

# THE PROPOSED RUSSIAN PETROLEUM CONSERVATION AND ENVIRONMENTAL PROTECTION LAW OF 1992

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## I. INTRODUCTION

There is an old Russian saying: "The worse, the better."<sup>1</sup> I take this to mean that positive change can emerge from poor conditions, and the poorer the conditions, the greater the change that will take place. If so, then there is great reason to be hopeful for Russia's future in general, and the future of the Russian oil and gas industry in particular. Conditions at present could not get much worse. The University of Houston Law Center Russian Petroleum Legislation Project necessarily had to deal with these conditions in the legislative proposals it made. These conditions included not only the physical problems of oil and gas production but also the existing constitutional and political structure. To explain the methods and goals of the project's proposed legislation for conservation of oil and gas and protection of the environment, it is first necessary to describe the Russian circumstances. Americans, who have enjoyed the luxury of two centuries of relative stability and continuity in their legal system, may have to adopt a somewhat different perspective to understand the special problems of developing law for Russia.

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1. Douglas Stanglin et al., *Toxic Wasteland*, U.S. NEWS & WORLD REP., Apr. 13, 1992, at 40, 46 (quoting Alexei Yablokov, Ecology Counselor to Russian President Boris Yeltsin).

## II. THE ENVIRONMENTAL CONDITIONS AND THE STATE OF THE OIL AND GAS INDUSTRY

The drastic environmental problems in Russia and the other parts of the former U.S.S.R. have been extensively discussed. A representative commentary states:

No other great industrial civilization so systematically and so long poisoned its air, land, water and people. None so loudly proclaiming its efforts to improve public health and protect nature so degraded both. And no advanced society faced such a bleak political and economic reckoning with so few resources to invest toward recovery.<sup>2</sup>

The Russian oil and gas industry contributed substantially to these environmental problems. One source estimates nearly 700 explosions of gas and oil pipelines occur each year, resulting in a loss of several million tons of oil and accounting for a loss of twenty percent of the total production of the country's gas and oil.<sup>3</sup> In addition to these explosions, poor production practices cause an excessive waste of oil and destruction of other natural resources.<sup>4</sup> It is therefore not surprising that the energy sector apparently fared worse than any other area of the Soviet economy in 1991. Oil production slumped by more than ten percent to 10 million barrels a day, the lowest level since

2. MURRAY FESHBACH & ALFRED FRIENDLY, JR., *ECOCIDE IN THE USSR: HEALTH AND NATURE UNDER SEIGE 1* (1992). See generally CHARLES ZIEGLER, *ENVIRONMENTAL POLICY IN THE USSR* (1987). A cover story appeared recently in *U.S. News & World Report* under the headline *Toxic Wasteland*, and it presents a picture of Russia as bleak as its title. See Stanglin, *supra* note 1, at 42 (noting that "[c]ommunism has left the 290 million people of the former Soviet Union to breathe poisoned air, eat the poisoned water and, all too often, to bury their frail, poisoned children without knowing what killed them").

3. *Environment: Growing Concern in Russia*, EUR. ENERGY, Jan. 24, 1992, available in LEXIS, Nexis Library, Currnt File.

4. Indeed, the cover story of the *U.S. News & World Report* issue mentioned in note 1 begins with a vivid description of the thousands of gas flares that light the night of the Tyumen oil fields of Siberia and that spread the sulphur dioxide that has helped ruin 1,500 square miles of timber. Stanglin, *supra* note 1, at 40. The article goes on to observe that to speed up construction of oil pipelines, builders were permitted to install cutoff valves every 30 miles instead of every three, so a break dumps up to 30 miles worth of oil onto the ground. It reports that one pool of spilled oil in Siberia is six feet deep, four miles wide and seven miles long. *Id.* at 42.

1975.<sup>5</sup> A number of factors contributed to this loss of production, but the chief reason was the preceding government's failure to make the necessary investments to maintain production. Poor production practices and a lack of investment in existing facilities directly affected the legislative proposals developed by the University of Houston project.

Russian officials believe that the quickest return on investment would come from restoration of inactive oil wells. Many wells sit idle due to lack of equipment and technical resources in Russia, especially in Siberia where nearly 20,000 shut-in wells exist.<sup>6</sup> Such wells and fields are known to produce and, in many instances, the producing characteristics of the formations and amount of reserves are known. However, many of these fields and wells were not completed and produced according to desirable standards. This raises serious questions concerning development of these substandard sites. If a foreign company takes over an existing well, to what extent should it bear the responsibility for any damage already caused to the surrounding environment? To what extent should it bear the responsibility for any damage that may yet be revealed or arise from pre-existing conditions in the manner the well was originally drilled and completed? The Russians might find it desirable for someone else to assume the responsibility and liability for damages and cleanup of years of Communist neglect. Increased expense and liability, however, make foreign investment in such activities much less attractive. Providing answers to the above issues, as well as incorporating solutions into proposed legislation, requires an analysis of the past and present state of the law.

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5. Isabel Gorst, *Gas Industry Weathers the Worsening Storm*, GAS WORLD INT'L, Jan. 1992, at 14, available in LEXIS, Nexis Library, Currnt File.

6. Andrei A. Konoplyanick & Nikolai Lisovsky, *Russia Aims for Favorable Climate for Joint Ventures*, OIL AND GAS J., Aug. 10, 1992, at 19. An example of a joint venture for reworking old wells and developing existing fields is the Komiquest venture, a joint venture of Quest Petroleum Exploration Gesellschaft GmbH, Komineft Production Association, and Usinsk NGDU. *Another Kazakh Mergaproject Lined Up*, OIL AND GAS J., July 13, 1992, at 24. Quest Petroleum is owned 50% by Quest Oil Trading BV, of which 14.06% interest is owned by Star Valley Resources Corp. of Vancouver, and 50% by Mannai Corp. of Qatar. *Id.* at 26. Mannai is providing \$10 million to work over wells on Komiquest acreage. *Id.* In addition, Mannai has agreed to provide \$1 million at the rate of \$150,000 per month to fund exploration. *Id.* As many as 7,000 wells eventually could be worked over by the joint venture. *Id.*

### III. SOVIET LAW

The Communist party gave a certain cohesion to whatever law existed in the Soviet Union. The party's hierarchy and authority served as the substitute for written law and enforcement of law through courts in this country. Specifically, statutes in the Soviet Union guided the actions of the government hierarchy, which was roughly coextensive with the Communist Party.<sup>7</sup> But the role of the Communist Party was never codified.<sup>8</sup> Lawyers and courts had only a marginal role in carrying out law. Statutes expressed collective goals of the society, and these were in some sense directives to the organs of government. However, interpretation and enforcement of statutes depended on the views of the Communist Party, not the courts.<sup>9</sup> Very often this meant no enforcement at all. The manager of an industrial plant might be a member of the Communist Party; this same person might also be a local government official. If this official violated a normative requirement of the state, who would enforce it? A fellow member of the Communist Party was unlikely to take serious action. When the Soviet state collapsed and the Communist Party no longer controlled the state there arose a legal vacuum.

