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**ENVIRONMENTAL PROTECTION IN INVESTMENT OIL
CONTRACTS IN KAZAKHSTAN IN COMPARISON TO THE
UNITED KINGDOM**

**BY
MEDETBAEVA VENERA**

LL.M. SHORT THESIS

COURSE: DRAFTING AND NEGOTIATING OF INTERNATIONAL
CONTRACTS

PROFESSOR: STEFAN MESSMANN, S.J.D.

Central European University
H-1051 Budapest, Nador utca 9
Hungary

Abstract

In Introduction, it is illustrated why research on Environmental Protection in Investment Oil Contracts in Kazakhstan in comparison to the United Kingdom is important, how much research is done previously, what was tried to achieve by writing this thesis.

The topic is discussed in three chapters, such as 1) Investment climate in Kazakhstan, which include subchapter Major oil companies in Kazakhstan; 2) Environmental regulation in Kazakhstan and 3) Environmental regulation policy in the United Kingdom.

The first chapter is about the general situation of investing into Kazakhstan's economy, what the country can offer in terms of economical, political and legal situation, e.g. tax system, dispute settlement, etc. Undermining problems like bureaucracy, corruption and change of legislation toward giving better position for domestic party is discussed. In the following subchapter I list the biggest oil companies set up in Kazakhstan, their location, investment into projects, outputs. It will be a helpful for readers to understand the importance of oil sector, and become familiarize with major oil companies.

The second chapter outlines environmental legislation in Kazakhstan.

In the third chapter, an overview of the past and present environmental regulations and policies of the United Kingdom presented. Britain, being the first industrialized nation, has a rich history of dealing with the environmental impact of human activities in general and industries in particular. A brief summary of the development of environmental legislation is given from before the industrial age up to the present day. Finally, I shall review the principles guiding decision-

making concerning the environment in today's UK and enumerate the regulatory bodies responsible for making and implementing such decisions.

The conclusion - lays out findings, sharing the author's opinion on the problem and suggesting possible recommendation how to improve the situation.

In Bibliography, I list sources used for writing the thesis

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ABBREVIATIONS

BIT – Bilateral Investment Treaty

BS7750 – British Standard 7750

BS5750 – British Standard on “Quality Systems”

CNPC - Chinese National Petroleum Corporation

CPC – Caspian Pipeline Consortium

DETR – Department of the Environment, Transport and the Regions

DTI – Department of Trade and Industry

EEC – European Economic Community

EPA - Environmental Protection Act 1990

EMAS – Eco-Management and Audit Scheme

GATT – General Agreement on Tariffs and Trade

GATS – General Agreement on Trade in Services

GE – Geological Exploration

OECD – Organization for Economic Co-operation and Development

RK - Republic of Kazakhstan

ISO9000 – Internationally Recognized Standard of Quality

ISO 14000 – Environment Management Systems and Standards

ISO – International Standards Organization

OSCE - Organization for Security and Co-operation in Europe

RCEP, Royal Commission on Environnemental Pollution

REC – Regional Electric Distribution Companies

PK – PetroKazakhstan

PSA - Production Sharing Agreement

TCO – Tengizchevroil

UK – United Kingdom

US – United States

UKAEA – The United Kingdom Atomic Energy Authority

VAT – Value Added Tax

I INTRODUCTION

Kazakhstan is one of the major producers of oil providing a significant share of the supply to the world's markets. The whole Kazakh economy depends on to the export of fossil fuel that bring the country most of its hard currency earning. After economic difficulties that the country had to go through, after the collapse of the Soviet Union, the oil and gas sector has been performing successfully in comparison with other sectors. It is likely that it will gain even more power, as the oil and gas sector nowadays provides the largest stable revenue flowing into the country's budget.

The key question is the necessity to protect environment in investment oil contracts, how to create a positive investors' attitude of adhering to environmental regulations, and to minimizing harmful effect of doing business.

The possibility of future expansion of oil and gas production and the development of a new field in remote parts of Kazakhstan will have a strong negative impact on the environment. The situation is complicated by the fact that the Soviet times left a heritage of environmental degradation in many oil producing regions adding to bad operational practices, lax compliance with environmental standards, absence of modern environmentally-oriented technologies and use of outdated leaking infrastructure existing nowadays.

The existing situation may be improved by changing environmental policy and legislation. One positive step is the new Ecological Code of Republic of Kazakhstan, which was adopted on 9

January 2007.¹ There is no much practice of implementing this new legislation yet, the future will show how successful it is.

The important question of fulfillment of environmental norms and regulation by companies involved in oil business remains unsolved. Unfortunately, in order to attract as much foreign investments as possible, Kazakh government chose to soften the exiting soviet environmental regulations. According to ecological agency “Greenwomen”, one oil company Shevron (USA) alone produced 18000 tones of poisonous chemical substances during 1997. Just to compare the maximum amount allowed to release for such substance is 10 ton per year in USA.²

Although the environmental protection is an important global issue related to the oil sector, there is not much literature on this subject. One of the first attempts to summarize information on oil sector in Kazakhstan was done by Maulenov K.S in his book “Oil Law in Republic Kazakhstan and Foreign Countries”. Unfortunately, only three pages are dedicated to environmental and legislation problems. The author has not found any substantive work on environmental protection in investment oil contracts in Kazakhstan.

Due to the fact that this topic is not very much researched, but is nevertheless very important, I have chosen this subject to make an attempt to research how through policy and legislation to protect environment, what kinds of mechanisms exist to create incentives not to violate environmental regulations, and how create attitude to improve existing exploiting techniques.

¹ www.zakon.kz official site of Kazakh legislation, visited 18 march 2007

² Maulenov K.C. *Nefnyanoe pravo Respubliki Kazakhstan I Zarubejnih stran*. Almaty. “Jeti Jargi” 2003, 83

Taking into consideration that Kazakhstan is a young country that gained its independence in 1991 year, we have to benefit from the experience and wisdom of more developed countries, such as the United Kingdom, to see how to better provide a balance between nature and business. It is undisputed that the trial and error method is very costly, and the consequences of bad management of environment problems may have many long side effects. That is why it is beneficial to compare environmental policy of United Kingdom and analyze their benefits.

The research methodology is comparison and analysis.

This work is limited in scope due to short time allowed for research and writing the thesis, despite the broadness of the subject and importance of evaluating different approaches towards the environment. Nevertheless, I believe that this research is necessary and will be a basis for further and more throughout research.

This thesis consists of Abstract; Table of Content; Introduction; three following chapters: first, Investment climate in Kazakhstan, which include subchapter Major oil companies in Kazakhstan; second, Environmental regulation in Kazakhstan and third Environmental regulation policy in the United Kingdom; and Conclusion.

I INVESTMENT CLIMATE IN KAZAKHSTAN

POLITICAL SITUATION

There have been no incidents of politically-motivated violence against foreign investment projects. Kazakhstan has been stable since its independence. Politically-motivated civil disturbances remain exceptionally rare and Kazakhstan has good relations with its neighbors. The Kazakh government continues to express concern over the security of its borders with Kyrgyzstan and Uzbekistan, which it views as vulnerable to penetration by extremist groups.

