' regulation to preventive strategies and effective mechanism for strengthening environmental compliance and enforcement.

The development of the concept of 'cleaner production' in Russia began in 1994 thanks to activities of the Russian-Norwegian Cleaner Production Center.<sup>67</sup> This Center began the 'cleaner production programme', which consists of three components: (1) the cleaner production training programme (including cleaner production theory); (2) financial engineering and investment projects for cleaner production; and (3) preparing enterprises to develop EMS and ISO 14000 certification.<sup>68</sup>

The main principles of the 'cleaner production programme' are:

- Education 'from engineer to engineer'
- Identifying the primary sources of environmental problems of an enterprise
- Pollution prevention through projects aimed at decreasing air emission, water discharges, waste generation and energy saving

The first steps to implement this programme were focused on training programmes at the industrial plants in Northwest Russia. During the 10 years of the activities of the Russian-Norwegian Cleaner Production Center in Russia, more than 1,600 engineers from 600 enterprises were trained. The cleaner production programme led both to financial benefits (for each \$1 invested into the 'cleaner production' programme resulted in a \$2-5 profit<sup>69</sup>) and resulted in positive environmental impacts, such as pollution prevention and energy saving at enterprises.

The results of the cleaner production programme introduced in the Northwest of Russia prompted the need to spread the cleaner production methodology across Russia as a means by which to prevent pollution. The Federal Service on Ecological, Technological, and Atomic supervision of MNR is the competent authority for the elaboration of legislative acts in the field of environmental pollution prevention, and this agency is now taking the appropriate steps for the development of such cleaner production laws and policies.<sup>70</sup>

Considering its positive results, businesses interested in improving their environmental impacts may wish to investigate ways in which the cleaner production programme was implemented in Northwest Russia.

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<sup>66</sup> Declaration by the Ministers of Environment of the Region of the United Nations Economic Commission for Europe (UNECE), 25 October 1995. See <<http://www.unece.org/env/wgso/pre-kiev.declar/Sofia.E.pdf>>.

<sup>67</sup> See <<http://www.ruscp.ru/tsyngeng.htm> and <http://www.ruscp.ru/>>.

<sup>68</sup> See Chapter 16 (*Dayman*), for a discussion of EMS in Russia.

<sup>69</sup> A.Tsygankov, L.Yanchik, On the development of the Cleaner Production Program in Russia (2004) p. 4.

<sup>70</sup> The International Conference 'Cleaner Production as a way to Sustainable Development' took place in December 2004 in Russia. The presentations made at this conference displayed that due to the mutual interests and common efforts of governmental bodies, non-governmental organizations and enterprises, in Russia the 'cleaner production' path may become the universal way of achieving a cleaner future through pollution prevention.

## Conclusions

This brief overview of Russian environmental law and practice provides a means by which to analyze the current status of environmental protection in Russia, including the gaps and challenges which may be faced when undertaking environmentally sound investments. On this basis, and in the author's view, both national and foreign businesses which are interested in undertaking environmental investments and operating in a socially responsible manner in Russia are recommended to encourage the following:

- Strengthening of the legal and regulatory framework;
- Intergovernmental cooperation, especially as regards permitting and inspection activities at the federal, regional or territorial level;
- The building of an effective compliance and enforcement system for existing environmental laws and regulations;
- More active public participation, by specifying whose responsibility it is to provide environmental information;
- Investments in environmental management and control;
- Strengthening of monitoring systems and the adoption of better environmental indicators;
- Better technical, scientific and policy analyses.

The results of the implementation of the current system for environmental protection in Russia based upon the 'end-of-pipe' approach shows that there still remains space for further improvement. The preferred manner to achieve such improvement appears to be the development of policy promoting environmental compliance, including the provision for a broader application of preventive strategies, economic incentives and targeted financial support actions.

The Technical Regulation Law regarding the establishment of common technical regulations for ecological safety is expected to be the foundation of the new system of Russian environmental law, stipulating the norms for an improved system of environmental enforcement and compliance, based on pollution prevention principles. Furthermore, the draft federal *Law on Payments for Negative Impacts on the Environment* is being prepared, which is hoped to be very beneficial to foreign investors. The draft law stipulates new principles for economic incentives and targeted financial support activities. For example, according to the draft, industrial plants using 'best available technologies' in their operations will be relieved of paying ecological fees.

In January 2008, in Cheliabinsk, the then First Vice-Premier Dmitry Medvedev (currently the President of Russia) suggested to bring in changes into environmental legislation related to industry.<sup>71</sup> According to him, polluting industry should either change their profile or be closed. Medvedev underlined that solving

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<sup>71</sup> See materials of the press-conference: <<http://chelyabinsk.rfn.ru/rnews.html?id=77335>>.

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environmental problems becomes one of the Russia priorities. He pointed out that the system whereby limits and norms of environmental impact are individually set for each given factory is extremely outdated, and a coherent system that covers a region, or several regions, or the whole country should be introduced instead.

President Medvedev has commented<sup>72</sup> that it is of equal importance to strengthen liability in certain circumstances and to tighten the sanctions for negative industrial impact on the environment. He has remarked<sup>73</sup> that a number of Russian companies have already taken measures to improve the environmental situation at their factories. Thus, currently, a new environmental policy based on a preventive strategy is being elaborated in Russia. This promises to provide a framework within which environmental investments will be encouraged. In addition, the application of cleaner production methodologies are increasingly shifting the current Russian law focus on 'end-of-pipe' regulation, towards more preventive strategies.

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.