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7. See, e.g., Maimon Schwarzschild, *Variations on an Enigma: Law in Practice and Law on the Books in the U.S.S.R.*, 99 HARV. L. REV. 685, 688 (1986) (reviewing OLYMPIAD S. IOFFE & PETER B. MAGGS, *SOVIET LAW IN THEORY AND PRACTICE* (1983)). This review indicates that the USSR Constitution provides for the Communist Party to be the "guiding and directing force of Soviet society and the nucleus of its political system and state and social organizations." *Id.*

8. Christopher Osakive, Book Review, 59 TUL. L. REV. 858, 862 (1985). One scholar has made the following observations concerning the extra-legal role of the Communist Party of the Soviet Union (C.P.S.U.): "The Communist Party of the Soviet Union is neither communist nor a party. For all practical purposes, the C.P.S.U. operates as a *regnum inter regnum*; the C.P.S.U. serves the Soviet legal system in a tripartite role as political guardian, moral tutor, and keeper of the Soviet legal conscience. Notwithstanding the provisions of Article Six of the U.S.S.R. Constitution of 1977, the C.P.S.U. in practice stands not only outside the state constitution but also above it because the Party does not derive its authority from the state constitution and the exercise of its inherent powers is not meaningfully limited by constitutional constraints." *Id.* at 862-63.

9. See Michael Axline, (Out) *Back in the U.S.S.R.: A Review of Charles Ziegler's Environmental Policy in the U.S.S.R.*, 18 ENVTL. L. 383, 391 (1988) (noting that "soviet laws are intended more to inform than to be enforced").

If Russia is to attract western investment and technology to develop its rich oil and gas resources, it must fill this vacuum. To attract and keep western investment, Russia must provide a stable economic and political environment. Furthermore, licensing laws and laws relating to conservation and the environment must be stable and predictable. Investors must be able to know what that law is and to know who exercises authority over oil and gas operations. The latter is probably the gravest difficulty for Russia in the future.

#### IV. THE NEW RUSSIA

There has been a revolution in Russia. It was largely peaceful, but a revolution nonetheless. Since 1917, the foundation of the society was the Soviet Union, the entity that succeeded the Romanov dynasty. In 1991, that foundation crumbled and a new state emerged — Russia.<sup>10</sup> All existing law lost its validity. As Kelsen (and Hobbes before him) observed, any existing law that is carried over derives its force from the new *grundnorm* or basic norm, not because it was already the law.<sup>11</sup> While some commentators may maintain that Soviet law remains law until displaced, it is only because the new regime chooses to make it so; the prior law has no force of its own, for its validating principle has now been dissolved and superseded.<sup>12</sup>

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10. See, e.g., *Finding a Formula for the New Union*, TORONTO STAR, Sept. 8, 1991, at B2, available in LEXIS, World Library, Tstar File.

11. Hans Kelsen, *General Theory of Law and State*, reprinted in JURISPRUDENCE 626-27 (George C. Christie ed., 1973). The author notes:

A revolution . . . occurs whenever the legal order of a community is nullified and replaced by a new order in an illegitimate way, that is in a way not prescribed by the first order itself . . . . Usually, the new men whom a revolution brings to power annul only the constitution and certain laws of paramount political significance, putting other norms in their place. A great part of the old legal order "remains" valid also within the frame of the new order. But the phrase "they remain valid" does not give an adequate description of the phenomenon. It is only the contents of these norms that remain the same, not the reasons of their validity . . . . If laws which were introduced under the old constitution "continue to be valid" under the new constitution, this is possible only because validity has expressly or tacitly been vested in them by the new constitution.

*Id.* at 626-27.

12. For discussion of this in the context of a specific question of law, see Peter J. Pettibone, *Privatization: Opportunities, Risk, Prognosis*, PLI Order No. A4-4364, Feb. 20-21, 1992, available in WL, Tp-all Database.

Much of the old law could be carried over, but the Russian government is making new law, and one cannot know in advance what Soviet laws the Russian government will retain. Reasons exist for not continuing some of the law that did exist in the Soviet Union. For example, recent writers have commented on how widely the actual functioning of Soviet law diverged from the law as written. One law professor recently observed that "law is . . . a form of propaganda in the Soviet Union, and as such it cloaks more than it reveals."<sup>13</sup>

In the United States, statutes, regulations, and judicial decisions are published and are not considered effective until promulgated, which generally includes publication. Much of Soviet law regulating economic activities has been in the form of unpublished administrative regulations.<sup>14</sup> Indeed, most Soviet statutes merely circulated among government offices without publication.<sup>15</sup> The Russians have not yet adopted a systematic basis for promulgating regulations so as to be accessible to a

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The legal framework for privatization in the Russian Federation is the Russian Law on the Privatization of State and Municipal Enterprises, which was enacted in July 1991 (the "Privatization Law"). At approximately the same time that law was enacted, the U.S.S.R. Supreme Soviet enacted the U.S.S.R. Law on the Fundamental Principles of Destatization and Privatization of Enterprises. In the fall of 1991 there was considerable confusion as to which privatization law was applicable law in Russia. The then Russian Minister of Economics, Eugene Saburov, stated that the Russian Federation would not recognize U.S.S.R. legislation as applicable within the Russian Federation (speech to a private group in Moscow on October 7, 1991), but other authoritative commentators took the position that U.S.S.R. legislation might have force where there was no Russian legislation on point. Indeed, some commentators have stated that the U.S.S.R. legislation on privatization is a better crafted law and have suggested that, even though there is no longer a U.S.S.R., its legislation on privatization, as well as its legislation on other matters, may well be followed by various republics notwithstanding the demise of the Soviet Union. Indeed, in the area of the income taxation of the individuals, the Russian Federation law incorporates by reference the U.S.S.R. law in applying its income tax law to individuals within the Russian Federation and has amended it in certain respects (e.g., the maximum rate is reduced from the 60% rate in the U.S.S.R. legislation to 30%).