Kazakhstan's 2005 presidential elections took place without significant violence or unrest. President Nazarbayev was reelected with an overwhelming majority of the votes. In its preliminary assessment the OSCE noted that the presidential election did not meet a number of OSCE commitments and international standards for democratic elections. Although some opposition groups denounced the election as fraudulent, there have been no significant demonstrations against the announced results. The next parliamentary election is scheduled to take place in 2009.

GENERAL OVERLOOK

Kazakhstan has made significant progress toward creating a market economy since its independence in 1991. The European Union in 2000 and the U.S. Department of Commerce in March 2002 recognized the success of Kazakhstan's reforms by granting it market economy

status.³ Kazakhstan also has attracted significant foreign investment since independence. By July 2005, foreign investors had invested a total of about \$36.8 billion in Kazakhstan, primarily in the oil and gas sector, during the country's fourteen years of independence. Following the country's independence, the government created a favorable regime for oil and gas investments at the same time that it undertook other liberalizing economic measures and began an ambitious privatization program.

However, over the past five years Kazakh government has had a tendency of changing its contractual rights and obligations. Also legislation is being changed toward giving a preferential position for domestic companies. Another area of interference is government intervention in foreign companies' operations, particularly procurement decisions. All that gives an impression that Kazakhstan is becoming less open to investment, which shows that at the time of liberalization government passed over favorable laws and regulations, attracting as much as possible foreign investment. E.g. environmental regulation was better protecting in certain areas in Soviet time, than after independence.⁴

Since 1997, there has been a growing trend to favor domestic investors over foreigners in most state contracts. Amendments passed in 1999 to the Oil and Gas Law required mining and oil companies to use local goods and services. According to "local content" regulations, subsurface users in Kazakhstan are obligated to purchase goods and services from Kazakhstan entities, provided that the local goods meet minimum project standards. Prospective subsurface users are

³ US government report on Investment Climate in Kazakhstan 2006, www.state.gov, visited 1 April 2007

⁴ Aitakov M. Jto jdet tebya, Kaspii?// Zentralnaya Azia. Kavkaz. 1999. # 1(2), 139

required to specify in their tenders the anticipated local content of their work, goods, and services. 2004 amendments to the Law on Subsurface Use also require that tender proposals specify the user's commitment to developing regional infrastructure and contributing to the provision of social services.

The Law "On Investments"⁵ that superseded and consolidated past legislation governing foreign investment, it establishes a single investment regime for domestic and foreign investors.⁶ It guarantees the stability of existing contracts, with the qualification that new ones will be subject to amendments in domestic legislation, certain provisions of international treaties, and domestic laws dealing with "national and ecological security, health and ethics."

The new law provides for dispute settlement through negotiation, Kazakhstan's judicial process, and international arbitration. U.S. - Kazakhstan Bilateral Investment Treaty⁷ from May 19, 1992, as well as the New York Convention, protect U.S. investor access to international arbitration. Kazakhstan's constitution specifies that international agreements have precedence over domestic law. The law "On International Commercial Arbitration" regulates dispute settlement procedure.⁸

The 2003 law "On Investment"⁹ contains incentives and preferences for government-determined sectoral priorities, specifies investment tax preferences, customs duties exemptions, and in-kind

⁵ www.zakon.kz official site of Kazakh legislation, visited 1 April 2007

⁶ Law "On Investments", January 2003, www.zakon.kz, official site of Kazakh legislation, visited 18 March 2007

⁷ U.S. - Kazakhstan Bilateral Investment Treaty – text available

<http://209.85.135.104/search?q=cache:I9CnxHBitUEJ:www.comex.go.cr/negociaciones/usa/proceso/ParteI/III%2520Documentos%2520tematicos/Inversion/US%2520Bilateral%2520Investment%2520Treaty%2520Program.doc+U.S.+Kazakhstan+Bilateral+Investment+Treaty&hl=hu&ct=clnk&cd=16&gl=hu>, visited 29 March 2007

grants. The law also provides exemptions for customs duties on imported equipment/components if Kazakhstan-produced stocks are not available or do not meet international standards.

Following amendments to the 2003 law came into force in May 2005, which eliminated five-year corporate income tax exemptions and replaced them with a modified set of ten-year exemptions. Customs duties exemptions would be limited to equipment that is destined for use in production processes exclusively in Kazakhstan.

Investment legislation body consists mainly of: 1) 2003 law "On Investment"¹⁰; 2) 1997 law "On Government Procurement"¹¹; 3) 2001 Tax Code¹²; and 4) 2003 Customs Code.¹³ These four laws provide for non-expropriation; currency convertibility; guarantees of stability in the legal regime; transparent government procurement; and incentives in certain priority sectors, including electrical infrastructure, telecommunications, light manufacturing, health and tourism. In practice, the implementation of these laws remain the key obstacle to business in Kazakhstan.

The government plays a large role in overseeing foreign investment. Government officials, sometimes at the highest levels, screen major foreign investment proposals. Major projects, such as the for Kashagan, Kazakhstan's super-giant offshore Caspian oil field, and the Karachaganak (oil and gas field) PSA, bear the President's personal imprimatur.

⁸ Law "On International Commercial Arbitration", April, 2004, www.zakon.kz, visited 25 march 2007-05-18

⁹ www.zakon.kz, visited 2 April 2007

¹⁰ www.zakon.kz, visited 2 April 2007

¹¹ Law "On Government Procurement", 1997, www.zakon.kz, visited 25 march 2007-05-18

¹² Tax Code, 2001, www.zakon.kz, visited 26 march 2007-05-18

¹³ Customs Code, 2003, www.zakon.kz, visited 27 march 2007-05-18

In 2004, the government adopted amendments to the law governing oil and gas exploration, assigning to the state a right of first refusal on the purchase of shares in PSAs in the extractive industries. The law as written applies to pre-existing as well as future contracts and thus, in the government's view, supersedes any pre-emptive rights consortium partners might have negotiated in the original contracts. This is a serious draw-back for investors, as government can always abuse its pre-emptive right.

TAX LAW

Tax experts consider Kazakhstan's tax laws to be among the most comprehensive in the former Soviet Union. The latest Tax Code, which entered into effect on January 1, 2002, applies taxes universally and allows only a limited set of exemptions. The code applies an international model of taxation, based on the principles of equity, economic neutrality and simplicity. This code is an improvement over its predecessor and a step forward in establishing a transparent and effective tax system. VAT, as of January 2004, is set at 15. The maximum rate of personal income tax is 20. Also in 2004, the government introduced a regressive scale for social taxes (applied to the income of foreign citizens seconded to companies in Kazakhstan and to payments made to individuals under certain legal arrangements), with rates ranging from 20 to 7. Since its independence, Kazakhstan has ratified treaties on the avoidance of double taxation with 36 countries.

Foreign firms operating in Kazakhstan frequently report harassment by the Financial Police via

unannounced inspections and other methods. The 2002 Tax Code provides a basis for improvement because it limits the powers of tax authorities and defines the rights of taxpayers more clearly. Tax authorities are notorious for their receiving bribes, which reflects uneven application of tax laws.

The 2003 Investment Law provides for, *inter alia*, guarantees of national treatment and non-discrimination for foreign investors.

Despite the general guarantee, national treatment is also denied in the petroleum and subsurface utilization (minerals) sectors. In June 2002, the Prime Minister signed a decree with regulations to implement domestic content requirements, which were originally enacted in 1999 through amendments to the Oil Law and the Subsurface Use Law. The laws require investors to contract with Kazakhstan service providers, and to purchase Kazakhstan equipment, goods and raw materials, so long as these meet the requirements for participating in government tenders. The 2002 decree required that a designated government body approve all tender documents, participate in tender committees and approve the decisions of those tender committees in order to ensure compliance with these requirements. The 2005 law on offshore PSAs also has local content requirements for goods, services and employees, and obligates prospective subsoil investors to address these requirements in their tender proposals.

These requirements are being challenged in connection with Kazakhstan's forthcoming WTO accession negotiations, as they appear to breach GATT and GATS rules and the Agreement on Trade Related Investment Measures. They also appear to contradict the 1994 U.S.-Kazakhstan Bilateral Investment Treaty, which states in Article II, paragraph 5, that "neither party shall

impose performance requirements...which specify that goods be purchased locally..."¹⁴

By law and in practice, foreign investors are allowed to participate in all privatization projects. There appears to be no discrimination against foreign investors after an investment is made. However, many foreign companies cite the need to protect their investments from a near-constant barrage of decrees and legislative changes. In addition to arbitrary tax inspections, foreign investors also complain of problems with closure on contracts, delays and irregular practices in licensing, land fees, etc.

Foreign workers are required to have a work permit to work legally in Kazakhstan. Obtaining these work permits can be difficult and expensive. The government cites the need to boost local employment by limiting the issuance of work permits to foreigners.

CONVERSION AND TRANSFER POLICIES

There are minimal restrictions on converting or transferring funds associated with an investment into a freely usable currency at a legal market-clearing rate.

There is no distinction made between residents and non-residents when opening bank accounts. There are no restrictions whereby different types of bank accounts are required for investment or import/export activities. For non-residents, money transfers in currency associated with foreign investments, whether inside or outside of the country, can take place without restriction.

¹⁴ US government report on Investment Climate in Kazakhstan 2006, www.state.gov, visited 29 March 2007

In June 2005 the President signed the law "On Currency Regulation and Currency Control".¹⁵ This law lifted restrictions on money transfers: both residents and non- residents are allowed to take up to \$10,000 in cash out of the country without documentation of the money's origin. The transfer of amounts exceeding \$10,000 must be accompanied by the certification of the National Bank.

In October and November 2005, the National Bank adopted several rules relating to the control of currency turnover and capital flows. In particular, starting from 2006, the National Bank will regularly monitor currency operations of selected non-residents. This procedure will primarily affect the following sectors: oil and gas industry, construction, mining, as well as companies, rendering architectural, engineering and industrial design services. According to the National Bank, this monitoring will furnish the Bank with better statistical data on the balance of payments and external debt.¹⁶

EXPROPRIATION AND COMPENSATION

The New Investment Law of 2003 allows nationalization by the state in cases "as provided in legislative acts of the Republic of Kazakhstan." It differentiates between nationalization and requisition, providing full indemnification of the investor in the case of the former, but only payment of market value in the case of the latter. Bilateral investment treaties (BITs) between Kazakhstan and other countries, including the U.S., also refer to compensation in the event of

¹⁵ Law "On Currency Regulation and Currency Control", June 2005, www.zakon.kz, visited 20 March 2007

¹⁶ US government report on Investment Climate in Kazakhstan 2006, www.state.gov visited 25 March 2007

expropriation.

There has been one case of legal expropriation of a foreign investor's property for public purpose. The investor ultimately submitted the case for international arbitration. In late 2005, after lengthy delays and negotiations, the government agreed to pay the amount awarded by the arbiter.

Some foreign investors have encountered serious problems short of expropriation. In one instance, in 1996, three foreign companies were forced to relocate their offices under pressure from the government. In 1997, investors, after reviving an important mine, found they could not obtain export licenses for their ore, although the right to export was written into their contract.

DISPUTE SETTLEMENT

There have been a number of investment disputes involving foreign companies in the past several years. While the disputes have arisen from unrelated, independent circumstances, many are linked to alleged breaches of contract or non-payment on the part of Kazakhstan's state entities.

According to US government report on Investment Climate in Kazakhstan 2006, some disputes relate to differing interpretations of joint-venture agreement and production sharing agreement (PSA) contracts; one questions the legality of the government's use of ex-post facto regulations governing value added taxes. The disputes involve, in some instances, hundreds of millions of dollars.¹⁷

¹⁷ US government report on Investment Climate in Kazakhstan 2006, www.state.gov

I.I MAJOR OIL COMPANIES

Over \$40bn have been invested in subsoil use operations in the mineral resources sector of Kazakhstan in 2000–2004. It is remarkable that investment in the development of oil and gas fields accounted for 79% of this sum. “Foreign companies accounted for 87% of the investment.

According to the results of 2004, investment in development of hydrocarbon fields almost tripled vs. 2000 and came to \$7.2bn”.¹⁸ Most of these funds (80%) were directed toward the extraction of oil, gas, and condensate from large, well known, and already developed fields. As for geological exploration (GE) at hydrocarbon sites, \$1.4bn was invested in 2004, marking a fivefold increase against year 2000 levels. Foreign companies placed 88% of this amount. Briefly, here are some of the biggest oil companies’ profiles¹⁹:

- 1 Tengizchevroil (TCO). The TCO joint venture (50 owned by Chevron, 25 by ExxonMobil, 20 by the Government of Kazakhstan, and 5 by LucArco), launched in 1993, was the first major international oil project in post-independence Kazakhstan. Through 2004 the joint venture partners invested more than \$7 billion in TCO. In 2005 TCO was expected to produce 280,000 bpd. By 2007, TCO will complete a three-year expansion project, which will increase production to an estimated 570,000 bpd. TCO member companies are also major shareholders in the Caspian Pipeline Consortium (CPC), a \$2.5 billion project which began transporting Tengiz crude to the Black Sea port of Novorossiysk in 2001.