*Id.*

13. Schwarzschild, *supra* note 7, at 689.

14. Harold J. Berman, *Doing Business in the Soviet Union: The Legal Environment*, PLI Order No. A4-4311, July 16-17, 1990, available in WL, Tp-all Database. See also Schwarzschild, *supra* note 7, at 691 (noting that "[i]n general, many Soviet statutes are couched in broad, abstract terms; practical enforcement is on the basis of unpublished regulations, secret ministerial instructions, and administrative orders whose texts are inaccessible to the general public").

15. Schwarzschild, *supra* note 7, at 691.

foreign company or, indeed, to many of their own citizens. In suggesting to the Russians a way to set up an effective method of conserving oil and gas and protecting the environment, while at the same time making it possible for foreign investors to know what is required of them, the legislative project adopted a "plan approval" approach.

The Russian Federation contains numerous geographic and political divisions.<sup>16</sup> With the collapse of the Communist Party, the question of the relationship of government subdivisions to the central government assumes greater importance than in the past. Specifically, there is no clear answer as to which level of government has what degree of authority. There are no Russian counterparts, as yet, to the American Constitution's Commerce Clause and the doctrine of federal preemption of state authority. The controversies extend beyond simply geographical governmental groupings or entities. The production associations and workers' organizations are asserting jurisdiction over oil and production facilities at existing development areas.<sup>17</sup> Such groups are akin to American corporations and unions but in Russia they are more: In the past, they had a status that was political in character, and it is not surprising that they would now assert such a role. The existing Russian oil and gas industry is undergoing an uncontrolled dissolution process in which

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16. The Russian Federation is organized in 49 oblasts and 6 krays. There is no legal distinction between the two, but the kray is a geographically larger area. Further subdivisions include 16 autonomous republics, five autonomous oblasts, and ten autonomous krugs. See Patricia Fry Eldridge, *Russian Energy Legislation: Regulating State Monopolies to Allow the Development of Competitive Markets*, 13 ENERGY L.J. 1, 2-3 (1992). When the Communist Party with its own hierarchy controlled the USSR, the putative authority of a subdivision of government was not greatly significant. *Id.*

17. See Thomas Ginsburg, *Ownership Clashes Worsen Russia's Oil Industry Woes*, TIMES-PICAYUNE, Aug. 2, 1992, at A43, available in WL, Times-Pic Database. For example, Vladimir Shten, a technical director of the Nizhnevartovsk Oil and Gas Production Association has claimed the oil wells are his and his laborers since they "pump the oil." *Id.* Moreover, labor leaders contend that they are in authority despite the nominal control of a production association. Leonid Zakharov, chief geologist and head of his company's labor collective, argues that although the parent Varyegan Oil and Gas Production Association tries "to make declarations about our work . . . they have no authority with the workers . . . [t]he voice of the chief is the voice of the workers." *Id.* (emphasis omitted). Zakharov points out as an example that he had "unilaterally considered and rejected" a proposal for development from a Swiss company. *Id.*

bits and pieces of the state industry are being transformed into new forms of ownership in a manner that is unplanned and for which no legal basis exists.<sup>18</sup> Deals made with these unofficial organizations "may be very vulnerable and short lived."<sup>19</sup> There are also bureaucratic struggles at the Moscow level. Natural gas continues as a state monopoly and is under one agency, Gazprom, while oil falls under another.<sup>20</sup> The Russian Ministry of Energy and Fuels is seeking reforms, one of which could be the proposed Russian Petroleum Legislation draft.

## V. THE ALTERNATIVES CONSIDERED

Methods of conservation and environmental regulation depend on the type of arrangement under which drilling and development take place. The Committee on Conservation and Environment of the University of Houston Law Center Russian Petroleum Legislation project (Committee) considered three categories of arrangements.

### A. A Fixed Content System

The main feature of this system<sup>21</sup> is that the obligations

18. Valery Kryukov and Arild Moe, *How the Industry Structure is Changing in the Former U.S.S.R.*, OIL AND GAS J., May 18, 1992, at 36.

19. *Id.* at 36. The problems of political uncertainty are illustrated by the experience of Elf Aquitaine, the French oil company, in Russian's lower Volga River region. Elf obtained rights to explore a 20,000 square kilometer area of Saratov and Volgograd provinces under a production sharing contract (PSC). Although President Yeltsin issued a decree supporting the Volgograd/Saratov PSC, problems arose because other governmental entities asserted the need for consent. The Moscow newspaper COMMERSANT reported that the agreement

has no practical force because it requires approval by several ministries and parliament . . . . The ministries and parliament are in a precarious situation because there is no legislation regulating concessions. However, parliament has passed laws on foreign investment and natural resources giving enterprises some legal grounds to cooperate on production sharing terms.

Another *Kazakh Mergaproject Lined Up*, *supra* note 6, at 25 (quoting COMMERSANT).

Volgograd and Saratov officials suddenly balked at allowing foreigners to exploit their resources, allegedly because they feared oil production would harm the regions' environment. Elf reassured Volgograd authorities that under the concession's terms it would be forced to cease development if environmental damage occurred. The Saratov officials apparently remained skeptical. *Id.*

20. *Gazprom Moving Toward New Era in Russian Natural Gas Industry*, OIL & GAS J., Sept. 7, 1992, at 18.

21. This system is found in the United States, Canada, Australia, many

and rights of the parties in petroleum development are determined by the national legislative body. The legislation establishes most of the terms for petroleum exploration and development, leaving little (though they may be very important terms) to negotiation between the government and the petroleum development company. Conservation and environmental requirements are generally part of the broad legislative program.

Much about the *fixed content system* is commendable, for the law is stable, predictable, and applies equally to all entities. But this system depends on a known hierarchy of authority for promulgation, implementation, and enforcement. Moreover, the process is generally long and complex, with an interplay between statutes and regulations to take into account the differing circumstances in which operations and development will take place; especially if the country is large. In the United States, statutes and regulations at the state and federal levels have developed over a century and are highly complex. In Russia today, the lines of authority are very vague. It is not clear that the national legislative body has general governing authority, that such authority is exercised, or that such authority would be enforceable. Perhaps in time such authority will mature, but for now, investors would be unwise to spend money relying solely on the hope of authoritative legislation. Furthermore, one concerned about the environmental well-being of the territory of Russia would have to doubt the sufficiency of a legislative pronouncement from Moscow to achieve environmental protection.

### B. *The Agreement System*

In this second system, there is little or no legislation for petroleum development by the host country. The negotiated agreement sets forth all or most of the terms and conditions of petroleum development.<sup>22</sup>

The advantage of this system is that each undertaking can be tailored to the circumstances of the particular development. The disadvantages are several. Inconsistent approaches may be applied from venture to venture, and the potential for "sweet-

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Latin American countries, and most members of the European Community.

22. Such joint ventures (under a variety of names) have been used in the Middle East, in Latin America, and in the former Soviet Union.

heart" deals and corruption is substantial. Unless the joint venture agreement is very detailed, important aspects of environmental protection may be ignored and, indeed, the individual arrangement may even be regarded as superseding other laws of the government.

Russia presently relies primarily on the *agreement system* to bring about oil and gas development while comprehensive legislation is pending. This system poses a danger for both Russian and foreign investors. The agreements reached between partners may ignore or inadequately describe requirements for conservation and environmental protection. Russians may find themselves with a business partner who later denies responsibility for damage it may have caused, and then denies any legal obligation to repair the damage or compensate for losses it has caused. The foreign company, on the other hand, faces tremendous uncertainty. It may find the Russian government, or a local unit of government, claiming money or property or denying further use of oil and gas resources on the grounds that the company has violated standards not appearing in the agreement or existing in legislation at the time of the agreement.<sup>23</sup>

The lack of a stable political structure with predictable legal mechanisms causes problems on both sides of the bargaining table. Foreign companies do not know with whom they should be dealing and are presently unable to predict the outcome of any particular investment. From the Russian perspective, as observed by Thane Gustafson, a director of Cam-

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23. The uncertainty in existing law has already threatened a large scale project. The Polyarnoye Siyaniye (Northern or Polar Lights) joint venture, formed by Conoco and the Arkhangelskgeologiya association in January 1992, began Russia's first ever joint oil deposit development project (most joint ventures thus far have involved existing fields). *Russian Joint Ventures Upstream Deal Hit Fast Clip*, OIL AND GAS J., June 29, 1992, at 30. Established to develop oil fields in the northern Timan-Pechora basin, north of the Arctic Circle and west of the Ural Mountains, the project has plans to invest three billion dollars in developing three major oil deposits. Several Russian drilling rigs are being converted and upgraded to conform more closely to western safety, environmental, and operational standards. However, a week after Acting Prime Minister Yegor Gaidar signed a resolution establishing export privileges for the company, the Social Ecological Union, a Russian environmental organization, said it would appeal the decision in court, on the ground that Gaidar's decision violated the law "On the Subsurface" and should be repealed. *Polyarnoye Siyaniye May Fail to Get Access to Oil*, BIZEKON NEWS, July 20, 1992, available in LEXIS, Nexis Library, Currnt File.

bridge Energy Research Associates (CERA), Cambridge, Massachusetts:

[O]fficials don't know whether they have authority to make deals and wouldn't know a good deal if they were offered one . . . . What they do know is they have a great deal to lose, because they're likely to come under attack from many quarters for having soul [sic] out, having made a bad deal, having given away the Russian birthright, or having perpetuated Russia's present humiliating position in the world as an exporter of raw materials.<sup>24</sup>

The uncertainty as to who has authority has led a number of observers to suggest that it is necessary to cover all bases. A recent report on Russian investment observed:

The best method of approaching an investment is still at the local level . . . . Negotiations should begin at the local level and then go up the ladder to obtain the necessary permits from the appropriate higher government authorities. With legal jurisdiction over natural resources still in a fluid state, the ideal situation for legal security is to obtain a decree from the Russian Supreme Soviet approving an investment . . . . It's not unreasonable, especially if the investment is large enough. It is essential — whatever the statutory jurisdiction and whether negotiations begin at the local or federation level — to bring local authorities along in the process . . . . These authorities' stamp of approval will be needed to complete negotiations for an investment.<sup>25</sup>

### C. *The Flexible System*

The Committee embodied the *flexible system* which combines features of both the *fixed content* and the *agreement systems*, in the legislation proposed to the Russians. Put simply,

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24. *Political Chaos Reins Progress on New Joint Ventures in Russia*, OIL AND GAS J., Mar. 16, 1992, at 19.

25. *Russian Law on Underground Resources Sets Basic Framework, But Many Details Needed*, RUSSIA & COMMONWEALTH BUS. L. REP., May 1, 1992, at 20.

the proposal seeks to establish broad standards and authority that would be nation-wide in Russia in both scope and application. However, the proposed legislation also specifies many of the details for conservation of oil and gas and environmental protection on a project-by-project basis. By requiring approval or input from many levels of government and public participation, the proposal attempts to assure comprehensive involvement from each entity that may assert authority, while at the same time avoids the inertia that would result if a foreign company could not proceed until the precise authority of each entity was established.

## VI. THE UNIVERSITY OF HOUSTON PROJECT

The background of the University of Houston Law Center Russian Petroleum Legislation Project is set forth in detail elsewhere and need not be repeated here.<sup>26</sup> What follows is an overview of the Proposed Petroleum Conservation and Environmental Protection Act of 1992 (Proposed C&E Act).<sup>27</sup> It is provided to give the reader a general understanding of the approach followed by the proposed legislation in light of the foregoing discussion of the present conditions in Russia. To see how this portion of the University of Houston legislative project relates to the other portions, the reader will need to refer to the other articles in this issue.

The purpose of the proposed legislation is to provide the normative principles and the regulatory procedures to govern the oil and gas industry in the Russian Federation so as to prevent waste of petroleum and to protect the environment from the adverse effects of exploration and development activities. The Russian Federation has laws for environmental protection, and its current petroleum licensing law has certain provisions that are designed to assure that good exploration and production practices are followed by the oil and gas industry. However, a more specialized body of law and a specific regulatory

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26. See Eldridge, *supra* note 16, at 11-16. See also Jacqueline Lang Weaver, *The History and Organization of the Russian Petroleum Legislation Project at the University of Houston Law Center*, 15 HOUS. J. INT'L L. 271 (1993).