Its main goal was to develop the Tengiz oil field, one of the gigantic oil fields in the world situated in Western Kazakhstan on the territory of Atyrau Oblast. According to the contract, foreign investments required for this project sum up to \$20 billion. 20 Currently TCO is made

¹⁸ Kazakhstan International Business Magazine # 1 2005. Subsoil Use in 2004: Investment Statistics. Elvira DzhanTUREYEVA

¹⁹ US government report on Investment Climate in Kazakhstan 2006, www.state.gov

²⁰ Kazakhstan International Business Magazine #1, 2005, Elvira DzhanTUREYEVA

up of partners, which include the national oil and gas company KazMunaiGaz (20%), Chevron Overseas Company (50%), ExxonMobil Kazakhstan Ventures Inc. (25%) and LukArko (5%).

Extractable reserves from this gigantic deposit are estimated between 750 million to 1.125 billion tonnes of crude oil. Figures for predicted volumes of geological reserves are put at 3.133 billion tonnes.

In 2004 Tengizchevroil produced a total of 13.7 million tonnes of oil putting the daily average production at 296 thousand barrels. Looking back during the past decade, the company increased volumes of production by 13 times compared to production volumes of 1993.

TCO is also developing the neighbouring Korolev oil field. Test production started here in November 2001. Earlier, developments were held back due to transportation limitations. The situation took a positive turn with the launch of the Caspian Pipeline Consortium.

Now the CPC plays the role of the main pipeline along which Tengiz oil is transported. Volumes of oil transported first exceeded 13 million tonnes of marketable oil in 2003. Before the launch of the CPC, up to 70% of the crude produced by TCO was transported to the Black Sea terminal by rail, while the remaining 30% went along the Atyrau-Samara pipeline. Targeting different sales markets has been the strategy of Tengizchevroil. The company aims to attain maximum profits through the flexible use of different transportation schemes and cutting back expenses.

The completion in 2001 of work on "Programme-12" allowed TCO process all the volumes of raw gas for the production of European standard propane and butane which is mainly sent for export. It was also around that time construction of two industrial plants for granulated sulphur started. These projects will enable TCO export up to 75% of produced sulphur and they also reflect the constant effort of TCO to continue the production and realisation of such important raw material like sulfur, while adhering to the strict safety regulations and care for the environment. In 2004 TCO's sulphur sales exceeded 960 thousand tonnes. The Joint Venture is presently working to raise the output of the current plants.

It is considered at Tengizchevroil that a joint business does not only concern production. Development of their oil field right from the onset, was blended with a programme for local

development. The company took it upon itself to help development in the surrounding districts and it has become an integral part of the life of Atyrau Oblast. TCO uses the services and goods of enterprises in the region. With the objective to maximize the purchase of Kazakhstan services and goods, the management of materials, equipment and office supplies has been transferred to the Total Supply Management department. Supporting the efforts of Kazakhstan to aggressively increase the use of the national resources, TCO has, at a steady pace from year to year, increased the share of local goods and services of the country, reaching in 2004 a spending of \$689 million.

The company's contribution to the economy of Kazakhstan includes wages for local personnel, payment of goods and services of local companies, tariffs and payments for the services of government enterprises as well as taxes and royalties paid into the country's budget. In 2004 this contribution into the economy amounted to \$2.846 billion.

However the main emphasis in the programme for the local development of the country was made in the social, culture, public health and education spheres. During the first five years of the activities of the company the social programme "Atyrau Bonus Fund" was realized and in 1998, replaced by a programme at the company's initiative, called Igilik, which in Kazakh stands for 'benefit'. It envisaged allocating funds for the realization of projects in the field of education, public health and social infrastructure. Its first step was the large-scale engineering and rehabilitation work on the bridge over the Ural River in the centre of Atyrau. With the achieved results, the bridge took on a new appearance and has become a landmark for the city.

Igilik is always coming up with urgent initiatives to set in place. Its programme philosophy best sums it up: to benefit significant number of community members, be visible and self sustainable. In 2004 a total amount of \$8 million was allocated for the development of infrastructure in Atyrau and Zhylyoi Region and the same amount has been earmarked for this year. This Igilik programme is an example of fruitful cooperation between the authorities of Atyrau Oblast and Tengizchevroil Management. In February 2005 the Akim of Atyrau Oblast Aslan Musin and the General Director of TCO Alexander Cornelius signed a memorandum on this programme and an agreement on a regional programme for the

modernization of the professional training system in Atyrau Oblast for the period 2005–2007.

Since the past decade of its history, TCO has spent over \$90 million on social projects.

Noting the success of the realization of social initiatives, Tengizchevroil is proud of its contribution in this process and believes that, in the near future, the people of Atyrau Oblast will become witnesses of new greater changes in the economic and social development of their oil-rich land.

The Second Generation Project will enable TCO attain production levels of 24 million tonnes of crude oil per annum. This new complex combines all the advantages of the current plant with new qualities such as high technological effectiveness, exclusive production safety and maximal automation of processes. *"It will be one of the most modern oil complexes in the world,"* maintains Mr. A. Cornelius, adding that several brilliant technological solutions were incorporated into its designing.

A distinguishing feature of these new projects is the wide use of Kazakhstani goods and services. Several huge technical orders for future production have been placed at well-known Kazakhstani companies such as Belkamit, Imstalkon and others to name a few.

- 2 AGIP Kazakhstan North Caspian Operating Company. Formed in 1997 to develop the super-giant offshore Kashagan field in the North Caspian, this consortium has undergone numerous partner changes. Current members include Agip-ENI, ExxonMobil Shell, Inpex, ConocoPhillips, Total, and KazMunayGaz. Estimated reserves of extractable oil stand at 7-9 billion barrels. First Kashagan oil is likely to be exported via the BTC pipeline, and IGA and HGA negotiations are ongoing to facilitate movement of Kazakhstan oil along that route. Under terms of the initial PSA, Agip KCO was to start commercial production in 2005, but

that date has been moved back to at least 2008. Project partners planned to invest \$3.5 billion in Kashagan in 2005 alone.

- 3 Karachaganak Consortium. Chevron, British Gas, Agip, and Lukoil signed a PSA in 1997 to develop the Karachaganak oil and gas condensate field, estimated to hold 2.3-6 billion barrels of oil / gas condensate and 16-46 Tcf of natural gas reserves. In 2003 Western partners completed a 400 mile pipeline to connect the field to the CPC pipeline in Atyrau. A "Phase Two" expansion project was completed in 2004, in which an estimated \$4.3 billion was invested to construct a new gas and liquids processing facilities, gas re-injection facilities, and a 120-megawatt power station. According to a 40-year agreement, the company will invest \$10 million annually in local social projects.

- 4 PetroKazakhstan (PK). Until its sale in October 2005 to a subsidiary of Chinese National Petroleum Corporation (CNPC), PK ran one of Kazakhstan's three major oil processing plants, the Shymkent refinery, which meets about 50 of the domestic demand for refined products. PK also operated the Kumkol deposits in southern Kazakhstan. According to an agreement between the GOK and CNPC International, the GOK will purchase 50 of the Shymkent refinery and one-third of additional PK assets. In 2004 PK's capital investments reached \$82 million, and were planned at \$40 for 2005. In addition to the former PK assets, in 1997 CNPC bought 60.2 of state-owned Aktobemunaygaz, and in 2003 CNPC purchased a further 25.12 stake for \$150 million. By 2004 the company's investments were over \$1 billion. In addition, CNPC, together with national oil company KazMunayGaz, is

constructing an oil pipeline to China. The second, \$700 million stage was completed in December 2005.

- 5 Nelson Resources (Canada). In 2000 the company purchased a 50 interest in Kazakhoil Aktobe, in partnership with KazMunayGaz. In 2004 production reached 20,000 bpd and is projected to increase three-fold by 2007. In 2004 Nelson invested about \$140 million in the project. Since 2004 Nelson Resources has developed North Buzachi field on a parity basis with CNPC. In 2004 the company produced 10,000 bpd. In 2005 \$125 million was invested into the project. In late 2005 Russian Lukoil purchased 100 of Nelson Resources.
- 6 Nations Energy (Canada). In 1997 the company bought a 94.64 stake in the Karazhanbasmunay state oil company for \$45 million. The company produces about 50,000 bpd. By 2005 the company had invested about \$250 million into the project, targeting planned production at 80-90,000 bpd over the next two years.
- 7 AES Kazakhstan and AES Ekibastuz. In 1996, the American energy company AES bought the Ekibastuz-1 power plant. In the fall of 1997, AES purchased two hydroelectric power generation plants and several other coal-fired power/heating plants in and around Ust-Kamenogorsk, in eastern Kazakhstan. In 1999, AES gained management control of two regional electric distribution companies (REC) in Kazakhstan for 15 years. Since 1996, AES has invested over \$220 million. In 2005-2008 the company plans to invest \$300-500 million in Kazakhstan's economy.
- 8 Bogatyr Access Komir. In 1996, the American firm Access Industries bought the Bogatyr coal mine and 66 of the neighboring Stepnoy coal mine (both part of the giant Ekibastuz

mining complex) for more than \$40 million. Access pledged to invest \$550 million toward upgrading the coalmines over the next five years. Access Industries continues its investment program at the Ekibastuz mining complex. Nearly 36 million tons of coal were delivered from the Bogatyr mine in 2004.

II ENVIRONMENTAL REGULATION IN KAZAKHSTAN

Legislative Framework

The Constitution of Republic of Kazakhstan states, that protecting nature is of extreme importance and “environment protection aimed at people’s well-being and health, must the goal of the country”. New Social conditions in the period of transition to market economy required new law making efforts, including the adoption of the Law “On Environmental Protection” ²¹ in 1997, “On Land”, “On Subsoil and Subsoil Use” and “On Oil” in 1995, “On Fauna protection, Reproduction and Use”, “Forest Code” and “Water Code” in 1993²².

The Ministry of Environment and Natural Resources in the body in charge of state control in the area of environmental protection and rational use of natural resources in Republic of Kazakhtan.

A bid breakthrough in legislation is Ecology code of Republic of Kazakhstan, which was adopted on 9 January 2007. ²³ After passing this Law most of the previous regulation regarding environmental regulation became void.

Kazakhstan has acceded to the main international conventions on protecting the environment from oil pollution, such as the International Convention on Civil Liability for Oil Pollution Damage²⁴ and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage ²⁵, and participates in international conventions on protecting the environment and sustainable development. At present, Kazakhstan environmental

²¹ www.zakon.kz, visited 28 March 2007

²² www.zakon.kz, visted 29 March 2007

²³ Ecology Code of RK, 9 January, 2007. # 212-III, www.zakon.kz

²⁴ The International Convention on Civil Liability for Oil Pollution Damage, Brussels, November 29, 1969. Kazakhstan acceded to the Convention by Decree of the Cabinet of Ministers of March 4, 1994.

²⁵ International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, December 18, 1971. Kazakhstan joined the Convention by Decree of the Cabinet of Ministers of

legislation is sufficiently developed and includes both general and specific normative legal acts. Specific normative legal acts include many rules regulating the protection of subsoil resources and the environment in the activities of subsoil users and in conducting petroleum operations, both on-shore and offshore.

Main disputes between subsoil users and environmental protection authorities are of a general nature, and they mainly concern operations conducted without a permit for special nature use or without a positive report from a state environmental expert examination, and failure to pay for polluting the environment.

New Ecological Code consists of general and special parts. General part specifies terms, principles of ecological legislation, rights and liabilities of natural and legal entities, etc.

Principles such as:

- 1) stable development of Republic Kazakhstan
- 2) ecological stability
- 3) complex and systematic approach toward ecological relationships
- 4) state regulation and state management in the field of ecological preservation
- 5) mandatory appliance of preventive measures for eradication of pollution on environment
- 6) responsibility for violation of ecological legislation
- 7) availability of ecological information
- 8) appliance only the best ecological clean and energy-efficient technologies during exploitation of natural resources
- 9) harmonization of ecological legislation in line with principles of international law

January 16, 1995.³ The Republic of Kazakhstan participated in World Conferences on Sustainable Development in Rio-de-Janeiro in 1992 and in Johannesburg in 2002.

10) presumption of ecological dangerousness of planing business activity and mandatory assessment of its influence on environment

11) interaction, coordination and openness of state bodies' activity on preservation of environment.

Grounds for establishing of permit for special nature use, art. 12 Ecological Code RK²⁶,

Permit for special nature use may be established under some grounds: 1) licenses and (or) permissions for using and exploitation of natural resources and execution of special types of activities in the field of nature preservation.

2) decisions of Kazakh Government and local municipal bodies of allowing processing or exploiting natural resources

3) contracts for nature management , concluded according to legislation of Republic of Kazakhstan.

Assessment of business activities is a procedure that assess possible influences of business or other activities on environment and human health. It allows to establish preventive measures of eradication of harmful effects.

Assessment is mandatory for any activities, which may cause direct or indirect influence on environment and human health.

Customer (initiator) and author of projects shall take into consideration results of assessment on environment, and implement its activity in a way, which cause minimum harmful influence on environment and human health.

²⁶ www.zakon.kz, visited 15 March 2007

Types of ecological expertise, art. 45 Ecological Code, two expertise are available, states ecological expertise and public ecological expertise. State ecological expertise is made by an established body in the field of nature preservation and local executive bodies. Maximum period for expertise is 3 months, after submitting all relevant document.

Conclusions of state ecological expertise, if positive it allows business activity to proceed. On other hand, if conclusion is negative, customer shall change all submitted documents according to suggestions of expert conclusion in a allowed time, or decline planned activity.

Licenses:

According to Aigul Kenjebayeva, partner with the international law firm, SALANS²⁷, “the provisions in the Environmental Law regarding licensing are just as confusing. It is impossible to determine this difference from among the types of licenses in the Law “On Licensing,” since the Law on Licensing is the only document in which all types of activities which require a license²⁸ are to be listed, and it does not contain a single type of activity related to environmental protection. Rather, it only provides that the special considerations for the licensing of activities related to the use of natural resources and environmental protection ... shall be established by special legislation.”.