27. PROPOSED PETROLEUM CODE OF THE RUSSIAN FEDERATION, PART II, CONSERVATION AND ENVIRONMENTAL PROTECTION (1992) 15 HOUS. J. INT'L L. 705 (1993) [hereinafter PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT].

framework are necessary to provide a comprehensive program for the rational development of oil and gas. The Law of the Russian Federation Concerning Subsurface Resources provides for the enactment of further laws for developing and improving the legislation of the Russian Federation concerning subsurface resources.<sup>28</sup>

The Proposed C&E Act is coordinated with the Proposed Licensing Act of the University of Houston Russian Petroleum Legislation Project.<sup>29</sup> Thus, the Proposed C&E Act often uses the same definitions; it borrows two complete sections from the Proposed Licensing Act (on unitization<sup>30</sup> and measurement<sup>31</sup>), and it requires that records and reports be standardized to avoid duplication. By nature, though, the two laws are different. The Proposed Licensing Act creates a license agreement between the host country and the licensee. There are no civil penalties for breach of the license; the licensee has 180 days to correct deficiencies,<sup>32</sup> and licensing disputes are resolved in an international arbitration forum.<sup>33</sup>

By contrast, conservation and environmental issues are not a matter of contract. The Proposed C&E Act as a regulatory, prescriptive law, carries civil penalties and requires reporting and notification to assure compliance with the environmental and conservation aspects of the licensee's plans for exploration or for development and production.<sup>34</sup>

This proposed legislation follows the patterns of offshore and onshore conservation and environmental laws used by the

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28. LAW OF THE RUSSIAN FEDERATION CONCERNING SUBSURFACE RESOURCES, art. 3(1) (Ernst & Young trans., May 5, 1992) (originally published in the *Russian Gazette*), [hereinafter SUBSURFACE RESOURCES LAW], reprinted in RUSSIA AND THE REPUBLICS LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992). *Editor's Note: For consistency, the above law has been cited as is although there are several translations and titles. See Weaver, supra note 26, at 290 n.20.*

29. PROPOSED PETROLEUM CODE OF THE RUSSIAN FEDERATION, PART I, LICENSES (1992) 15 HOUS. J. INT'L L. 641 (1993) (companion volume) [hereinafter PROPOSED LICENSING ACT].

30. PROPOSED LICENSING ACT, art. 36. This article is replicated as Article 22 of the Proposed C&E Act, *supra* note 27.

31. PROPOSED LICENSING ACT, art. 43. This article is replicated as Article 27 of the Proposed C&E Act, *supra* note 27.

32. PROPOSED LICENSING ACT, art. 70.

33. PROPOSED LICENSING ACT, art. 64.

34. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 32-34.

United States on federal lands and by Great Britain and Norway in the North Sea.<sup>35</sup> It draws on environmental regulatory principles of the European Community, the United Nations, and other countries with petroleum exploration and production experience. This legislation differs from the programs of other countries in certain respects because of the special circumstances of the Russian Federation. These circumstances include the unsettled Russian political structure and the fact that a well-established oil and gas industry already exists in the country in which the law will apply.

Chapter A (Articles 1-4) of the Proposed C&E Act gives its title, states the broad objectives of the law and the scope of its applicability, and sets forth the definitions that are employed in the law.<sup>36</sup> The definitions are consistent with those in the Licensing Act.<sup>37</sup>

Chapter B (Articles 5-12) of the Proposed C&E Act provides the general authority and powers of the Petroleum Conservation and Environment Authority (PCEA).<sup>38</sup> The use of the term PCEA here was not necessarily meant to establish a particular type of regulatory authority. The members of the Committee were aware of the fact that there is no single governmental agency in Russia charged with authority over the country's oil and gas industry. The Committee did indicate the desirability of establishing such an agency, however, it did not specify a name for it or describe it precisely. The PCEA might be an individual or board or a commission; it likewise might be structured as a body made up of the heads of several other agencies. Additionally, it was not intended that the PCEA in this Chapter would necessarily be the same agency or entity as the Authority used in the Licensing Act.<sup>39</sup> The question of who

35. For a discussion of such laws, see generally OYSTEN NORENG, *THE OIL INDUSTRY AND GOVERNMENT STRATEGY IN THE NORTH SEA* (1980); BRENT F. NELSEN, *THE STATE OFFSHORE* (1991).

36. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 1-4.

37. See PROPOSED LICENSING ACT, art. 2. The terms have been defined in such a way that they will be employed in their broadest definition throughout the Act. Where a more limited meaning is to be given a defined term in a particular article, the application of the term is made clear in the context of the particular article.

38. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 5-12.

39. The Proposed Licensing Act refers to the "competent authority" as the

will exercise authority is a sensitive one. An agency such as the PCEA will certainly have an expert staff of petroleum engineers and geologists, as well as environmental specialists.

The Committee attempted to clarify that the PCEA's function is not to manage the daily operations of the oil and gas industry in the sense of making the fundamental decisions regarding exploration and development. Each Licensee must have the freedom to manage its operations; deciding when and how to develop the license it has acquired from the Russian Federation. But the PCEA will review the drilling and development activities to assure that such actions by the licensee are in accordance with law and sound environmental policies.<sup>40</sup>

The PCEA will oversee drilling and production activities. Other authorities, however, will give approval to plans for exploration, development, and production that are prepared by the licensees. These plans will be reviewed by the PCEA and by other approving authorities. The proposed Act does not attempt to indicate which authorities should review the plans nor the degree of authority such authorities should possess in the review process. The Russian environmental law provides certain authority, responsibilities, and powers for all levels of government<sup>41</sup> in the area of environmental protection.<sup>42</sup> But it remains for the Russian Federation to specify what role these government units have in the development of underground resources, pursuant to the Law of the Russian Federation Concerning Subsurface Resources. This Subsurface Resources Law provides the following sub-articles as the responsibility and power of the Russian Federation:

- 1) developing and improving the legislation of the Russian Federation on mineral deposits;<sup>43</sup>

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regulating agency for that area but does not specify which agency will serve in this capacity. See PROPOSED LICENSING ACT, arts. 2, 4.

40. See PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 5.

41. I.e., the Russian Federation Government, State Organs of the Russian Federation, the Constituent Republics, Autonomous Oblast and Autonomous Okrugs, Krays and Oblasts, and Local Self-Government Organs.

42. "On Protection of the Environment" (December 19, 1991), arts. 6-10.