At the same time, such contradictions in the legislation sometimes help nature users in disputes with environmental protection authorities, since the authorities themselves incorrectly understand and apply the law and, as a consequence, there is a possibility to avoid liability for violations which under certain provisions of the Law are violations and which under other provisions are

²⁷ Certain Environmental Aspects of the Activities of Subsoil Users, Aigul Kenjebayeva, Yuliya Mitrofanskaya. Kazakhstan Business Magazine. <http://www.investkz.com/en/journals/32/255.html>

²⁸ RK Law of April 17, 1995, “On Licensing,” Article 3.5.

not. With regard to disputes over nature use, we have observed that in 2002 most disputes have been connected with emissions and disposals into the environment which are made either without a permit for pollution of the environment, or in excess of the norms for the maximum allowed emissions and maximum allowed discharges. One client of ours, an oil company, was sued in mid 2002 for environmental damage from emitting pollutants without a permit for pollution, which occurred in early 2001.

The essence of the dispute was as follows: At the end of 2000, the company filed documents to obtain a permit for special nature use for 2001 for the purpose of carrying out emissions (discharges) of pollutants. At this time, the Ministry for Natural Resources and Environmental Protection issued permits for the special nature use in accordance with the procedure established by Rules adopted by the Ministry on January 19, 2000. According to the Law on Regulatory Legal Acts, since the Rules were compulsory and affected the rights, freedoms and obligations of citizens, they were required to be registered with the Ministry of Justice.²⁹ However, the Rules were not registered. Moreover, the Ministry for Natural Resources and Environmental Protection did not have any authority to approve rules for issuing permits for special nature use.³⁰ As a result, permits for nature use were not issued from January through April 2001.

On April 5, 2001, the Ministry for Natural Resources and Environmental Protection approved new Rules for Nature Use and started issuing permits for nature use. However, the environmental protection authorities were unable simultaneously to issue such permits to all that had applied for nature use. As a consequence, on April 10, 2001, the Ministry for Natural Resources and Environmental Protection issued an order, pursuant to which the regional environmental

²⁹ Law of March 24, 1998, "On Regulatory Legal Acts," Article 38.1. , www.zakon.kz

³⁰ Environmental Protection Law, Article 8. , www.zakon.kz

protection departments were not before July 1, 2001, to apply against enterprises the increased payment rates for the absence of a permit for nature use. At the same time, however, in addition to complying with environmental protection legislation, oil companies must also observe the legislation on the use of the subsoil and the legislation on petroleum, as well as to fulfil the conditions of subsoil use contracts and work programs, which establish deadlines for conducting petroleum operations. For this reason, the company involved in this dispute was unable to suspend its activity due to the absence of a permit for nature use. Notwithstanding the absence of a permit for nature use, the company was forced in April 2001 to discharge pollutants into the atmosphere. The permit for nature use, which included this discharge, was obtained by the company at the end of April 2001, with an indication that its validity period started from January 1, 2001. Sometime later, the Ministry for Natural Resources and Environmental Protection sent the company a letter regarding the fact that the validity of the permit should have started not from January 1, 2001, as indicated in the permit, but instead from the date of the issuance of the permit, i.e., from April 2001.

The legislation contains an exhaustive list of the grounds for invalidating permits for nature use. The letter from the Ministry did not contain any reasons for changing the validity period of the permit, which could have objectively served as grounds for changing the validity period of the permit that was already issued. It was therefore clear that the letter did not have legal force for the company. Nonetheless, the territorial environmental protection department required that the company pay for “above-normative pollution” of the environment in April 2001, since the company supposedly discharged pollutants “without a permit.” The court brought justice by rejecting the territorial environmental protection department’s lawsuit. In addition, the court indicated that, in fact, under those circumstances the Ministry for Natural Resources and Environmental Protection had the right to issue the permits for nature use, but that it could not

reduce the period of their validity; that the issuance of permits for nature use in the second quarter of the year was the prevailing practice of the Ministry; and that therefore the company did not commit any violation by its discharges.

III ENVIRONMENTAL REGULATION AND POLICY IN THE UK

Introduction

In this chapter, an overview of the environmental regulations and policies of the United Kingdom, a country very different from Kazakhstan, is presented. While the historical, economical, social and legal backgrounds as well as geography and most environmental issues differ dramatically in these two countries, it is precisely such differences that allow us to draw some general conclusions about policies concerning the environment and, perhaps, other areas where some economic activity seriously affects those not directly involved in it.

Just like in the rest of this thesis, emphasis will be placed on legal aspects. Yet, the discussion of the context in which the presented legal framework exists is unavoidable. Thus, history, geography and economy will also be discussed, as necessary.

The United Kingdom is a member state of the European Union. Hence, it is impossible to discuss UK regulations and policies without an outlook on the EU.

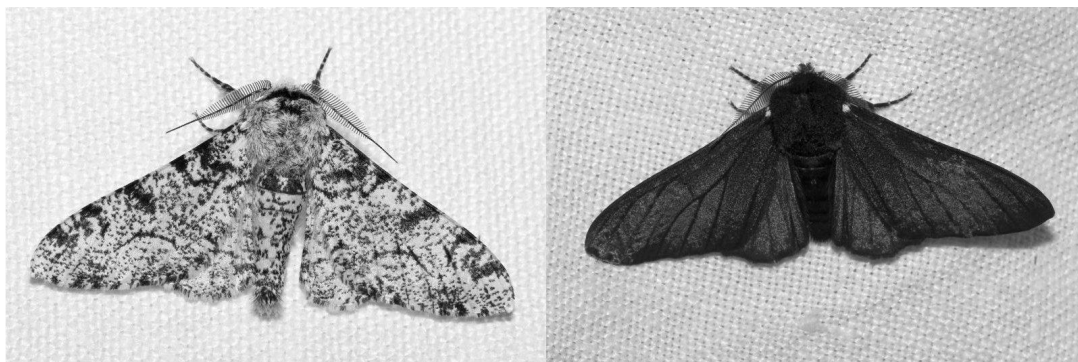
Of the many human activities with significant environmental impact, such as transportation, urban development, irrigation (and agriculture in general), fishing and hunting, logging, mining and energy production this chapter focuses on the latter, for the following two reasons:

1. Globally, decision-makers currently appear to be most concerned with energy issues, which therefore, dominate the international agenda, resulting in a large body of publications available for research.
2. It is in energy production that pollution (and environmental impact in general) is easiest to measure, making the definitions of corresponding environmental standards the most

straightforward.

Historical Context

The example of the UK is particularly interesting from a historical point of view, since Britain was the first industrialized nation and therefore the first to face the problems caused by the increased environmental footprint of industrial civilization. In fact, British experience with the effects of industrial pollution on the environment has been long enough to cause observable evolutionary changes, the best known of which is the example of the **peppered moth** (*biston betularia*). As **soot** blackened tree barks and killed off lichen in Manchester area, the hitherto very rare black-bodied variant became dominant by the end of the XIXth century (see Ken Miller's "[The Peppered Moth: An Update](#)" for example), while improving environmental standards have reversed this trend beginning with 1962 (see "The rise and fall of the Carbonaria form of the peppered moth" by L. M. Cook, 2003).³¹



The two variants of peppered moth

(Pictures from Wikimedia Commons, courtesy of Olaf Leillinger)

From a legal point of view, it is interesting to note that although the legal system based on the Common Law of England in other matters has mostly relied on precedent set by judicial decision

³¹ L. M. Cook. The rise and fall of the Carbonaria form of the peppered moth, 2003

rather than legislation, laws concerning pollution have been mostly legislated into existence yielding to political pressure rather than being outcomes of actual disputes.

Patricia D. Park divides the history of legislative control over the impacts of man's activity on the environment into three broad stages in Section 2.1 of “Energy Law and the Environment”:³²

1. **Before the Industrial Revolution**, the economy was agricultural-based and the society was mostly rural. The only problems that were serious enough to stimulate legislative action were those affecting the larger centers of population. The most prominent example of environmental concern at the time is the pamphlet titled “*Fumifugium, or, The inconveniencie of the air and smoke of London dissipated together with some remedies humbly proposed by J. E. esq. to His Sacred Majesty, and to the Parliament now assembled*” published by John Evelyn in 1661, recommending the relocation of some of London's most polluting industries, such as lime-burning and brewing, outside the capital. As P. D. Park writes, “Almost all areas of trade and industry were subject to very detailed legislative controls at that time, although some were governed by 'self regulation' in the form of guilds, who regulated both supply and methods of production”. She also notes that despite the tight legislative controls, the measures implemented at that time for the protection against the adverse effects of pollution were mostly ineffective in the absence of appropriate enforcement.³³
2. **Beginning with the Industrial Revolution**, pollution became a highly visible problem, given the rapid urbanization of the British society and its profound effects on the

³² Patricia D. Park , Energy Law and the Environment, Taylor & Francis, 10-29

³³ Patricia D. Park , Energy Law and the Environment, Taylor & Francis

environment and public health. A typical example of the approach to pollution control during this period would be the prohibition of “nuisances” and “conditions prejudicial to public health” that was regularly re-enacted in legislation from the Town Improvement Clauses Act 1847 to the Public Health Act 1936³⁴. As P. D. Park writes, “The objectives of the legislation during this period were limited to the nature and quantity of those pollutants and their effects on the immediate surroundings and public health, and the principal form was a general target standard which was randomly applied by rudimentary administrative machinery. For some particularly noxious substances, a set of performance standards was enforced by an expert inspectorate.”, referring to Alkali and Works Regulation Act 1906. As it became clear that competition in providing water, gas and electricity was not feasible, the need for economic regulation arose.

3. **The third stage**, she writes, is “marked by the expansion away from the public health issues to the broader concern for the environment and the impact of pollutants on the biosphere as a whole.” While she says that the beginning of this modern era of environmental policy and legislation in the UK is not easily defined, I would single out Wilfred Beckerman's contribution to the *Third Report of the Royal Commission on Environmental Pollution* in 1972, where he proposes to approach pollution as a use (or, rather, wasting) of scarce resources such as clean air and pure water and advocates the use of standard market mechanism for efficient allocation thereof. It was later published in Hobart Paper 66 by the Institute of Economic Affairs titled “Pricing for Pollution” in 1975 and by its second edition in 1990³⁵, it was fast approaching the status of a classic. While it was largely ignored by the decision-makers of the time, two decades later the

³⁴ West Law, visited 3 April 2007

³⁵ Wilfred Beckerman, *Pricing for Pollution*, Hobart Paper 66, Institute of Economic Affairs, Second edition, 1990

case for **tradable pollution rights and credits** became broadly accepted and today it forms the basis of several international treaties to which the UK is signatory (most notably the **Kyoto Protocol to the United Nations Framework Convention on Climate Change**)³⁶. However, it would be a mistake to attribute the acceptance of these principles solely to the universal acknowledgment of their scientific merits by UK decision makers; the coercive influence of the European Economic Community (later the European Union) is not to be underestimated. On the other hand, as P. D. Park writes, the regulatory approach to the energy sector remains largely “command-and-control”. But, as argued later on in this thesis, that is not due to decision-makers' ignorance of Beckerman's arguments but because governmental decision-making is also subject to economic rationality and it would be a mistake to think that governments, no matter how democratic, always act in the public interest (especially when it conflicts with their own goal of being re-elected).

Currently, British environmental policy is based on the principles outlined in the White paper, *This Common Inheritance* and the subsequently passed Environmental Protection Act 1990 (EPA)³⁷.

Principles

P. D. Park singles³⁸ out the following principles as defining guidelines to contemporary British environmental policy. Policy decisions on environmental issues are generally prepared according to these principles and proposals are judged against them.

³⁶ <http://unfccc.int/resource/docs/convkp/kpeng.html>

³⁷ Environmental Protection Act 1990, referred by Patricia D. Park, *Energy Law and the Environment*, Taylor & Francis, 35

³⁸ Patricia D. Park, *Energy Law and the Environment*, Taylor & Francis, 35

1. Sustainable development. UK government devotes an entire website to conveying their understanding of this broadly discussed concept:³⁹ Instead of referring to P. D. Park's definition, let us highlight the most important points from this governmental website. First, it must be noted that most of descriptions on this website are negative in nature in that they define sustainable development as something opposed to current practices, thereby making it a goal of a desired transformation process rather than an attribute of British society and economy as it currently exists. In one phrase, the goal is summarized as *“development which meets the needs of the present without compromising the ability of future generations to meet their own needs”*. Five principles are highlighted as cornerstones of sustainable development, three of which (Achieving a Sustainable Economy, Using Sound Science Responsibly and Promoting Good Governance) are policy goals, while the remaining two (Living within Environmental Limits and Ensuring a Strong, Healthy & Just Society) are the desired consequences thereof. On March 7, 2005 a comprehensive government strategy was published in a document titled *“Securing the Future — UK Government sustainable development strategy”*. It is available both in printed hard copies and as in pdf files downloadable from the website.
2. Indicators for the domestic energy market. In order to facilitate effective decision making, setting specific objectives against which success can be judged is a recognized need and indeed an important principle of British environmental policy. Specifically, it has been set forth in the January 1996 report of the UK Round Table on Sustainable Development titled *“The domestic energy market: 1998 and beyond”* to provide useful feedback in the process of energy market liberalization. The actual set of indicators is subject to often heated discussion, but with the onset of the 21st century, the UK Government committed

to annual reports on 15 key indicators among which we find those directly related to the domestic energy market, including **greenhouse gas emissions**, **electricity from renewable sources**, the so-called **proportion of households experiencing fuel-poverty** and others.