43. SUBSURFACE RESOURCES LAW, art. 3(1).

- 2) establishing a procedure for the use and protection of subsurface resources, and developing the corresponding standards (norms);<sup>44</sup>
- 3) state supervision of the rational use and protection of subsurface resources and the establishment of a procedure for carrying out such supervision.<sup>45</sup>

Therefore, the Russian Federation clearly has the authority and power to establish a regulatory body that has primary responsibility for conservation and environmental protection in the development of oil and gas. The PCEA under this law has the power and responsibility to coordinate the involvement of other government authorities in the plan approval process.<sup>46</sup> This law also allows the Russian Federation to create a one-window agency for conservation, environmental, and safety aspects of petroleum operations through a delegation of authority.<sup>47</sup>

The PCEA has authority to perform its functions like other administrative agencies in other major legal systems. That is, it may issue orders to enforce the law<sup>48</sup> and promulgate regulations to implement the law.<sup>49</sup> The rights of citizens to obtain information is specified in Article 9.<sup>50</sup> Confidentiality of certain information belonging to licensees is provided in Article 10.<sup>51</sup> Article 11 provides for resolution of disputes between the PCEA and a licensee in specified circumstances.<sup>52</sup> Disputes over disapproval of an exploration plan, disapproval of a development and production plan, denial of a drilling permit or plan application will be resolved in the same manner as under the Proposed Licensing Act.<sup>53</sup> At present, Article 66 of the Proposed Licens-

44. SUBSURFACE RESOURCES LAW, art. 3(3).

45. SUBSURFACE RESOURCES LAW, art. 3(9).

46. *See* PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 15(e), 16(e).

47. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 5(c). This is similar to the Environmental Protection Agency's delegation to the federal Mineral Management Services of authority to grant environmental permits for offshore areas in the United States. 30 C.F.R. § 280.5 (1992).

48. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 7.

49. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 8.

50. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 9; *see* discussion *infra* notes 88-89.

51. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 10.

52. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 11.

53. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 11.

ing Act provides for arbitration in accordance with procedures set out in the License.<sup>54</sup> The Proposed C&E Act attempts to establish a procedure that will be consistent with the Licensing law. Furthermore, it refers other disputes to an Arbitrazh court.<sup>55</sup> Article 12 establishes special treatment for existing Russian petroleum associations.<sup>56</sup> While they will be required to live up to the same standards as foreign investors, there will need to be a transition period.

Chapter C (Articles 13-16) of the Proposed C&E Act establishes the use of plans for the rational development of oil and gas.<sup>57</sup> Under this Chapter, the licensees must develop plans for exploration and for development and production before commencing exploration or development operations. These plans are

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54. PROPOSED LICENSING ACT, art. 66.

55. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 11(b). In the United States, resolution of most disputes occurs in the state and federal court systems. The judicial system of Russia and the other former Soviet republics does not have the same tradition as the American system. Even before the breakup of the Soviet Union, foreign companies doing business in there with state-owned enterprises were reluctant to submit to a court system they did not fully understand or trust. To accommodate such concerns, the Soviets were willing to agree to arbitration of disputes. The Soviets normally preferred arbitration in the Soviet Union, generally held at the Court of Arbitration (formerly the Foreign Trade Arbitration Commission) of the USSR Chamber of Commerce and Industry. This Court became competent to hear disputes involving joint ventures through a December 1987 decree of the Supreme Soviet and already had heard disputes involving joint ventures. But the Soviets also agreed to arbitration of disputes between joint venture parties in neutral, third-country locations, such as London (e.g., the London Court of International Arbitration) or Stockholm (the Arbitration Institute of the Stockholm Chamber of Commerce). Partners to joint ventures may agree upon the arbitration procedures (e.g., the UNCITRAL or ICC arbitration rules) to be followed at the arbitration. See generally Eugene Theroux and Arthur L. George, *Joint Ventures in the Soviet Union: Law and Practice*, Sep. 25-26, 1991, available in WL, Tp-all Database. For a thorough discussion of this subject see Jonathan H. Hines, *Dispute Resolution and Choice of Law in U.S.—Soviet Trade*, PLI Order No. A4-4267, July 17, 1989, available in WL, Tp-all Database. Swedish law has been often adopted as controlling law. Hines' piece sets forth the "optimal clause" viewed by the American Arbitration Association and the USSR Chamber of Commerce and Industry as being an acceptable arbitration clause for inclusion in contracts between legal or natural persons of the United States and foreign trade organizations of the Soviet Union. *Id.*

56. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 12.

57. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 13-16.

subject to approval by the appropriate authorities.<sup>58</sup> This approach allows a greater flexibility for different production and environmental circumstances. Thus, these provisions should be adaptable for onshore or offshore drilling and development in a wide range of environmental conditions. Filing of such plans is required in the United States (as well as in other countries) for land managed by the federal government.<sup>59</sup>

The use of fully integrated plans for rational exploration and production techniques and use of resources is in accord with the United Nations Environmental Protection (UNEP) guidelines that recognize that the most cost-effective environmental approach systematically integrates environmental issues into the project planning phase. The plans will consider all environmental media and would allow for the proper planning of reducing waste at its source and increasing recycling of waste components.

Although the licensee must take the initiative in proposing plans, as well as bear the responsibility for development, all actions that might lead to waste or harm to the environment will be subject to the jurisdiction of the Russian Federation.<sup>60</sup> By requiring approval from the PCEA and appropriate governmental authorities, licensees will be subject to full oversight and control. Moreover, the PCEA has the power to supplement legislation by appropriate orders with sufficient criteria to guide the exercise of such authority.<sup>61</sup>

The PCEA will supervise the implementation of the plans. It will have jurisdiction to supervise operations under the plans, under this law, and under regulations made pursuant to this law.<sup>62</sup> For purposes of simplification and flexibility, addenda to this law detail the exploration plan and the development and production plan requirements.<sup>63</sup> By appropriate regulation, the responsible government agency may wish to vary the require-

58. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 13.

59. *See, e.g.*, Act of Mar. 22, 1985, No. 11, art. 23 (Nor.) (providing for the licensee "to submit to the Ministry for approval a detailed plan for development and operation" of a petroleum deposit).

60. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 13-16.

61. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 7.

62. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 5.

63. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, addenda 1-2.

ments of the plans by region or type of development contemplated. The details are merely suggestive in the draft as it will be necessary to coordinate the conservation and environmental regulations under the Proposed C&E Act with other laws of the Russian Federation. Ecological protection requirements of other laws will not be displaced by these plans for exploration and for development and production of oil and gas, but once approved the plan will be binding between licensors and licensees. Thus the Proposed C&E Act does not attempt to provide a comprehensive body of regulation of the oil and gas exploration and production industry, but instead provides merely a means for implementing and achieving comprehensive regulation and ecological protection. It will be through the drafting, review, approval, and implementation of these plans that mechanisms for compliance with the Russian Federation laws will be spelled out and the goals of such laws will be fulfilled. In reviewing, approving, and conditioning these plans, the PCEA, related government entities, and the public can ensure that rational decisions are made in choosing between technology control (e.g. use of Best Practicable Technology) and emission limitations, or a combination of such techniques. In some areas, of course, specific operations may be entirely forbidden.

The licensee acting under an exploration license granted in accordance with Chapter B of the Proposed Licensing Act,<sup>64</sup> or acting under a production license granted in accordance with Chapter C of the Proposed Licensing Act (for the Exploration Period of such Production License),<sup>65</sup> is responsible for preparing and submitting an exploration plan to the PCEA.<sup>66</sup> This plan must include a description of the type and sequence of exploration activities; a description of drilling rigs, platforms and other structures to be used; the types of geophysical equipment that will be used; and the location of each exploratively relevant geological and geophysical information.<sup>67</sup> Information contained in the report must also include a detailed description of support and storage facilities; the number of people expected

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64. PROPOSED LICENSING ACT, arts. 11-14.

65. PROPOSED LICENSING ACT, arts. 24-30.

66. See PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 13.

67. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, addendum 1.

to be employed; traffic patterns; the quantity and makeup of wastes and pollutants; supplies, services and resources needed for exploration plan implementation; a description of potentially hazardous or environmentally sensitive areas, including archaeological and cultural sites; and an Environmental Impact Assessment (EIA) of the effects on the environment of carrying out the exploration plan.<sup>68</sup> Regional officials and agencies may review and comment to the PCEA on all exploration plans.

After locating economically recoverable oil or gas, the licensee, who has been granted a production license pursuant to Chapter C of the Proposed Licensing Act,<sup>69</sup> must prepare and file with the PCEA a development and production plan for approval. This plan includes information similar to that in the exploration plan. As with the exploration plan, the PCEA receives an EIA prepared in accordance with international standards that ensures a review of the environmental effects of activities proposed in the development and production plan. Regional officials and other agencies may review and comment to the PCEA on all development and production plans.<sup>70</sup>

The procedures set forth for obtaining both the exploration and the development and production plans<sup>71</sup> incorporate provisions from the Russian draft law on Ecological Disaster Zones pertaining to activity permits. The provisions in the Proposed C&E Act require publication of applications in the local press, public hearings on the application, and allow for additional hearings to familiarize the public with the application.<sup>72</sup> They also provide for state ecological examination by the appropriate authority, list items that must be shown at the hearing by the applicant to get approval, and require limits and conditions on

68. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, addendum 1.

69. PROPOSED LICENSING ACT, arts. 24-30.

70. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 15(e), 16(d).

71. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 13-16.

72. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 15(b), 16(b)-(d). If an application is for seismic activity, under Article 14 of the Proposed C&E Act, the PCEA may approve the exploration plan without a hearing, if it conclusively finds that the proposed activity will adversely affect the environment. *Id.* art. 14(b).

operations under the approved plan on such matters as limiting negative environmental influences and requiring measures for recultivating land and renewing other natural resources.<sup>73</sup>

An environmental baseline study will be part of the licensee's preparation of information for an exploration plan or a development and production plan. A licensee will most likely include such a study as part of its EIA preparation.<sup>74</sup> Submitting such information will be of importance to the licensee under Article 28 of the Proposed C&E Act for this section on environmental obligations makes it clear that the licensee will not be held responsible for pre-existing environmental problems.<sup>75</sup>

In addition to the plan requirements of the Proposed C&E Act, Chapter D (Articles 17-27) sets forth additional specific requirements of all licensees.<sup>76</sup> These requirements relate to the drilling and operation of all wells that are subject to this Act. Specific procedures must be followed.<sup>77</sup> Other operations such as fracturing, shooting, and acidizing the well must be accompanied by sundry notice to the PCEA.<sup>78</sup> A monthly report of operations for each license must be filed by all licensees,

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73. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 15(d)-(f), 16(d)-(e).

74. See PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 31.

75. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 28(e).

76. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 17-27.

77. For example, under Article 18, the PCEA will receive a Notice of Intent to Drill. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 18. A suggested NOTIFICATION OF DRILLING FORM has been provided that gives the PCEA full information about a proposal to drill, and it indicates specifically the locations and depths of wells to be drilled. See PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, Form Three. It must be filed at least 30 days in advance of drilling. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 18. This allows a period of time for the PCEA to review the Notice to assure itself that the licensee is planning to drill in accordance with the appropriate plan and that no other lawful reason exists why the proposed drilling should not be allowed. If there is a problem with drilling, the 30 day period gives the Petroleum Conservation and Environment Authority sufficient time to initiate action to stop the drilling. Each time a well is deepened, reworked, redrilled, or plugged, a new Notice must be filed. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT art. 19(a).

78. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 19(b).

including operators.<sup>79</sup> Authority is provided for voluntary and compulsory unitization in appropriate circumstances under established criteria.<sup>80</sup> While there is an identical provision in the Proposed Licensing Act,<sup>81</sup> it may be preferable for the PCEA to exercise such authority over unitization.

Chapter E (Articles 28-31) of the Proposed C&E Act contains additional concerns and authority regarding the environment and safety.<sup>82</sup> The Act provides for environmental protection in several ways that are meant to be complementary, not exclusive. One way is the plan approval process. If the exploration and the development and production plans proposed by a licensee devote insufficient attention to the environmental aspects of petroleum development, then they will not receive approval.<sup>83</sup> Second, Chapter E spells out certain specific requirements and standards that a licensee and the PCEA must observe. The licensee will be liable for any harm it causes but will not be liable for pre-existing conditions.<sup>84</sup> An EIA must be prepared as part of plan preparation.<sup>85</sup> Such assessments are routinely required of significant industrial projects in many countries, and the assessments are expected to conform to international standards. The third way in which environmental protection is provided for is that the licensee will continue to be subject to other applicable environmental laws of the Russian Federation, including the comprehensive legislation on environmental protection.<sup>86</sup>

Citizens will have participation in the licensing and exploration and development of oil and gas through their national and regional representatives. Moreover, provisions have been included that assure citizens of notification of the plan approval

79. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 23(e).

80. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 22.

81. *See* PROPOSED LICENSING ACT, art. 36.

82. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 28-31.

83. *See* PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 15(f)(3), 16(e)(3).

84. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 28(e).

85. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 14(c), 15(a), and 16(a).

86. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 28(a).

process through publication in local press and participation in the process through public hearings.<sup>87</sup> There is also a special provision added that guarantees every citizen the right to obtain ecological information from the agencies unless the denial is in the interest of safety, national defense, or concerns a commercial secret.<sup>88</sup> Quick response times are required and denial of access to ecological information is appealable to the courts.<sup>89</sup>

Chapter F (Articles 32-34) of the Proposed C&E Act contains provisions for noncompliance with the law by licensees and for penalties.<sup>90</sup> To assure compliance with the requirements of this Act, including the regulations, orders and plans issued or approved, the PCEA must take coercive action to suspend operations and production.<sup>91</sup> The power to suspend should only be used as a measure of last resort, and only when absolutely necessary to achieve the provisions of the Act. Unfortunately, suspension of operations and production effectively penalizes the state as well as the licensee. Civil penalties are also provided for in the Act,<sup>92</sup> yet the PCEA must provide additional regulations to implement this provision.<sup>93</sup> It is understood that some violations of this Law would also constitute violations of some other environmental laws of the Russian Federation. It is not the purpose of this Law to establish multiple liability, and it is doubtful that it is necessary for an effective regulatory program to impose penalties under multiple

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87. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 15(b), 16(b).

88. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 9(a)-(b).

89. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 9(c). Article 9 is taken from the Draft Law of the Russian Federation on Ecological Disaster Zones.

90. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 32-34.

91. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 32(a). This article should be read in conjunction with Article 7, which gives the PCEA the power to issue orders that would require compliance with the Act somewhat short of the more drastic action of suspending operations and production. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 7.

92. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 33.

93. Regulations to classify violations and specify the maximum penalties for each classification must be promulgated in accordance with the procedures provided in Article 8. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 8.

laws. However, some overlap is unavoidable since it is necessary to have penalties for violations of this Law that would not constitute violations of other laws of the Russian Federation. Problems of multiple enforcement may be solved by having other agencies delegate enforcement authority to the PCEA under Article 5 of this law.<sup>94</sup>

When penalties are to be assessed, the procedures of Article 34 must be followed.<sup>95</sup> These provide a method of impartial adjudication. Such procedures are the essence of due process as observed in most developed countries of the world.

Chapter G (Articles 35-41) of the Proposed C&E Act provides for oil spill preparedness while Chapter H (Articles 42-52) establishes a fund for compensation for certain offshore oil spills.<sup>96</sup> There is concern regarding the serious threat of oil pollution from exploration and production of oil and gas. It is important to establish a law to provide precautionary measures in avoiding oil spills, as well as to dictate standards for prompt and effective action to minimize damage resulting from an incident. The Proposed C&E Act provides for cooperation in responding to oil spills,<sup>97</sup> preparation of oil spill contingency plans,<sup>98</sup> and civil penalties for the violation of its terms.<sup>99</sup> It creates a national and regional exchange of technology to assure state-of-the-art programs.<sup>100</sup>

The costs of a major oil spill clean-up and compensation for damages is so potentially awesome that a particular licensee might not be able to pay for all of it.<sup>101</sup> Chapter H (Articles

94. See PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 5(c).

95. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 34. Under this article a notice specifying the violation must be issued to the licensee. The licensee then has 30 days to request a hearing. The decision of the hearing officer is appealable only by the licensee and can be appealed all the way to the Supreme Arbitrazh Court. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 34.

96. Chapter H was subsequently deleted.

97. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 35(a), 39-40.

98. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 36-37.

99. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 33-34.

100. The basis for Chapter G of this Act is the International Convention on Oil Pollution Preparedness, Response and Cooperation, Nov. 30, 1990, 30 I.L.M. 733.

101. In 1978, the U.S. created an Oil Spill Pollution Fund by placing a levy

42-52) creates a fund that is modeled after the U.S. Outer Continental Shelf Lands Act Amendments of 1978 and pertinent regulations.<sup>102</sup> Article 46 addresses license liability and financial responsibility.<sup>103</sup> This article is based on the 1977 London Civil Liability for Oil Pollution Damages Convention.<sup>104</sup> Article 51 sets forth claims procedures and is a mixture of both the sources mentioned above.<sup>105</sup>

## VII. CONCLUSION

Currently, the status of the University of Houston Law Center's Proposed Petroleum Conservation and Environmental Protection Act of 1992 is uncertain. The proposal was submitted to and discussed with a committee of Russian officials in late April and early May of 1992. Since that time, it appears that certain of the reforms envisioned early in the Yeltsin administration have faltered. The author suspects that Russia will see more rather than less turmoil. Adopting a comprehensive legislative program to encourage an infusion of capital, while at the same time providing an improvement of conservation and environmental conditions would help stabilize the country. Failure to do so may augur poorly for the future of Russia. A worst case scenario in this writer's view is to see a series of joint ventures established by Western and Japanese companies at the local government and production association level. Such alliances could then become wedges causing the further breakup of the Russian state. Without adoption of sound comprehensive legislation this seems a distinct possibility.

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on offshore oil production. The licensee would continue to be liable for a substantial portion of the costs; but the fund was available to make sure costs of clean up and appropriate compensation for damages were made. The Fund also bore costs of administering an oil spill response program. Fortunately, exploration, production and pipeline activities have maintained an excellent record. See David Hodes, *Natural Resource Damages: A Research Guide*, 9 PACE ENVTL. L. REV. 107 (1991).

102. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, arts. 42-52; see 33 C.F.R. § 135.1 (1992).

103. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 46.

104. Convention on Civil Liability for Oil Pollution Damage Resulting From Exploration for and Exploitation of Seabed Mineral Resources, May 1, 1977, 16 I.L.M. 1450-55.

105. PROPOSED CONSERVATION AND ENVIRONMENTAL PROTECTION ACT, art. 51.