3. **The precautionary principle.** From a legal point of view, this is the most controversial of the political principles adopted by the UK government with respect to environmental policies, since it might be interpreted as contradicting to the *presumption of innocence*; it states that if an action or policy might cause severe or irreversible harm to the environment, the burden of proof that harm would not ensue, falls on those advocating the policy or action in question. Its application in UK policy-making is rooted in a diverse set of international legal sources, one of the earliest of which *Principle 15 of Agenda 21*, adopted at *Earth Summit* meeting at Rio de Janeiro in 1992 with the following wording:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

There is also a large body of EU legislation clarifying the precautionary principle and setting limits to its application, listing which is clearly beyond the scope of this thesis.

4. **The polluter pays principle.** The aim of this principle, also known as EPR or “Extended Producer Responsibility”, is to internalize the cost of pollution into production, thus providing the industry with incentives to reduce pollution. This principle has gained enormous popularity within OECD countries (including, of course, the UK), to the point

³⁹ <http://www.sustainable-development.gov.uk/>

that it appears to be self-evident to many policy makers as well as the general public. However, from a purely economic point of view, I believe the most common interpretation of this principle is flawed, resulting in unnecessary environmental damage and inefficient allocation of resources. Pollution taxes and fines, which are most often rationalized by this principle, provide governments with incentives that are incompatible with the goal of internalizing pollution costs, specifically on the receiving end: some directly suffer the negative consequences of pollution, while the government directly benefits from the proceedings of such taxes and fines. This, in turn, has potentially the following adverse effects: governments may become interested in attracting polluting industries in order to collect additional revenues and may implement other policies that actually encourage pollution, also powerful players (e.g. large corporations) may attempt to negotiate exemptions for themselves as they can reasonably hope that governments will be afraid of capital flight to other jurisdictions where such fines and taxes do not exist, are lower or are not enforced, which by itself can be a negative consequence of pollution taxes and fines. One implementation of this principle, which does not suffer from mis-aligned incentives is producers' civil responsibility for damages caused through pollution, which is one of the more important features of British environmental law.

5. **The move toward deregulation.** In line with Thatcherite political-economic thinking during the eighties of the 20th century, advocating radical reduction of public expenditure and limiting the public sector, the Deregulation Initiative was inaugurated in 1985, resulting in the abolition of a number of controls (see White Paper, *Lifting the Burden* by Cmnd, 1985)⁴⁰. Reaffirming the faith in the efficiency of competitive markets, this same principle was the basis of the Deregulation and Contracting Out Act 1994, which includes

a general power for any Minister to amend or repeal existing legislation by means of a statutory instrument if they are of the opinion that the measure imposes a burden on any trade, business or profession that will be thus reduced.

6. **Self-regulation.** There is a longstanding tradition in Britain, dating back to guilds in the middle ages, that the rights of practice and rules of conduct for certain professions are being determined by bodes drawn exclusively or predominantly from among the members of the profession in question. This seems to be at odds with some principles of good governance, namely that of avoiding conflicts of interest by separation of roles, but it can also be argued that the high degree of specialization results in a situation where those outside the profession have insufficient training and experience for making informed regulatory decisions.
7. **BS7750.** The so-called British Standard on Environmental Management Systems launched in 1994 following a pilot program, is a voluntary system in which a firm can choose to participate. It is very similar to quality-control standards such as BS5750 or ISO9000 series in that it does not stipulate specific levels of environmental performance, but instead requires establishing an environmental policy and carrying out regular audits of the firm's current position ensuring that environmental targets and objectives set in the policy are met. Similarly to the above mentioned quality-control standards, it is a peer certification program, sending a signal to business partners and customers about reliable environmental performance.
8. **EMAS.** An EU standard on Eco-management and Audit dating back to 1995, very similar

⁴⁰ White Paper, *Lifting the Burden*. Cmnd, 1985, 9571

to BS7750 with the notable exception that EMAS requires a *public statement* on the firm's environmental performance, including relevant figures on pollution emissions, waste generation, the use of raw materials and energy and water consumption.

9. **The ISO 14000 series.** This is a series of environmental management standards from the International Standards Organization (ISO), which have been adopted as British, and in most cases, EU standards.
10. **Market mechanisms.** Economic instruments such as *subsidies, charges, deposit-refund systems* and others that leave polluters free to respond in the way which they choose have been defined as providing “monetary incentives for voluntary, non-coerced action by polluter” (see OECD Report, 1989⁴¹).

Regulatory Bodies

Below follows a list of British regulatory bodies responsible for making and implementing policy decisions on environmental issues.

1. DETR, Department of the Environment, Transport and the Regions
2. DTI, Department of Trade and Industry
3. Parliamentary Select Committees
4. RCEP, Royal Commission on Environmental Pollution
5. The Environment Agency
6. Local Authorities
7. UKAEA, the United Kingdom Atomic Energy Authority
8. The Coal Authority

IV CONCLUSION

Summarizing all above, it should be noted that the current legislation on protecting the environment in Kazakhstan retains the vagueness and contradictions, which have led to disputes over its implementation. Since protection of the environment and the subsoil is one of the significant aspects of subsoil use, the absence of clearly-defined rules deprives the subsoil user of confidence that he is acting in accordance with legislation and has a negative effect in his decisions regarding future investments in Kazakhstan.

In my view, after introducing in legislation measures that would adequately protect environment issues, government should permit a transitional period during which companies have time to take appropriate measures to adjust themselves to the introduction of stricter pollution-control policies. This is the common practice whenever tariffs on internationally traded goods are reduced. The internationally agreed rounds of tariff reductions and also arrangements for the establishment of customs unions of one kind or another (like EEC) invariably allow transitional periods.

As though, it is very difficult to solve problems with protecting environment, which cannot speak for itself, cannot sue, only environmental protection awareness can solve the problem of achieving a balance between governmental interest of making money and global problem of clean nature. Governmental policy on environment reflects the framework of legislation. Thus unless policy-makers are genuinely concerned with humanistic problems, like environment, Kazakhstan

⁴¹ The Polluter Pays Principle, OECD, 1975 referred by Patricia Park, *Energy Law and the Environment*, Taylor & Francis, 2002

won't achieve a good balance. On the other hand, since income from oil business is the biggest contribution, policy on this matter is influenced by many interests.

In the end of this thesis, author become more concerned that more research is needed on this issue. It is understandable that all big oil companies when they invest in the third world countries, they expect to benefit with low standards of environment protection and cheap labor, so that they withdraw more profit, but since environment is a global issue, legislation should be harmonized in line with development countries legislation.

In the beginning of Kazakhstan independence, many mistakes were made with soft environment regulation, but it is not too late to chance the situation now. As a rule, investors are aware that environment legislation can change for stricter regime, so changes should be made later than never.

In my view, Kazakh government should not worry much, that investors will lose their interest in the country, as they already spent considerable money, therefore after the policy will be changed, and allow them a specific time to introduce more environment friendly technologies, to create business as such that there would be less harmful side-effects. This will all help for the country to create mandatory incentives for businesses to spend more money on environment.

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